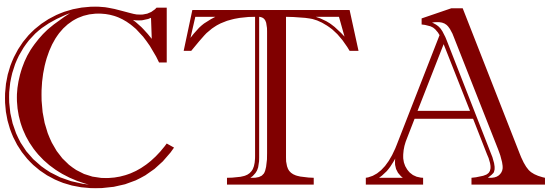

Capital Trust Agency

Tax-Exempt Debt
Post-Issuance Compliance Policies and Procedures

Adopted June 26, 2014

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Part I. Purpose.

It is the policy of Capital Trust Agency ("Agency") to comply, and have each conduit borrower (each, a "Borrower"), as listed in Exhibit A, comply, with all applicable federal tax rules related to the tax-exempt debt ("debt"[1]) issuances for which the Agency acts as a conduit issuer. As of the date of adoption of the following policies and procedures ("Policies and Procedures"), the Agency has acted as the conduit issuer for "qualified private activity" bonds authorized under Section 142 ("Exempt Facility Bonds") of the Internal Revenue Code of 1986, as amended ("IRC"), or Section 145 ("Qualified 501(c)(3)" Bonds) of the IRC.

These Policies and Procedures are intended to serve as a guide for both the Agency and each of the Borrowers to facilitate compliance with the federal tax laws applicable to the Agency's outstanding conduit debt issuances for a Borrower (collectively, such debt issuances are referred to as "Borrower's Bonds").

In the event these Policies and Procedures conflict, in whole or in part, with the Arbitrage and Tax Regulatory Certificate (or other similar certificate) (the "Tax Certificate") prepared on behalf of the Agency in connection with a debt issuance for a Borrower, the terms of the Tax Certificate shall control.

Part II. Responsibility of a Borrower's Primary Compliance Officer.

Except as otherwise described herein, the Agency Compliance Officer, has primary responsibility for ensuring that the Agency's outstanding debt issuances are, and will remain, in compliance with federal tax law. It is the policy of the Agency to ensure this compliance by requesting each borrower to designate a "Primary Compliance Officer," as listed in Exhibit A, for each Borrower, who will be responsible for ensuring that the responsibilities designated to the Borrower, as detailed in these Policies and Procedures, are met, with respect to each of the Borrower's Bonds. The Agency Compliance Officer and each Borrower's Primary Compliance Officer may consult with the Agency's Bond Counsel, as well as other third party providers, as needed, to ensure compliance with these Policies and Procedures. The Agency Compliance Officer, in consultation with each Borrower's Primary Compliance Officer, will review on an annual basis, the Policies and Procedures and make any necessary adjustments.

The Agency encourages each Borrower to implement its own post-issuance policies and procedures. In addition, the Agency will require each Borrower's Primary Compliance Officer, at the same time that these Policies and Procedures are reviewed, to complete a questionnaire for each issue of Borrower's Bonds outstanding. The forms of the questionnaires are shown on Exhibit B.

[1] Unless otherwise indicated herein, all references to "debt" shall include any tax-exempt debt.

Part III. Closing of Debt Issuances.

A. Tax Certificates. The Agency's bond counsel, with assistance from the Borrower for such debt issuance and professionals associated with the financing, shall prepare a Tax Certificate in connection with each conduit debt issuance issued by the Agency, to be executed by the Executive Director, as well as the Borrower's Primary Compliance Officer or other authorized designee of the borrower, at closing. The Tax Certificate shall serve as the operative document for purposes of establishing the Agency's and Borrower's reasonable expectations as of the date of issue of the Borrower's Bonds, as well as provide a summary of the federal tax rules applicable to such issuance. The Agency Compliance Officer and the Borrower's Primary Compliance Officer will review with the Agency's bond counsel the Tax Certificate prepared for each of the Agency's conduit debt issues for a Borrower prior to the closing of the issue.

B. Internal Revenue Service Form 8038 – Tax-Exempt Bonds. The Agency's bond counsel, with assistance from the Borrower's Primary Compliance Officer and other professionals associated with the financing, shall prepare an Internal Revenue Service ("IRS") Form 8038 (Information Return for Tax-Exempt Private Activity Bond Issues), in connection with each conduit debt issuance issued by the Agency, which the Agency Compliance Officer and the Borrower's Primary Compliance Officer will review prior to closing. Each IRS Form 8038 prepared for a debt issuance for a Borrower will be filed by the Agency's bond counsel with the IRS no later than the 15th day after the 2nd calendar month after the close of the calendar quarter in which the tax-exempt obligation to which such Form 8038 relates is issued.

Part IV. Use of Debt Proceeds – Qualified 501(c)(3) Bonds.

A. Private Use Generally. Neither the Agency nor any Borrower of proceeds of Qualified 501(c)(3) Bonds will knowingly take or permit to be taken any action which would cause any of the Borrower's Qualified 501(c)(3) Bonds to become "private activity bonds" other than Qualified 501(c)(3) Bonds as described below. Generally, a bond issue constitutes Qualified 501(c)(3) Bonds if:

1. 100% of the property which is financed or refinanced by the net proceeds of the bonds is owned by an organization described in Section 501(c)(3) of the IRC or a governmental unit, and

2. (a) At least 95% of the net proceeds of the bonds are used by a 501(c)(3) organization in furtherance of its exempt purpose or by a governmental unit. In general, an activity is treated as "exempt" if it does not constitute an "unrelated trade or business" of the 501(c)(3) organization using the net proceeds of the bonds, determined by applying Section 513(a) of the IRC, or

   (b) Not more than 5% of the net proceeds of the bonds is (a) secured by an interest in property, or payments in respect of property, used by a 501(c)(3) organization in an unrelated trade or business or for a private business use, or (2) derived from payments (whether or not to the Agency) made in respect of property, or borrowed money, used by a 501(c)(3) organization in an unrelated trade or business or for a private business use.

B. Overview. Each Borrower's Primary Compliance Officer will be responsible for routinely reviewing the uses of its facilities financed with the proceeds of Borrower's Qualified 501(c)(3)

Bonds for continued qualification of such bonds as Qualified 501(c)(3) Bonds. In addition, the Borrower may consult with the Agency's bond counsel regarding the applicable federal tax limitations imposed on each series of Borrower's Qualified 501(c)(3) Bonds and whether arrangements with third parties give rise to private business use of the financed projects. The private business use arrangements to be monitored by the Borrower include, but are not limited to, the following:

1. Management or Other Service Contracts. In the event the Borrower enters into a management contract, service agreement, operating agreement or license with a third-party, the Borrower will evaluate whether such arrangement results in private business use. The Borrower's Primary Compliance Officer shall be responsible for such evaluation and will review every service contract entered into involving the use of property financed with the proceeds of Borrower's Qualified 501(c)(3) Bonds. For these purposes, a management contract, service agreement, operating agreement and license include any contract under which a service provider provides services involving any portion of property financed with the proceeds of Borrower's Qualified 501(c)(3) Bonds (a "Service Contract").

   It is the intent of both the Agency and the Borrower to have the Borrower structure all Service Contracts impacting property financed with the proceeds of Borrower's Qualified 501(c)(3) Bonds so as to satisfy one of the private business use safe harbors set forth in Revenue Procedure 97-13. If the Borrower expects to enter into a Service Contract that may not satisfy the safe harbors set forth in Revenue Procedure 97-13, the Borrower should consult with the Agency's bond counsel to assess the impact, if any, that the noncompliant Service Contract would have on the tax status of the Borrower's Qualified 501(c)(3) Bonds, if any. For Borrower's reference, Revenue Procedure 97-13 can be found as Exhibit C to this Policies and Procedures.

2. Leases and Subleases. Each Borrower's Primary Compliance Officer will monitor all leases and subleases that involve the use of property financed with the proceeds of Borrower's Qualified 501(c)(3) Bonds, including the name of the lessee (or sublessee), the term of the lease (or sublease), the amount of the rent paid by the lessee (or sublessee) and the square footage of space used by the lessee (or sublessee) relative to the square footage of such property.

3. Naming Rights Agreements. Each Borrower's Primary Compliance Officer will monitor all naming rights agreements that involve property financed with the proceeds of Borrower's Qualified 501(c)(3) Bonds, including the term of the arrangement and the amount paid by the naming party.

4. Sponsored Research. Each Borrower's Primary Compliance Officer will monitor all "Sponsored Research Agreements" that involve property financed with the proceeds of Borrower's Qualified 501(c)(3) Bonds. The Borrower will apply Revenue Procedure 2007-47, 2007-29 I.R.B. 108, to any research sponsorship agreement existing now or in the future with respect to such property.

5. Clinical Trials. Each Borrower's Primary Compliance Officer will monitor all clinical trial agreements that involve property financed with the proceeds of Borrower's Qualified 501(c)(3) Bonds, including the term of the arrangement, the sponsoring entity, the trial to be conducted and the amount paid by the sponsoring party.

6. Joint Ventures and Partnership Arrangements. Each Borrower's Primary Compliance Officer will monitor all joint ventures, partnerships, or other cooperative agreements that involve the use of property financed with the proceeds of Borrower's Qualified 501(c)(3)Bonds.

7. Unrelated Trade or Business Use. Each Borrower's Primary Compliance Officer will monitor all uses of the bond financed property to determine whether any uses of such property gives rise to unrelated trade or business use.

C. Sales of Debt-Financed Property. It is the Agency's policy to have the Borrower use proceeds of Borrower's Qualified 501(c)(3) Bonds to finance property that the Borrower intends to own for the entire term of the debt issue financing the projects. Prior to selling or otherwise disposing of any project financed with the proceeds of Borrower's Qualified 501(c)(3)Bonds for which debt remains outstanding, the Borrower shall consult with the Agency's bond counsel to determine the impact, if any, such sale or disposition would have on the tax status of the Borrower's Qualified 501(c)(3) Bonds.

Part V. Use of Debt Proceeds – Exempt Facility Bonds.

A. Use of Proceeds. Section 142(a) of the IRC requires that 95% or more of the "net proceeds" of a Borrower's Exempt Facility Bonds be used to provide the exempt facility.

B. Use of Exempt Facilities. The Borrower shall consult the Tax Certificate prepared for the Exempt Facility Bonds to determine the ownership and use standards applicable to the Exempt Facility Bonds.

Part VI. Arbitrage Limitations Imposed on Debt Issuances.

A. Arbitrage Rebate Monitor. Each of the Borrowers will continue to retain an arbitrage rebate monitor to review its outstanding debt issuances, unless, in the judgment of the Borrower's Primary Compliance Officer, and in compliance with these Policies and Procedures and the Tax Certificate entered into in connection with the issue of Borrower's Bonds, there is no reasonable prospect of an arbitrage rebate or yield reduction payment liability. If an arbitrage rebate monitor is retained, the arbitrage rebate monitor will perform calculations to ascertain whether the Borrower owes an arbitrage rebate payment or yield reduction payment to the IRS, including whether the debt issuance in question qualifies for an exception to the arbitrage rebate rules. In the event a Borrower owes arbitrage rebate or has accrued a yield reduction payment liability to the IRS, that Borrower will timely[2] submit IRS Form 8038-T, Arbitrage Rebate Yield Reduction and Penalty in Lieu of Arbitrage Rebate, to be prepared by the arbitrage rebate monitor, together with payment in the amount equal to the arbitrage rebate or yield reduction payment liability calculated by the arbitrage rebate monitor in accordance with the Tax Certificate related to such debt issue, with notice to the Agency that such payment has been made.

Part VII. Accounting for Debt Proceeds.

[2] For these purposes, timely shall mean within 60 days after each installment computation date, the Borrower will cause to be paid to the IRS at least 90% of the amount of arbitrage rebate and yield reduction payment liability owed and within 60 days after the final installment computation date, the Borrower will cause to be paid to the IRS 100% of the amount of arbitrage rebate and yield reduction payment liability owed.

A. General. Except as otherwise described below and in the Tax Certificate entered into by the Agency and a Borrower in connection with a debt issuance, it is the policy of the Agency to have each Borrower consistently apply a generally accepted method of accounting for and allocating its debt proceeds.

B. Investment of Proceeds. Proceeds of each borrower's capital borrowings shall be accounted for in a separate fund or account. All proceeds shall be invested at the direction of the Borrower's Primary Compliance Officer.

C. Expenditure of Debt Proceeds on Capital Projects. The Borrower's Primary Compliance Officer reviews and approves invoices related to debt financed expenditures and causes payments to be made. All invoices and records of payment (either in the form of paper checks or electronic funds transfer confirmations) are retained by, or caused to be retained by, the Borrower in accordance with Part VIII, "Recordkeeping," below.

Each Borrower shall maintain accounting records, updated with each payment of an expenditure from proceeds of Borrower's Bonds, that for each outstanding issue of Borrower's Bonds show:

(1) The name and date of issue of the issue of Borrower's Bonds to which the proceeds relate;
(2) The projects financed with the proceeds of the issue of Borrower's Bonds;
(3) The authorized amount of proceeds to be used to finance each project;
(4) The amount of proceeds of the issue of Borrower's Bonds used to date to finance each project;
(5) The amount of unspent proceeds of the issue of Borrower's Bonds to be used to finance each project; and
(6) The date on which the debt proceeds related to each project were fully expended.

Part VIII. Recordkeeping.

A. General. The Agency's relationship with DAC is intended to assist the Agency in maintaining compliance with their recordkeeping responsibilities. Each Tax Certificate prepared on behalf of the Agency and a Borrower for a debt issuance shall provide for a description of the records to be maintained by or on behalf of the Agency and a Borrower and the period of time such records must be maintained. In addition, each Borrower will remain familiar with the IRS's Frequently Asked Questions related to the recordkeeping requirements for debt.

B. Means of Maintaining Records. Each of the Borrowers may maintain all records required to be held as described in this Part VIII in paper and/or electronic (e.g., CD, disks, tapes) form either internally or through the record-keeping system maintained by Digital Assurance Certification, L.L.C. ("DAC"). It is the policy of the Agency to have each Borrower maintain as much of its records electronically as feasible.

C. Transcript and Use of Debt Proceeds. Each Borrower shall maintain, or cause to be maintained, all records relating to the tax-exempt status of its debt issuances and the representations, certifications and covenants set forth in its respective Tax Certificates until the date 3 years after the last outstanding obligation of the issue to which such records and Tax Certificate relate has been retired. These records include, but are not limited to, the following:

(1) basic records and documents relating to the obligations (including the transcript, which shall include, among other records, the Tax Certificate, Internal Revenue Service Form 8038-G, verification report, authorizing resolution(s), trust indenture, loan agreement, record of public approval, and the opinion of bond counsel),
(2) documentation evidencing the expenditure of debt proceeds,
(3) documentation evidencing the use of debt financed projects by public and private sources, including copies of all arrangements described in Part VI of these Policies and Procedures,
(4) documentation evidencing all sources of payment or security for the debt issuance; and
(5) documentation pertaining to any investment of debt proceeds (including the purchase and sale of securities, SLGS subscriptions (if applicable), yield calculations for each class of investments, actual investment income received from the investment of proceeds, guaranteed investment contracts, and rebate calculations).

D. Investment Records. Each Borrower shall maintain detailed records with respect to every investment acquired with proceeds of its debt issuances until the date three years after the last outstanding obligation of the issue to which such records and nonpurpose investments relate has been retired. These records may reflect, but are not limited to, the following:

(1) purchase date, (2) purchase price, (3) information establishing fair market value on the date such investment became allocated to gross proceeds of the debt, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) periodicity of interest payments, (8) disposition price, (9) any accrued interest received, (10) disposition date, and (11) broker's fees paid (if at all) or other administrative costs with respect to each such nonpurpose investment.

E. Arbitrage Rebate and Yield Reduction Payment Records. Each of the Borrowers shall maintain all records of arbitrage rebate payment and yield reduction payment calculations performed by the arbitrage rebate monitor (irrespective of whether that Borrower owed any amount to the IRS), and records related to any arbitrage rebate payments or yield reduction payments made to the IRS, including the calculations performed by the arbitrage rebate monitor substantiating such payments, together with the IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, that accompanied all such payments, until the date 3 years after the last outstanding obligation of the issue to which such records and rebate payments relate has been retired.

F. Overpayment of Arbitrage Rebate Records. In the event a Borrower has overpaid to the United States an arbitrage rebate or yield reduction payment liability, the Borrower shall maintain all records of such arbitrage rebate payments or yield reduction payments, including calculations performed by the arbitrage rebate monitor, together with the IRS Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, that accompanied the request for a recovery of such overpayment until the date 3 years after the last outstanding obligation of the issue to which such records and rebate overpayments relate has been retired.

G. Other Records. In addition to the records described above, each Borrower will maintain the following records, to the extent applicable to a particular debt offering, until the date 3 years after the last outstanding obligation of the issue to which such relate has been retired:

(1) minutes and resolutions authorizing the issuance of, or the reimbursement of expenditures using proceeds of, the financing,

(2) appraisals, demand surveys and feasibility studies related to debt financed or refinanced property,
(3) documentation relating to any third-party funding for a project to which debt proceeds will be applied (including government grants),
(4) records of any Internal Revenue Service audit(s) or compliance check(s), or any other Internal Revenue Service inquiry related to the debt.

H. Applicability of Recordkeeping Requirement in the Event of a Refunding. In the event the Agency issues debt to retire prior debt of any of the Borrowers, that Borrower shall maintain all of the records described in this Part VIII with respect to the refunded debt until the date that is three years after the last outstanding tax-exempt obligation of the issue the proceeds of which were used to retire the refunded debt has been retired.

Part IX. Corrective Action.

A. General. In the event a violation of federal tax law is discovered, the Borrower's Primary Compliance Officer for such series of Bond will consult with the Agency Compliance Officer and the Agency's bond counsel to determine the best corrective action.

B. Remedial Actions. The Agency is aware of the remedial action rules contained in Treasury Regulations Section 1.141-12 (for Qualified 501(c)(3) Bonds) and Section 1.142-4 (for Exempt Facility Bonds), providing the Agency and Borrowers with the ability, in certain circumstances, to voluntarily remediate violations of the private business tests or private loan financing test. Although the Agency intends that none of its debt issuances will require the application of the remedial action rules, prior to taking any action that would cause one or more of its outstanding debt issuances to, absent a remedial action, violate the private business tests or private loan financing test, the Agency may consult with its bond counsel regarding the applicability of the remedial action rules to such action and the ability to remediate the impacted debt issuance.

C. Voluntary Closing Agreement Program. The Agency is aware of its ability, pursuant to IRS Notice 2008-31, to request a voluntary closing agreement with the IRS to correct failures on the part of a Borrower to comply with the federal tax rules related to tax-exempt debt issuances.

Part X. Continuing Education.

The Agency and each of the Borrowers will continue to consult regularly with the Agency's bond counsel regarding the federal tax rules applicable to its outstanding debt and changes to the federal tax law, and the Agency will regularly update these Policies and Procedures to reflect any such changes.

Each Borrower shall ensure that those who are tasked with bond compliance responsibilities shall undertake a reasonable amount of continuing education on an annual basis, including but not limited to, consulting with outside professionals, participation in conferences, reading informational updates from governmental resources and professional organizations, and participation in DAC webinars.

Capital Trust Agency Conduit Borrowers

Borrower

Name: _____

Address: _____

Primary Compliance Officer

Name _____

Title _____

Contact Info _____

Bond Issue

Title: _____

Dated Date: _____

Questionnaire: _____

Forms of Questionnaires

Exhibit B-1 – Exempt Facility

Exhibit B-2 – Qualified 501(c)(3)

CTA

Annual Post-Issuance Tax Compliance Certification of Exempt Facility Bonds

Name of Borrower:_____
Name of Bond Issue: _____
Issue Date:_____

The Borrower certifies and acknowledges responsibility for monitoring post-issuance tax compliance with respect to the above-described bond issue, including, but not limited to:

- Qualified use of bond proceeds and bond-financed property, including the requirement that, in the event proceeds of the bond issue and/or the property financed thereby are used in a manner so as to require that a "remedial action" be taken, the Borrower complies with applicable federal tax law
- Arbitrage yield restriction and rebate requirements, including limiting the investment of bond proceeds, complying with applicable "temporary period" exceptions, monitoring amounts pledged directly or indirectly to secure the payment of debt service, and compliance with any applicable requirements to rebate excess investment earnings to the Federal Government.

In connection with the above, the Borrower hereby represents and certifies:

(1) The Borrower is, and has been since the Issue Date, in compliance with the terms and conditions described in the Tax Certificate (or other similarly-named document) executed by the Borrower in connection with the issuance of the bonds	**Yes**	**No**
(2) The Borrower is aware of its ability to take a "remedial action" pursuant to the Federal Income Tax Regulations arising out of the Borrower's failure to use the proceeds of the bonds and/or the property financed thereby in a qualifying manner	**Yes**	**No**
(3) The Borrower will consult with the Capital Trust Agency in the event that an action is taken (or is not taken) that results in the need to take a "remedial action" pursuant to the Federal Income Tax Regulations	**Yes**	**No**
(4) The Borrower is in compliance with the applicable arbitrage yield restriction and rebate requirements with respect to the bonds, including:	**Yes**	**No**
(a) Investment of sale proceeds of the bonds at the applicable permissible yield		
(b) Monitoring and investment of "replacement proceeds" of the bonds at the applicable permissible yield		
(c)Payment of any yield reduction payments owed with respect to the bonds to the Internal Revenue Service		
(d) Compliance with the arbitrage rebate requirement, including the payment to the Internal Revenue Service of any arbitrage rebated owed with respect to the bonds		
(5) The Borrower maintains, and will continue to maintain, sufficient records to establish compliance with applicable federal tax law, including, but not limited to, the matters described in Questions [1] through [4] above	**Yes**	**No**

This Annual Post-Issuance Tax Compliance Certification of the Borrower is utilized by the Capital Trust Agency to assist the Agency in monitoring post-issuance tax compliance with respect to the above-referenced bonds. Nothing contained in this Annual Certification of the Borrower is intended to, or will, modify the Borrower's representations, certifications or warranties made under the Tax Certificate (or other similarly-named document) entered into by the Borrower in connection with the issuance of the bonds or otherwise modify or limit the Borrower's post-issuance tax compliance monitoring requirements.

Signature:_____

Name: _____

Title: _____

Date : _____

CTA

Annual Post-Issuance Tax Compliance Certification of the Borrower of Qualified 501(c)(3) Bonds

Name of Borrower:_____
Name of Bond Issue: _____
Issue Date:_____

The Borrower certifies and acknowledges responsibility for monitoring post-issuance tax compliance with respect to the above-described bond issue, including, but not limited to:

- Qualified use of bond proceeds and bond-financed property, including the requirement that, in the event proceeds of the bond issue and/or the property financed thereby are used in a manner so as to require that a "remedial action" be taken, the Borrower complies with applicable federal tax law
- Arbitrage yield restriction and rebate requirements, including limiting the investment of bond proceeds, complying with applicable "temporary period" exceptions, monitoring amounts pledged directly or indirectly to secure the payment of debt service, and compliance with any applicable requirements to rebate excess investment earnings to the Federal Government.

In connection with the above, the Borrower hereby represents and certifies:

(1) The Borrower is, and has been since the Issue Date, in compliance with the terms and conditions described in the Tax Certificate (or other similarly-named document) executed by the Borrower in connection with the issuance of the bonds	**Yes**	**No**
(2) The Borrower has owned, and will continue to own, all property financed with the bond proceeds	**Yes**	**No**
(3) The Borrower is aware of its ability to take a "remedial action" pursuant to the Federal Income Tax Regulations arising out of the Borrower's failure to use the proceeds of the bonds and/or the property financed thereby in a qualifying manner	**Yes**	**No**
(4) The Borrower will consult with the Capital Trust Agency in the event that an action is taken (or is not taken) that results in the need to take a "remedial action" pursuant to the Federal Income Tax Regulations	**Yes**	**No**
(5) The Borrower is in compliance with the applicable arbitrage yield restriction and rebate requirements with respect to the bonds, including:	**Yes**	**No**
(e) Investment of sale proceeds of the bonds at the applicable permissible yield		
(f) Monitoring and investment of "replacement proceeds" of the bonds at the applicable permissible yield		
(g) Payment of any yield reduction payments owed with respect to the bonds to the Internal Revenue Service		
(h) Compliance with the arbitrage rebate requirement, including the payment to the Internal Revenue Service of any arbitrage rebated owed with respect to the bonds		
(6) The Borrower maintains, and will continue to maintain, sufficient records to establish compliance with applicable federal tax law, including, but not limited to, the matters described in Questions [1] through [4] above	**Yes**	**No**

This Annual Post-Issuance Tax Compliance Certification of the Borrower is utilized by the Capital Trust Agency to assist the Agency in monitoring post-issuance tax compliance with respect to the above-referenced bonds. Nothing contained in this Annual Certification of the Borrower is intended to, or will, modify the Borrower's representations, certifications or warranties made under the Tax Certificate (or other similarly-named document) entered into by the Borrower in connection with the issuance of the bonds or otherwise modify or limit the Borrower's post-issuance tax compliance monitoring requirements.

Signature : _____

Name: _____

Title: _____

Date : _____

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 103, 141, 145; 1.141–3, 1.145–2.)

Rev. Proc. 97–13

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth conditions under which a management contract does not result in private business use under § 141(b) of the Internal Revenue Code of 1986. This revenue procedure also applies to determinations of whether a management contract causes the test in § 145(a)(2)(B) of the 1986 Code to be met for qualified 501(c)(3) bonds.

SECTION 2. BACKGROUND

.01 *Private Business Use.*

(1) Under § 103(a) of the 1986 Code, gross income does not include interest on any state or local bond. Under § 103(b)(1) of the 1986 Code, however, § 103(a) of the 1986 Code does not apply to a private activity bond, unless it is a qualified bond under § 141(e) of the 1986 Code. Section 141(a)(1) of the 1986 Code defines "private activity bond" as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under § 141(b)(1) of the 1986 Code, an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under § 141(b)(6)(A) of the 1986 Code, private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 145(a) of the 1986 Code also applies the private business use test of § 141(b)(1) of the 1986 Code, with certain modifications.

(2) Corresponding provisions of the Internal Revenue Code of 1954 set forth the requirements for the exclusion from gross income of the interest on state or local bonds. For purposes of this revenue procedure, any reference to a 1986 Code provision includes a reference to the corresponding provision, if any, under the 1954 Code.

(3) Private business use can arise by ownership, actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or certain other arrangements. The Conference Report for the Tax Reform Act of 1986, provides as follows:

> The conference agreement generally retains the present-law rules under which use by persons other than governmental units is determined for purposes of the trade or business use test. Thus, as under present law, the use of bond-financed property is treated as a use of bond proceeds. As under present law, a person may be a user of bond proceeds and bond-financed property as a result of (1) ownership or (2) actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or (3) any other arrangement such as a take-or-pay or other output-type contract.

2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–687–688, (1986) 1986–3 (Vol. 4) C.B. 687–688 (footnote omitted).

(4) A management contract that gives a nongovernmental service provider an ownership or leasehold interest in financed property is not the only situation in which a contract may result in private business use.

(5) Section 1.141–3(b)(4)(i) of the Income Tax Regulations provides, in general, that a management contract (within the meaning of § 1.141–3(b)(4)(ii)) with respect to financed property may result in private business use of that property, based on all the facts and circumstances.

(6) Section 1.141–3(b)(4)(i) provides that a management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility.

(7) Section 1.141–3(b)(4)(iii), in general, provides that certain arrangements generally are not treated as management contracts that may give rise to private business use. These are—

(a) Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing or similar services);

(b) The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities;

(c) A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined in § 168(i)(10) of the 1986 Code), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and

(d) A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

(8) Section 1.145–2(a) provides generally that §§ 1.141–0 through 1.141–15 apply to § 145(a) of the 1986 Code.

(9) Section 1.145–2(b)(1) provides that in applying §§ 1.141–0 through 1.141–15 to § 145(a) of the 1986 Code, references to governmental persons include section 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under § 513(a) of the 1986 Code.

.02 *Existing Advance Ruling Guidelines.* Rev. Proc. 93–19, 1993–1 C.B. 526, contains advance ruling guidelines for determining whether a management contract results in private business use under § 141(b) of the 1986 Code.

SECTION 3. DEFINITIONS

.01 *Adjusted gross revenues* means gross revenues of all or a portion of a facility, less allowances for bad debts and contractual and similar allowances.

.02 *Capitation fee* means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. For example, a capitation fee includes a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed medical services for a specified period. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to

protect the service provider against risks such as catastrophic loss.

.03 *Management contract* means a management, service, or incentive payment contract between a qualified user and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract. See §§ 1.141–3(b)(4)(ii) and 1.145–2. .

04 *Penalties* for terminating a contract include a limitation on the qualified user's right to compete with the service provider; a requirement that the qualified user purchase equipment, goods, or services from the service provider; and a requirement that the qualified user pay liquidated damages for cancellation of the contract. In contrast, a requirement effective on cancellation that the qualified user reimburse the service provider for ordinary and necessary expenses or a restriction on the qualified user against hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the qualified user, such as a loan or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm's- length that could operate to prevent the qualified user from terminating the contract (for example, provisions under which the contract terminates if the management contract is terminated or that place substantial restrictions on the selection of a substitute service provider).

.05 *Periodic fixed fee* means a stated dollar amount for services rendered for a specified period of time. For example, a stated dollar amount per month is a periodic fixed fee. The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. Capitation fees and per-unit fees are not periodic fixed fees.

.06 *Per-unit fee* means a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user. For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee. Separate billing arrangements between physicians and hospitals generally are treated as per-unit fee arrangements.

.07 *Qualified user* means any state or local governmental unit as defined in § 1.103–1 or any instrumentality thereof. The term also includes a section 501(c)(3) organization if the financed property is not used in an unrelated trade or business under § 513(a) of the 1986 Code. The term does not include the United States or any agency or instrumentality thereof.

.08 *Renewal option* means a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

.09 *Service provider* means any person other than a qualified user that provides services under a contract to, or for the benefit of, a qualified user.

SECTION 4. SCOPE

This revenue procedure applies when, under a management contract, a service provider provides management or other services involving property financed with proceeds of an issue of state or local bonds subject to § 141 or § 145(a)(2)(B) of the 1986 Code.

SECTION 5. OPERATING GUIDELINES FOR MANAGEMENT CONTRACTS

.01 *In general*. If the requirements of section 5 of this revenue procedure are satisfied, the management contract does not itself result in private business use. In addition, the use of financed property, pursuant to a management contract meeting the requirements of section 5 of this revenue procedure, is not private business use if that use is functionally related and subordinate to that management contract and that use is not, in substance, a separate contractual agreement (for example, a separate lease of a portion of the financed property). Thus, for example, exclusive use of storage areas by the manager for equipment that is necessary for it to perform activities required under a management contract that meets the requirements of section 5 of this revenue procedure, is not private business use.

.02 *General compensation requirements*.

(1) *In general*. The contract must provide for reasonable compensation for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the facility. Reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties is not by itself treated as compensation.

(2) *Arrangements that generally are not treated as net profits arrangements*. For purposes of § 1.141–3(b)(4)(i) and this revenue procedure, compensation based on—

(a) A percentage of gross revenues (or adjusted gross revenues) of a facility or a percentage of expenses from a facility, but not both;

(b) A capitation fee; or

(c) A per-unit fee is generally not considered to be based on a share of net profits.

(3) *Productivity reward*. For purposes of § 1.141–3(b)(4)(i) and this revenue procedure, a productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract, generally does not cause the compensation to be based on a share of net profits.

(4) *Revision of compensation arrangements*. In general, if the compensation arrangements of a management contract are materially revised, the requirements for compensation arrangements under section 5 of this revenue procedure are retested as of the date of the material revision, and the management contract is treated as one that was newly entered into as of the date of the material revision.

.03 *Permissible Arrangements*. The management contract must be described in section 5.03(1), (2), (3), (4), (5), or (6) of this revenue procedure.

(1) *95 percent periodic fixed fee arrangements*. At least 95 percent of the compensation for services for each annual period during the term of the

contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 15 years. For purposes of this section 5.03(1), a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(2) *80 percent periodic fixed fee arrangements.* At least 80 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 10 years. For purposes of this section 5.03(2), a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(3) *Special rule for public utility property.* If all of the financed property subject to the contract is a facility or system of facilities consisting of predominantly public utility property (as defined in § 168(i)(10) of the 1986 Code), then "20 years" is substituted—

(a) For "15 years" in applying section 5.03(1) of this revenue procedure; and

(b) For "10 years" in applying section 5.03(2) of this revenue procedure.

(4) *50 percent periodic fixed fee arrangements.* Either at least 50 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee. The term of the contract, including all renewal options, must not exceed 5 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the third year of the contract term.

(5) *Per-unit fee arrangements in certain 3-year contracts.* All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee. The term of the contract, including all renewal options, must not exceed 3 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the second year of the contract term.

(6) *Percentage of revenue or expense fee arrangements in certain 2-year contracts.* All the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee. During the start-up period, however, compensation may be based on a percentage of either gross revenues, adjusted gross revenues, or expenses of a facility. The term of the contract, including renewal options, must not exceed 2 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This section 5.03(6) applies only to—

(a) Contracts under which the service provider primarily provides services to third parties (for example, radiology services to patients); and

(b) Management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (for example, a contract for general management services for the first year of operations).

.04 No Circumstances Substantially Limiting Exercise of Rights.

(1) *In general.* The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

(2) *Safe harbor.* This requirement is satisfied if—

(a) Not more than 20 percent of the voting power of the governing body of the qualified user in the aggregate is vested in the service provider and its directors, officers, shareholders, and employees;

(b) Overlapping board members do not include the chief executive officers of the service provider or its governing body or the qualified user or its governing body; and

(c) The qualified user and the service provider under the contract are not related parties, as defined in § 1.150–1(b).

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 93–19, 1993–1 C.B. 526, is made obsolete on the effective date of this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after May 16, 1997. In addition, an issuer may apply this revenue procedure to any management contract entered into prior to May 16, 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is Loretta J. Finger of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure contact Loretta J. Finger on (202) 622–3980 (not a toll-free call).

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26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 103, 141, 145; 1.141–3, 1.145–2.)