Department of Administrative Services, Capital Investment Section
Arbitrage Compliance Procedures: State Agency / Grantee Responsibilities
Updated: January 17, 2012

This document establishes responsibilities of State Agencies and Grantees for borrowings issued by the Capital Investment Section (CIS) on behalf of the State. This guidance helps assure continuing compliance with Internal Revenue Code and GASB Statements as well as conformity with generally accepted accounting principles.

	Action	Time Frame
1.	Enter into Interagency/grant agreement(s) with CIS that will require State Agencies and grants, at a minimum, to comply with: ➢ Requirements regarding restriction of proceeds to capital assets only; ➢ Timely expenditure of proceeds within IRS guidelines; ➢ Identification of available project proceeds and debt service requirements; ➢ Required submission of Completion Certificate to CIS Staff; ➢ Reporting responsibilities to maintain compliance with all State and Federal laws; and ➢ Recordkeeping requirements to maintain all records for three (3) years after final maturity of borrowing(s).	Ongoing
2.	Obtain appraisals when acquiring real property and submit to CIS Staff. Document that use of bond proceeds for acquisition price is commensurate with market value. Explain any significant variances between market and purchase price, and submit to CIS Staff.	Prior to bond sale
3.	State Agencies/Grantees will affirm to CIS that the "Temporary Period" exception timeline is met. State Agencies/Grantees will certify via their Spend Plan in the Interagency Agreement that the "Temporary Period" is satisfied in order for the State to issue the bonds tax-exempt, and the State Agency/Grantee reasonably expects at the time the bonds are issued: ➢ to spend, or have a binding commitment to an unrelated third party to spend, at least 5% of the net sale proceeds of the issue within 6 months after the issue date; ➢ to spend at least 85% of the net sale proceeds of the issue within three (3) years after the issue date; and ➢ to proceed with spending the proceeds of the issue on eligible expenditures with "due diligence".	Pre-bond sale and Ongoing
4.	Provide spend plan that shows the spending exception to arbitrage rebate for construction issues of at least 75% of available proceeds spent on "construction expenditures" as defined in the Tax Certificate for the issue is as	Pre-bond sale and Ongoing

	Action	Time Frame
	follows: <u>Elapsed Time After Issuance</u> — <u>Required Spending</u> Six (6) months — 10% 12 months — 45% 18 months — 75% 24 months — 100%	
5.	Provide spend plan that shows the spending exception to arbitrage rebate for non-construction issues as follows: <u>Elapsed Time After Issuance</u> — <u>Required Spending</u> Six (6) months — 15% 12 months — 60% 18 months — 100% Example: When more than 25% of the proceeds of a new borrowing issue are spent on a combination of land and equipment (other than specially made equipment) that issue would be only be eligible for the 18 month exception in this section.	Pre-bond sale and Ongoing
6.	Prepare formal Agency Request to Reimburse letter. Identify any expenditures to be reimbursed from bond proceeds between 18 months and 60 days prior to bond sale. Submit to CIS for review and approval.	Pre-bond sale and Prior to incurring expenditures
7.	Provide to CIS Staff any potential “private use” of financed assets, including use by such entities as the federal government, private research at universities or local governments. Follow guidance of CIS Staff for appropriate action of proposed private use including removing the item from the financing or selling taxable bonds to finance the asset.	Prior to bond sale
8.	For bond proceeds that will be granted to unrelated parties, enter into written contractual agreement with the unrelated party. Include in contractual agreement that obligations of grant are **limited solely** to conditions required to ensure and confirm that expenditures are made in accordance with the purpose of the grant and that granted funds will only be used for capital expenditures in accordance with tax code. Provide a copy of agreement to CIS.	Agreement is completed before expenditure is incurred
9.	State Agencies will be directed in interagency agreements to retain all construction and purchase contracts for three years after final bond maturity for each series.	At time of sale

	Action	Time Frame
10.	State Agencies record cost of issuance expenditures in accordance with generally accepted accounting principles and Oregon Accounting Manual. Retain supporting documentation for three years after final bond maturity for each series.	Post bond sale
11.	In the rare event a State Agency/Grantee abandons a project that it originally expected to undertake as a capital project: ➢ Pre-Issuance Abandonment: If the State Agency/Grantee has made expenditures for a capital project that it intended to reimburse with tax-exempt bond proceeds of a future issue, and the project is abandoned prior to the issue, the State Agency/Grantee will not seek to reimburse such expenditures with tax-exempt bonds. ➢ Post-Issuance Abandonment: If the State Agency/Grantee abandons a capital project after expenditures on such project have been repaid with tax-exempt bond proceeds, the State Agency/Grantee will notify CIS staff. CIS will consult with Bond Counsel to determine if the State Agency/Grantee may reallocate the tax-exempt bonds originally allocated to the project to another capital project or other applicable remedies provided under tax code.	At project abandonment
12.	Report on status of assets acquired with tax-exempt bond proceeds. If necessary, work with CIS on remedial action up to and including defeasance of outstanding bonds.	Annually in July / August
13.	Record arbitrage liability for State Comprehensive Annual Financial Report (CAFR) with CIS input.	Annually by October 31st
14.	Prepare agency reimbursement requests with accompanying documentation as prescribed in Exhibit G in of the Interagency Agreement. Reimbursement requests with documentation will be retained for three years after final borrowing maturity for each borrowing. Documentation accompanying reimbursement requests should include detailed invoices, or payroll information for state-constructed assets to sufficiently demonstrate expenditures were necessary for the construction of asset(s). Include explanatory notes where appropriate describing how asset(s) qualifies as a capital expenditure under GAAP. Any agency or grantee requesting payroll expense reimbursement will document the process for capturing capital expenditures in the interagency agreement.	Ongoing
15.	To comply with the tax-exempt status of the issue, assure that the payment date of costs for which reimbursement is being requested were either after or within 60 days before the bond closing. Or, if earlier:	Ongoing

	Action	Time Frame
	1) Intent Resolution: a) the costs were authorized through an Intent Resolution; b) the costs were paid no earlier than 60 days before the date of the Intent Resolution; c) the costs are being reimbursed no later than the later of 18 months after i) the expenditure was paid; or ii) the project to which the expenditure relates was placed in service; and d) the costs are not being reimbursed more than 3 years after the expenditure was paid; or 2) Preliminary Costs: a) The costs were paid earlier than the time limits described in (1) above but such costs were "preliminary costs" such as architectural, engineering, surveying, soil testing, and similar costs; b) The costs were incurred prior to commencement of the construction, acquisition or rehabilitation of the project; and c) No more than 20% of the proceeds of a bond issue can be used to reimburse preliminary costs described in this section.	
16.	Record transactions, report on activities in accordance with interagency/grant agreement and the State Accounting Manual.	Ongoing
17.	For all programs including but not limited to Certificates of Participation, XI-Q bonds, Lottery bonds, and Seismic bonds, State Agencies and grantees will retain expenditure(s) documentation of proceeds for three years after final bond maturity for each series. Refer to archives schedules for detailed information. In the event of a discrepancy with federal regulations, the guidelines established by the Internal Revenue Code shall prevail. The index for records retention schedules can be found at: http://arcweb.sos.state.or.us/pages/recmgmt/sched/index.html.	Ongoing
18.	To the extent that all proceeds from a bond issue have not been spent within three (3) years, State Agencies /Grantees will provide a written explanation from Project Management to CIS describing what circumstances changed after the bonds were issued such that all of the proceeds could not be spent within 3 years. State Agencies/Grantees shall provide an amended Spend Plan with a revised "date certain" completion date.	Third anniversary of bond issue
19.	The State Agency shall not change the use of the capital asset(s), or in any manner alter its design, structure, or configuration in any way inconsistent with the State Agency's currently approved plan, without first requesting and receiving the written consent of DAS.	Ongoing

	Action	Time Frame
20.	Interagency agreements require State Agencies and grantees to receive CIS permission prior to conducting any disposition of obsolete or sale of financed assets.	Ongoing
21.	As required by the Interagency Agreement, State Agencies/Grantees will submit completion certificate to CIS Staff upon project(s) completion. Upon completion of capital asset, State Agencies will remove expenditures from construction in progress and place the asset into service in accordance with generally accepted accounting principles and the Oregon Accounting Manual.	At time asset is ready for its intended use
22.	Once Completion Certificate has been provided, provide assertion to CIS Staff that no “private use” will occur relative to assets funded by borrowing(s). For grants to entities external to the State, provide assertion to CIS Staff on at least an annual basis.	Ongoing
23.	State Agencies/Grantees are responsible for maintaining the list of capital assets and associated depreciation throughout the life of the asset in accordance with generally accepted accounting principles and the Oregon Accounting Manual.	Ongoing after asset is placed in service