

Title: Post Issuance Compliance (PICO) Procedure	Effective Date: 4/2/24
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## Purpose

The Internal Revenue Service (“IRS”) requires organizations to monitor private use of facilities financed with tax-exempt bonds. This policy outlines tracking procedures to monitor post issuance private use so that limitations for these facilities are not exceeded.

This procedure is supplemental to *Policy 202: CSUS Board Debt Management Policy*

## Inputs

*Policy 202: CSUS Board Debt Management Policy*

## Procedure

Post-issuance compliance is the ongoing practice and procedures put in place by CSU to comply with the federal tax requirements for tax-exempt (TE) governmental bonds. This procedure consists of identifying and preventing any possible tax violations that may occur during the term the tax-exempt bonds are outstanding. The IRS rules allow up to 10% of bond proceeds for private business use (PBU) for government entities over the term of the bond.

Private business use means use (directly or indirectly) of the “facilities” in a “trade or business” carried on by a “nonqualified user.” IRC § 141(b)(6):

Use (directly or indirectly)

- PBU is usage of a TE bond financed property in trade or business by a “non-governmental person” such as nonprofit organizations, profit business entities, and federal or foreign governments.
- State and local government usage does not constitute PBU. Federal use does.
- An indirect usage example is heat supplied to other buildings from a bond-financed utility plant.

“Of the “facilities” (facilities or assets financed by, or the proceeds of, a tax-exempt financing)

In a “trade or business” (any activity carried on by a person other than a natural person)

Carried on by a “nonqualified user.”

- Nonqualified users are the federal government, its agencies, and any non-CSU user.
- Qualified users are limited primarily to state or local government units and CSU-users.

PBU can occur primarily from usage in a TE financed space by a non-CSU user. A non-CSU user is anyone other than a student, paid staff, or paid faculty.

Potential sources of private use of tax-exempt financed space may include the following:

- Unrelated trade or business activities
- Management and other service arrangements
- Sponsored research contracts conducting applied research
- Naming rights contracts
- Leases and subleases of facilities
- Joint venture/limited liability corporations/partnership arrangements

This procedure is done on a fiscal year basis and consists of several steps. These steps are included in order of appropriate timing below and are completed throughout the year.

Refer to the PICO Desk Manual for detailed instructions for the steps below:

- Gather and summarize, from campus departments, the sponsored research account information, (research projects), for the Fiscal Year (FY) being evaluated.
- Request information regarding private business use from building or department representatives for tax-exempt bonded buildings. We are currently using a questionnaire format in addition to emails. Prior to FY22, emails kept in the referenced blue binder were used as confirmation of private business use.
- Conduct building walkthroughs to identify/verify private business use.
- Update the PICO Space Use Summary Spreadsheet using documents provided by the Financial Reporting and Analysis (FRA) group.
- Update individual building summary spreadsheets using documents and emails provided by building representatives, walkthroughs, and sponsored research account PBU space use calculations. Create a spreadsheet and electronic file for any newly TE bonded building or existing bonded building, having started any PBU in the FY under review.
- Update the PICO Space Use Summary Spreadsheet for all building summaries with PBU.
- Percentages of PBU per bond will be shown in the PICO Space Use Summary Spreadsheet and will now be added to the PBU by bond file to determine if there are any bonds with PBU over 10% over the life of the bond.
- If any Private Business Use for any TE bond is identified at or over 10%, notify the University Controller and proceed with further investigation into the PBU activity for that bond.

## **Sponsored Research Accounts**

1. A listing of all new sponsored research accounts started in the fiscal year is generated from the university accounting system (Kuali). This may be done in 2 sets, one mid-fiscal year and one after the close of the fiscal year. This will disperse the workload on the departments from which the information will be requested.

2. The resulting spreadsheet is separated by department number and sent to each department representative to compile the principle investigators input on the building location for the research.
3. Upon return of the building location input, the Post Issuance Coordinator will perform a series of steps to cross reference the accounts to the research type listing provided by the Office of Sponsored Programs (OSP), insure data integrity across years and combine the data with previous years. Additional analysis is performed determining the location of all research accounts with activity for the year and added to a yearly summary spreadsheet.
4. The yearly summary spreadsheet calculates the percentages for the different types of research. The research types that are private business use are added to a multi-year % spreadsheet. This input is added to the yearly building summary spreadsheets where the research PBU percentages are calculated on total space available for research in the building determined by space type of each room.

### **Other Private Business Use, Questionnaires**

1. Email an [Annual Review Questionnaire.xlsx](#) to each building/department contact for all buildings currently funded by tax-exempt bonds. The buildings are determined by reviewing the PICO Space Use Summary Spreadsheet.
2. Upon receipt of completed questionnaire a review is done for any changes from the prior year that could indicate a change in PBU in the building. A request for follow-up information and/or a building walkthrough may be scheduled for clarification on space used for any new PBU activity. These figures will be used in the bonded building summaries. Questionnaires are kept in the building files.
3. If there has been any change in private business use for existing buildings, complete a walkthrough. For any new buildings, a walkthrough is needed if the department has mentioned potential private business use.
4. Prior to FY22, emails were sent to Building Proctors, (available on Facilities web site), or other designee, requesting information about the entire building, or if info was reported in a previous year--any updates on changes in space use. These email responses were kept in a "Blue Binder" referenced on the PICO Space Use and Building Summary spreadsheets.

### **Building Walkthroughs**

1. A complete walkthrough of tax exempt bonded buildings should be completed every 2 years for buildings with private business use.
2. Walkthroughs are to be completed for any new bond funded buildings that have potential private business use.
3. A successful walkthrough requires the following preparation and reduces the length of time required:
  - a. A printed copy of the building floor plans for note-taking during the walkthrough. Write in any private business use on these hard copies during the walkthrough noting the room numbers related to private business use. Square footage can be found if needed in the PICO database

- b. Copy of or knowledge of the contents of the questionnaire and any changes from the prior year
  - c. Research and recharge account activity
  - d. Information received from outside the departments residing in the building
  - e. Outside owned communications or solar equipment
  - f. Known leases or management contracts.
4. Set up a time to meet with the main contact (someone who is knowledgeable about the space use).
  5. In some cases, an entire building walkthrough might not be able to be completed (example, a security clearance may be needed for portions of a building). If this is the case, a request is to be made to the main contact for the building to provide an email, (to be kept on file), explaining the private business use within that space.
  6. Notes and observations and any accompanying PBU calculation changes will be kept in the building file.

### **PICO Space Use Summary Spreadsheet**

This spreadsheet calculates and shows the final PBU percentages per building and per bond. Fiscal years are on tabs labeled by year. The PBU percentages by bond totals are on a separate tab.

1. This spreadsheet is updated for the year under review:
  - a. Update for any new or refunding taxable or tax-exempt bonds issued in the Fiscal Year using information from FRA (bond map, par value schedule and building funding files).
  - b. Taxable bonds are listed here but not summarized for PBU.
  - c. Tax Exempt bonds are listed and summarized for PBU.
  - d. As a bond is paid off and taken off the market, the bond will be removed from PBU consideration.
  - e. The bond information update done here will also be updated in the individual building summary files.
  - f. After the building summary files are updated for all private business use, the total PBU percentage allocated to TE bonds is linked back to this PICO Space Use Summary Spreadsheet for every bond on that building.
  - g. When all the building PBU percentages have been recorded on the yearly spreadsheet, the summary totals per bond are recorded.

### **Building Summary Spreadsheets**

These spreadsheets are created for each building with PBU activity and financed all or in part with TE bonds. They are updated throughout the year as PBU information is collected from the preceding processes in this document. Each file is saved in the yearly building file along with substantiating information. Separate tabs in the summary are as follows:

1. Total space for the building, rooms, square footage, space type and space description from the PICO space database.

2. PBU research spreadsheet for the year from the sponsored research account process.
3. PBU calculation spreadsheet with all usable space allocated to CSU activities, research, other PBU with notes for the PBU space.
4. Bond funding including refundings for all active bonds with additional reference for bonds that have been called and retired.
5. Final PBU allocations to all applicable funding sources. PBU is allocated first to all non-bond funding sources for the project for which TE bonds were issued, then to taxable bonds for the same period and finally any remainder PBU allocated to the TE bonds. The TE bond PBU allocation is the percentage that is transferred to the PICO Space Use Summary Spreadsheet.

## **Corrective Actions**

The goal of ongoing tracking and monitoring is to ensure that all tax-exempt bonds remain qualified and are held in compliance with regulatory standards. Such monitoring also ensures that any actual or potential violations of federal tax requirements can be timely identified and corrected via self-remediation or through the IRS voluntary closing agreement program, if self-remediation is not available under applicable IRS regulations.

## **Training**

The Post Issuance Coordinator will participate in PBU training annually.

The Post Issuance Coordinator conduct PBU training annually for campus groups who participate in the collection of data for the Post Issuance process.

## **Records**

Electronic Post Issuance Compliance files for TE bonds will be kept at the University Controller's level for the life of the TE bonds along with any TE refunding bonds plus 3 years as required by the IRS.