ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS

CATEGORY: Financial/Fiscal/Budget	**CODE NUMBER:** AC 3-5
TITLE: Monitoring of Tax-Advantaged Bonds Internal Control Procedures	**ADOPTED:** 10/16/12 **AMENDED:** **ORIGINATING DEPARTMENT:** Clerk of Circuit Court/Finance Department

PURPOSE/SCOPE:

To constitute written procedures coupled with requirements contained in the arbitrage and tax certificates (the "Tax Certificates") or other operative documents executed at the time of issuance of the tax-advantaged bonds for ongoing compliance with federal tax requirements to ensure timely identification and remediation of violations of such requirements.

POLICY:

Lee County, Florida, Board of County Commissioners (the "County") has issued and may in the future issue tax-exempt obligations (including, without limitation, bonds, notes, loans, leases and certificates), tax credit obligations and "direct-pay" tax credit obligations (collectively, "tax-advantaged bonds") that are subject to certain requirements under the Internal Revenue Code of 1986, as amended (the "Code") with which the County intends to ensure continuing compliance.

The tax-advantaged bonds that are covered by these Procedures include, but are not limited to, "Build America Bonds" and "Recovery Zone Economic Development Bonds" that constitute "qualified bonds" under Section 6431 of the Code and are therefore eligible for interest subsidy payments (the "Subsidy") from the U.S. Treasury (such Build America Bonds and Recovery Zone Economic Development Bonds are collectively referred to as "Direct-Pay Bonds").

RESPONSIBILITIES:

The County Manager or designee ("CM") is responsible for coordinating the necessary actions required for monitoring these requirements. The CM and the Clerk of Courts or designee ("CFO") will consult with outside professionals such as the County's general counsel, Bond Counsel, financial advisor and rebate specialist as necessary to achieve the objectives of these policies and procedures. The County will provide the funding for the necessary professionals.

PROCEDURE:

1.0 General

1.1 Revisions to Procedures. To the extent necessary, the CM and CFO shall communicate with the County's Bond Counsel and shall suggest changes to these procedures from time to time in order to incorporate any additional requirements related to tax-advantaged bonds.

1.2 Additional Responsible Employees. The CM shall identify any additional persons who will be responsible for each section of these procedures, notify the current holder of that office of the responsibilities, and provide that person a copy of these procedures.

1.2.1 Upon employee or officer transitions, new personnel will be advised of responsibilities under these procedures and ensure they understand the importance of these procedures.

1.2.2 If employee or officer positions are restructured or eliminated, responsibilities will be reassigned as necessary to ensure that all procedures have been appropriately assigned.

1.3 Training. The CM, CFO, and other responsible persons will receive appropriate training that includes the review of and familiarity with the contents of these procedures, review of the requirements contained in the Code applicable to each tax-advantaged bond, identification of all tax-advantaged bonds that must be monitored, identification of all facilities (or portions thereof) financed or refinanced with proceeds of tax-advantaged bonds, familiarity with the requirements contained in the Tax Certificates or other operative documents contained in the transcript for each tax-advantaged bond, and familiarity with the procedures that must be taken in order to correct noncompliance with the requirements of the Code in a timely manner.

1.4 Periodic Review. The CM shall periodically review compliance with these procedures and with the terms of the Tax Certificates to determine whether any violations have occurred so that such violations can be timely remedied through the "remedial action" regulations (Treasury Regulation §1.141-12, §1.142-2 or §1.147-2, as applicable) or the Voluntary Closing Agreement Program described in Internal Revenue Service ("IRS") Notice 2008-31 (or successor guidance) and related sections of the Internal Revenue Manual. Such periodic review shall occur at least annually and confirmation of such review shall be provided to the CM.

1.5 Change in Bond Terms. If any changes to the terms of the outstanding tax-advantaged bonds of the County are contemplated, the CM shall consult Bond Counsel. Such modifications could result in a reissuance, i.e., a deemed refunding, of the bonds which could jeopardize the status of tax-advantaged bonds or subsidies on any direct-pay obligations.

1.6 Tax Certificates; Consultation with Bond Counsel. Upon the issuance of any tax-advantaged bonds, the CM shall ensure that Bond Counsel prepares a comprehensive Tax Certificate with respect thereto. The CM shall review such Tax Certificate and consult with Bond Counsel, if necessary, to fully understand the provisions of the Tax Certificate and the tax law requirements relating to such tax-advantaged bonds.

2.0 Issue Price for Tax-Advantaged Bonds; Premium Limit for Direct-Pay Bonds

2.1 Issue Price. In order to document the issue price of tax-advantaged bonds, the CM shall consult with Bond Counsel and the financial advisor and obtain a written certification from the underwriter, placement agent or other purchaser of the bonds as to the offering price of the bonds that is in form and substance acceptable to the County and Bond Counsel. The CM may request its financial advisor or other consultant to review the market trading activity of tax-advantaged bonds following their sale and prior to closing and to report any irregular trading activity.

2.2 Premium Limit for Direct-Pay Bonds. Prior to issuing Direct-Pay Bonds, the CM shall consult with Bond Counsel and Financial Advisor to assure that the premium on each maturity of the Direct-Pay Bonds (stated as a percentage of principal amount) does not exceed one-quarter of one-percent (0.25%) multiplied by the number of complete years to the earlier of the final maturity of the bonds or, generally, the earliest call date of the bonds, and that the excess of the issue price of the bonds over the price at which the bonds are sold to the underwriter or placement agent, when combined with other issuance costs paid from proceeds of the bonds, does not exceed 2% of the sale proceeds of the bonds.

3.0 Information Return Filing

3.1 Filing of Applicable Form 8038. The CM will confirm that Bond Counsel has filed the applicable information reports (such as Forms 8038, 8038-G and 8038-B) for such bond issue with the IRS on a timely basis, and maintain copies of such form including evidence of timely filing as part of the transcript of the bond issue.

3.2 Filing of Forms 8038-T or 8038-R. The CM shall file the IRS Form 8038-T relating to the payment of rebate or yield reduction payments in a timely manner. The CM shall also monitor the extent to which the County is eligible to receive a refund of prior rebate payments and provide for the timely filing for such refunds using an IRS Form 8038-R.

3.3 Filing of Form 8038-CP. For Direct-Pay Bonds, the CM shall review the IRS Form 8038-CP in order to ensure that the proper amount of interest is being reported and the proper amount of Subsidy is being requested with respect to each interest payment date. The CM shall ensure that the IRS Form 8038-CP is filed on a timely basis with respect to each interest payment date in order to receive timely payment of the Subsidy. If the Subsidy is to be paid to a person other than the County (i.e., the bond trustee or paying agent), the CM shall obtain and record the contact information of that person, and ensure that it is properly shown on Form 8038-CP so that the direct payment will be made to the proper person.

4.0 Use of Proceeds

4.1 Consistent Accounting Procedures. The CFO shall ensure the maintenance of clear and consistent accounting procedures for tracking the investment and expenditures of tax-advantaged bond proceeds, including investment earnings on such bond proceeds.

4.2 Reimbursement Allocations at Closing. At or shortly after closing of a tax-advantaged bond issue, the CM shall ensure that any allocations for reimbursement expenditures comply with the Tax Certificate for such bonds.

4.3 Timely Expenditure of Bond Proceeds. The CM shall monitor that sale proceeds and investment earnings on sale proceeds of tax-advantaged bonds are spent in a timely fashion consistent with the requirements of the Tax Certificate for such bonds.

4.4 Costs of Issuance Limitation. With respect to Direct-Pay Bonds and qualified private activity bonds, the CM shall monitor that no more than 2% of the sales proceeds are used to pay costs of issuance.

4.5 Qualified Use of Proceeds of Direct-Pay Build America Bonds. With respect to Build America Bonds, the CM shall determine the correct amount of available project proceeds and monitor that 100% of all sale proceeds and investment earnings on sale proceeds (other than proceeds used to pay costs of issuance or deposited in a reasonably required reserve fund) are allocated to capital expenditures in a timely fashion consistent with the requirements of the Tax Certificate.

4.6 Qualified Use of Proceeds of Recovery Zone Economic Development Bonds. With respect to Recovery Zone Economic Development Bonds, the CM shall determine the correct amount of available project proceeds and monitor that 100% of all sale proceeds and investment earnings on sale proceeds (other than proceeds used to pay costs of issuance or deposited in a reasonably required reserve fund) are allocated to expenditures for qualified economic development purposes within the recovery zone in a timely fashion consistent with the requirements of the Tax Certificate. Ensure compliance with "Davis Bacon Act".

4.7 Qualified Use of Proceeds of Qualified Private Activity Bonds. With respect to qualified private activity bonds, the CM shall monitor that sale proceeds and investment earnings on sale proceeds are allocated to qualifying expenditures permitted in a timely fashion consistent with the requirements of the Tax Certificate for such bonds.

4.7.1 If an exempt facility will not be completed, or the facility has been placed in service, and there are remaining unspent bond proceeds, the CM shall immediately consult with Bond Counsel to determine whether bonds are required to be redeemed or defeased under Treasury Regulation §1.142-12.

4.7.2 If exempt facility bonds are required to be redeemed or defeased in order to comply with the remedial action rules under Treasury Regulation §1.142-12, the CM shall cause such redemption or defeasance to occur within the time period prescribed by federal tax requirements at such time.

4.8 Requisitions. The CM shall utilize, or cause to be utilized, requisitions to draw down tax-advantaged bond proceeds, and ensure that each requisition contains (or has attached to it) detailed information in order to establish when and how bond proceeds were spent. The CFO shall review requisitions carefully to ensure proper use of bond proceeds to minimize the need for reallocations.

4.9 Maintenance and Retention of Records Relating to Proceeds. The CFO shall maintain careful records of all project and other costs (e.g., costs of issuance, credit enhancement and capitalized interest) and uses (e.g., deposits to a reserve fund) for which tax-advantaged bond proceeds were spent or used and any final allocation of such proceeds. The CFO shall maintain records separately for each issue of bonds for the period indicated in Section 7.1 below.

5.0 Monitoring Private Business Use - With respect to tax-advantaged bonds that are subject to the private activity bond limitations provided in the Code, the following procedures shall be implemented:

5.1 Identify Bond-Financed Facilities. The CM shall identify or "map" which outstanding tax-advantaged bond issues financed or refinanced which facilities (the "bond financed facilities") and whether the bonds were governmental or private activity.

5.2 Review of Contracts with Private Persons. The CM shall review all of the following contracts or arrangements with non-governmental persons or organizations or the federal government (collectively referred to as "private persons") with respect to the bond-financed facilities which could result in private business use of the facilities:

5.2.1 contracts for the sale or other disposition of bond-financed facilities;

5.2.2 leases of bond-financed facilities;

5.2.3 management or service contracts relating to bond-financed facilities; and

5.2.4 any other contracts involving "special legal entitlements" (such as exclusive provider arrangements) granted to a private person with respect to bond-financed facilities.

5.3 Bond Counsel Review of New Contracts or Amendments. Before amending an existing agreement described in 5.2 above with a private person or entering into any new lease, management or service agreement with a private person with respect to any bond financed facilities, the CM shall consult Bond Counsel and general counsel, as needed, to review such amendment or agreement to determine whether it results in private business use. The CM shall periodically communicate with the general counsel's office and facilities personnel in order to be informed with respect to the foregoing.

5.4 Analyze Use. The CM shall analyze any private business use of government bond-financed facilities and, for each issue of bonds, determine whether the 10% limit on private business use (5% in the case of "unrelated or disproportionate" private business use) is exceeded, and contact Bond Counsel or other tax advisors if the limit appears to be exceeded.

5.5 Remediation if Limitations Exceeded. If it appears that private business use limits are exceeded, the CM shall immediately consult with Bond Counsel to determine if a remedial action is required with respect to nonqualified bonds of the issue under Treasury Regulation §1.141-12, or if the IRS should be contacted under its Voluntary Closing Agreement Program.

5.5.1 If tax-advantaged bonds are required to be redeemed or defeased in order to comply with the remedial action rules under Treasury Regulation §1.141-12, the CM shall cause such redemption or defeasance to occur within the time period prescribed by federal tax requirements at such time.

5.6 Maintenance and Retention of Records Relating to Qualifying Use. The CFO shall retain copies of all of the above contracts or arrangements (or, if no written contract exists, detailed records of the contracts or arrangements) with private persons for the period indicated under Section 7.1 below

6.0 Arbitrage Rebate Compliance

6.1 Review of Tax Certificates. The CM shall review each Tax Certificate to understand the ongoing federal tax requirements applicable to each bond issue and shall consult with Bond Counsel to the extent necessary to fully understand such requirements.

6.2 List of Bonds and Arbitrage Yield. The CM shall record a list of all tax-advantaged bonds that require arbitrage calculations and denote the arbitrage yield of each bond issue (as shown on the applicable IRS Form) or, if applicable, denote that such bonds are variable rate bonds which must be determined on an ongoing basis.

6.3 Temporary Periods. The CM shall review the Tax Certificates to determine the "temporary periods" for each tax-advantaged bond issue which are the periods during which proceeds of bonds may be invested without yield restriction.

6.3.1 Post-Temporary Period Investments. The CM and CFO shall ensure that any investment of bond proceeds after applicable temporary periods is at a yield that does not exceed the applicable bond yield, unless yield reduction payments can be made pursuant to the applicable Tax Certificate.

6.3.2 Monitor Temporary Period Compliance. The CM shall monitor that tax-advantaged bond proceeds (including investment earnings) are expended promptly after the bonds are issued in accordance with the expectations for satisfaction of three-year or five-year temporary periods for investment of bond proceeds.

6.4 Monitor Yield Restriction Limitations. The CM and CFO shall identify situations in which compliance with applicable yield restrictions depends upon subsequent investments (e.g., the purchase of 0% State and Local Government Securities from the U.S. Treasury for an advance refunding escrow) and shall monitor and verify that these purchases are made as contemplated.

6.5 Establish Fair Market Value of Investments. The CFO shall ensure that investments acquired with bond proceeds satisfy IRS regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), maintaining records to demonstrate satisfaction of such safe harbors. The CFO shall consult the Tax Certificate for a description of applicable rules.

6.6 Credit Enhancement, Hedging and Sinking Funds. The CM shall consult with Bond Counsel before engaging in credit enhancement or hedging transactions relating to a tax-advantaged bond issue, and before creating separate funds that are reasonably expected to be used to pay debt service on bonds. The CFO shall maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions that are entered into relating to a bond issue.

6.7 Grants/Donations to Governmental Entities. Before beginning a capital campaign or grant application that may result in gifts that are restricted to bond-financed projects (or, in the absence of such a campaign, upon the receipt of such restricted gifts), the CM shall consult Bond Counsel to determine whether replacement proceeds may result that are required to be yield restricted.

6.8 Bona Fide Debt Service Fund. Even after all proceeds of a given tax-advantaged bond issue have been spent, the CM and CFO shall ensure that the debt service fund meets the requirements of a "bona fide debt service fund," i.e., one used primarily to achieve a proper matching of revenues with debt service that is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of: (i) the earnings on the fund for the immediately preceding bond year; or (ii) one-twelfth of the debt service on the issue for the immediately preceding bond year.

6.9 Debt Service Reserve Funds. The CFO shall ensure that amounts invested in any reasonably required debt service reserve fund do not exceed the least of: (i) 10% of the stated principal amount of the bonds (or the sale proceeds of the bond issue if the bond issue has original issue discount or original issue premium that exceeds 2% of the stated principal amount of the bond issue plus, in the case of premium, reasonable underwriter's compensation); (ii) maximum annual debt service on the bond issue; or (iii) 125% of average annual debt service on the bond issue.

6.10 Rebate and Yield Reduction Payment Compliance. The CM shall review the arbitrage rebate covenants contained in the Tax Certificate. Subject to certain rebate exceptions described in the applicable Tax Certificate, investment earnings on bond proceeds at a yield in excess of the bond yield (i.e., positive arbitrage) generally must be rebated to the U.S. Treasury, even if a temporary period exception from yield restriction allowed the earning of positive arbitrage.

6.10.1 The CM shall ensure that rebate and yield reduction payment calculations will be timely performed and payment of such amounts, if any, will be timely made. Such payments are generally due 60 days after the fifth anniversary of the date of issue of the bonds, then in succeeding installments every five years. The final rebate payment for a bond issue is due 60 days after retirement of the last bond of the issue. The County should hire a rebate consultant if necessary.

6.10.2 If a spending exception from the rebate requirement (as described in the Tax Certificate) may apply to the bonds, the CM shall ensure that the spending of proceeds is monitored prior to semi-annual spending dates for the applicable exception.

6.10.3 The CM shall file Form 8038-T in a timely manner.

6.10.4 Even after all other proceeds of a given bond issue have been spent, the CM shall ensure compliance with rebate requirements for any debt service reserve fund and any debt service fund that is not exempt from the rebate requirement.

6.11 Maintenance and Retention of Arbitrage and Rebate Records. The CFO shall maintain records of investments and expenditures of proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and yield reduction payments, and any other records relevant to compliance with the arbitrage restrictions for the period indicated in Section 7.1 below.

7.0 Record Retention

7.1 Period to be Maintained. The CFO shall ensure that for each issue of bonds, all relevant records and contracts are maintained in retrievable paper or electronic format while any of the tax-advantaged bonds are outstanding, plus a minimum of three years following the final maturity or redemption of that bond issue. Records required to be maintained include, but may not be limited to:

7.1.1 Basic records relating to the bond transaction, including the bond transcript and other related closing documents.

7.1.2 Construction contracts, purchase orders, invoices, trustee requisitions, accounting statements and other documentation relating to costs paid or reimbursed with bond proceeds.

7.1.3 Records identifying the assets financed with bond proceeds, including a final allocation of bond proceeds.

7.1.4 Documentation evidencing the use of bond-financed property, including records of lease or sale of such property and any change in use of such property from its original intended purpose.

7.1.5 Documentation relating to investment proceeds, including the purchase and sale of securities, SLGS subscriptions, yield calculations for each class of investments, actual income received from investments, trustee statements, rebate payments and arbitrage calculations and reports.

7.1.6 All correspondence to and from the IRS with respect to the tax-advantaged bonds.