



Oregon Public Universities;
University Shared Services Enterprise

Tax-Exempt Bonds: Compliance Training

Alison J. Bengé
Stacey Crawshaw-Lewis

20 AUGUST 2026 | OREGON STATE UNIVERSITY



Agenda

Post-Issuance Tax Compliance Training

Welcome, Introductions

Bond Compliance 101

- I. Basic federal law requirements
- II. Closing requirements
 - I. Including Shared Services role
- III. Post issuance and project completion
- IV. Expenditures and allocations
- V. Private business use
 - I. Including key PBU topics
- VI. Remedial actions

Lunch Break

Agenda (cont.)

Post-Issuance Tax Compliance Training

Bond compliance 201

- I. Investments: Arbitrage Rules
- II. State grant agreements
- III. Tax documentation
- IV. IRS enforcement
- V. Continuing disclosure
- VI. Private business use
 - I. Qualified equity and mixed use projects
 - II. Measurement
 - III. Management contracts 201
- VII. Sponsored Research

Basic Federal Tax Law Requirements

Basic Federal Tax Law Requirements

Tax-exempt bonds are subject to a number of federal tax law restrictions

— Expenditures

— What types of projects qualify for tax-exempt financing?

- University academic, sports and other facilities
- Student housing
- Other university projects

— Investments

— Monitoring the investment of bond proceeds

- Can you earn positive arbitrage?
- Can you keep it?

— Use

— Who can use tax-exempt bond financed facilities?

- Limits on private business use



Types of Obligations

State- and University-Issued Debt

- State-Issued Debt
 - Tax-backed
 - Proceeds granted or loaned to universities
- University-Issued Debt
 - Long-term Revenue Bonds
 - Fixed rate
 - Variable rate or multimodal
 - Short-term obligations
 - Notes or loans
 - Commercial paper or lines of credit
- Taxable or Tax-exempt
- New money or refunding

Closing Requirements

At Closing

A number of federal tax law requirements must be met at closing

— Documentation

- Tax certificate(s)
- Form 8038-G (governmental bonds) and Form 8038 (qualified private activity bonds)

Based on reasonable expectations on the date of closing

Form 8038-G (Rev. October 2021) Department of the Treasury Internal Revenue Service		Information Return for Tax-Exempt Governmental Bonds ► Under Internal Revenue Code section 149(e) ► See separate instructions. Caution: If the issue price is under \$100,000, use Form 8038-GC. ► Go to www.irs.gov/F8038G for instructions and the latest information.		OMB No. 1545-0047
Part I Reporting Authority				Check box if Amended Return ► ☐
1 Issuer's name		2 Issuer's employer identification number (EIN)		
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a		
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only)		
		3		
6 City, town, or post office, state, and ZIP code		7 Date of issue		
8 Name of issue		9 CUSIP number		
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information		10b Telephone number of officer or other employee shown on 10a		

At Closing

State and University Roles

— State Issued Article XI-F(1) and G Bonds

— For University Projects

OFFICIAL STATEMENT DATED APRIL 29, 2025

This Official Statement has been prepared on behalf of the State of Oregon, acting by and through the Office of the Oregon State Treasurer, to provide information on the 2025 Bonds. Selected information presented on this cover page is for the convenience of the users. To make an informed decision regarding the 2025 Bonds, a prospective investor should read this Official Statement in its entirety. Unless otherwise indicated, capitalized terms used on the cover page have the meanings given in this Official Statement.

**NEW ISSUES – NEGOTIATED
BOOK-ENTRY ONLY**

RATINGS: See “Ratings”



\$76,130,000
2025 SERIES F
**(ARTICLE XI-F(1) PROJECTS AND
REFUNDING)**

\$271,215,000
STATE OF OREGON
GENERAL OBLIGATION BONDS
(HIGHER EDUCATION)

\$195,085,000
2025 SERIES G
**(ARTICLE XI-G PROJECTS AND
REFUNDING)**

Purpose and Authority

The 2025 Bonds are being issued by the Issuer, at the request of the Director of the Oregon Department of Administrative Services (“DAS”), with the concurrence of the Higher Education Coordinating Commission (“HECC”) to finance various projects for Oregon universities and community colleges, to refund certain of the State’s outstanding general obligation bonds, and to pay costs of issuing the 2025 Bonds, as described herein. The 2025 Bonds are being issued pursuant to provisions of the Oregon Constitution that specifically authorize the issuance of general obligation bonds, including refundings, for projects that benefit certain higher education institutions or activities or community colleges authorized by law to receive State aid, Oregon Revised Statutes chapters 286A, 341 and 352, as amended, and an Issuance Certificate executed by the State Treasurer. See “AUTHORITY FOR ISSUANCE” herein for a more detailed discussion.

USSE Debt Management Responsibilities

Overview of Responsibilities and Processes



Purpose

- Legislative mandate
- Legacy Debt Services
- Non-Legacy Debt Services
 - 2015 and later

At Closing of Bond Sale

- Request Debt Sale information by Project and University from DAS:
 - Contracts Payable amount/Debt Service Schedules
 - Project Funding Amount
- Provide updated Debt Service Schedules to Universities:
 - New Money Sales
 - Refundings
 - DebtBook
- Institutional Paid Debt:
 - *Record* Contracts Payable
 - *Record* Contracts Receivable
 - If a refunding, record adjustment to Contract Liability
 - University to provide Project Fund and Liability Fund Information

At Fiscal Year End

- Institutional Paid Debt:
 - Record Short Term Liability, Adjust Long Term Liability
 - Record Interest Accrual as of June 30
 - Prepare Schedules for Financial Statement Preparation and Audit Requests

State Documentation (Summary)

- Grant agreements
 - Based on template form
 - Customized schedules
- Loan agreements
 - Based on template form
 - Customized schedules
- PITC
 - Joint Post-Issuance Tax Compliance Agreement
 - Arbitrage and rebate records
 - Tracking and reporting PBU
- Tax certificate for each issue
 - Grantee/borrower exhibit to State tax certificate
 - Based on template form
 - Reasonable expectations at closing regarding:
 - Project
 - Reimbursements; spenddown
 - Private use
- Form 8038G
- Each University's PITC policy



Post Issuance and Project Completion

Importance of a Post-Issuance Compliance Program

- Post-Issuance compliance
 - Duration of compliance requirements
 - Record keeping
 - Proactively addressing potential noncompliance
 - Timely corrective action
- Key moments
 - Refundings
 - Succession
 - Audits



Keys to Post-Issuance Compliance

Have and follow a roadmap

- Have written procedures.
- Identify responsible persons for tax compliance.
- Know arbitrage reporting requirements.
- Track bond proceeds.
- Monitor private use on an ongoing basis.
- Have a record retention policy.
- Call bond counsel if you have questions or run into issues.
- Review regularly and update as needed.

State Compliance Reports

Ongoing reporting obligations

- Grant and/or Loan Agreements
 - Project completion report on the Recipient's expenditure [and the Matching Amount]
 - No later than the Allocation Deadline, a final funding allocation report of all funding sources (bond and non-bond funding) allocated to the Project.
 - Notice of default
 - Additional reports as the State may reasonably request from time to time.
- Tax Certificate
 - Notice of change in use
- PITC
 - Notice of new Specified Arrangements
 - Annual compliance report and training*

State Tax Documentation

Joint Post-issuance Tax Compliance Agreement (PITC)

Among OST, DAS and the universities

Identifies post-issuance tax compliance obligations for State bonds

- Arbitrage
 - Maintain records, follow DAS/OST instructions, pay allocable rebate or yield restriction payment
- Private business use
 - Provide notice of new “Specified Arrangements” that may give rise to PBU ☐ consultation
 - Sales of Financed Assets
 - Leases of Financed Assets (other than residential leases),
 - management contracts not identified in Revenue Procedure 97-13, as clarified by Notice 2014-67,
 - contracts for basic research outside of the guidelines specified in Revenue Procedure 2007-47,
 - the sale or provision of electricity, water, or steam heat produced by the Financed Assets to buildings or structures that are in whole or in part used in a manner that gives rise to PBU, and
 - contracts that convey special legal entitlements for the beneficial use of Financed Assets comparable to those conveyed by the contracts identified above
 - Procedures for transferring/addressing PBU
 - Annual PBU compliance report
- Annual compliance training
- Excess PBU; remedial actions; VCAP

Key Compliance Reports

Project

- Expenditure reports
- Final allocation
(including match,
other Qualified
Equity)

PBU

- Annual report
- Any other new
Specified
Arrangement

Other

- Annual training*
- Notice of default

PITC and Debt Service Payments

- State Compliance reporting:
 - Track expenditure of bond/project proceeds until all project funds are expended (Includes University issued Revenue Bonds)
 - Prepare drafts of Final Project Reports required by the State (Certificate of Completion)
 - Tax-Exempt Debt - Calculate and Track Private Business Use by Building within Series
 - Preparation of Annual Financial Status Reports
 - PBU Annual Report
- Miscellaneous tasks:
 - Initiate and Record Semi Annual Debt Service Payments

Private Business Use Tracking

- PBU Tracking by Series, University, Project, and Building
 - PBU Annual Report
 - Location Codes
 - DebtBook
- PBU Change in Use
 - Research PBU availability- current bonding associated with Building
 - Request PBU approval from the State
 - Sale of a University Building

Practical Tools

Belts and suspenders

- Compliance calendar tied to each issue.
- Spend-down tracker aligned to the spending exceptions.
- Private use questionnaire for facility managers (annual).
- Annual internal certification from operating departments.
- Central "virtual filing cabinet" per issue.

Records Retention (What to Keep)

Long lived bonds, long lived records

- **General rule:** life of the bonds plus 3 years. If new money bonds are refunded, the clock extends through the life of the refunding bonds plus 3 years.
- What to keep:
 - Transcript and basic records relating to the bond transaction.
 - Documents evidencing the expenditure of bond proceeds.
 - Documents evidencing use of bond-financed property by public and private sources.
 - Documents evidencing all sources of payment and security of the bonds.
 - Documents pertaining to the investment of bond proceeds.
 - Rebate calculations and filings.
 - Contracts affecting bond-financed property.

How to Keep the Records

“Filing cabinets” for the future

- Electronic storage is fine — the IRS accepts it if records are complete, accurate, and accessible.
- Build for succession: assume the person who created the record will not be the person who has to find it.
- Consider one folder structure per issue: transcript, 8038-G, expenditure records, investment records, private use monitoring, rebate.



Expenditures and Allocations

Allocating to Expenditures

General Rule: Bond proceeds cease being proceeds when properly allocated to expenditures. Once a proper allocation or expenditure occurs, the arbitrage rules no longer apply to those amounts.

- The State generally requires that bond funds be distributed either for
 - Reimbursement of expenditures already made or
 - Amounts to be expended within 5 days.
- Reimbursement or a “current outlay” of cash
 - Considered expended on the date the proceeds are disbursed for the reimbursement
 - Current outlay of cash means an outlay reasonably expected to occur not later than 5 banking days after the allocation date.

Reimbursement of Pre-Issuance Expenditures

General Rule: Bond proceeds can be allocated to reimbursement of expenditures made prior to closing under certain circumstances.

- Nature of expenditures:
 - Capital Expenditures
 - Issuance costs
 - “Extraordinary” working capital
 - Certain grants or loans
- Timing:
 - Expenditure made not more than 60 days prior to “official intent” declaration
 - Allocation must be made not later than 18 months after the later of—
 - The date the original expenditure is paid; or
 - The date the project is placed in service or abandoned, but in no event more than 3 years after the original expenditure is paid.
- Timing Exceptions:
 - Preliminary Expenditures
 - Issuance costs and “de minimis” expenditures

Final Allocation

- Allocation methods:
 - Need to be reasonable and consistently applied
 - Specific tracing (default)
 - FIFO or LIFO
 - Pro Rata
 - Bond-proceeds-spent-first

Final allocation is an opportunity to review and change the allocation of bond proceeds.

- Timing Restrictions:
 - Not later than 18 months after the later of
 - The date the expenditure is paid or
 - The date the project is placed in service
 - 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier



Private Business Use

Basic Rule (Governmental)

Bonds issued as governmental bonds will become “**private activity bonds**” and therefore lose their tax status if:

1. More than 10% of bond proceeds are used for a “**private business use**” and
2. More than 10% of the debt service on the bonds is directly or indirectly payable from or secured by property used in a private business.
3. Or, more than 5% of the bond proceeds are loaned to a private entity

Note

Special rule for bond issues above \$150 million: The amount of private business use is effectively capped at \$15 million per issue.



What is Private Business Use?

Private business use of a financed facility is any use by or for the benefit of a party other than use by a state or local governmental entity or use as a member of the general public. In short, private business use means:

- Use (directly or indirectly)
- Of a financed facility
- In a “trade or business”
- Carried on by any person other than a state or local governmental unit – including the federal government and nonprofit organizations



Private Business Users

- Federal government
- Foreign governments
- Corporations, partnerships or any other entity engaged in business
- Natural persons engaged in a trade or business
- Governmental Bonds: 501(c)(3) organizations
- Special rules for partnerships with private users
- **Note:** Students are not private users. They are natural persons, not engaged in a trade or business.

Qualified 501(c)(3) Bonds

- If bonds are “qualified 501(c)(3) bonds” then most use by 501(c)(3) organizations is not considered private business use
- Need to follow special rules when issuing, such as having a public hearing and using a conduit issuer
- PBU limit is reduced to 5%
- Proceeds spent on costs of issuance count against the PBU limit
- A public university may choose to issue all or a portion of their bonds as 501(c)(3) bonds if they expect a lot of use by 501(c)(3) organizations

Basic Measurements

- The amount of private business use of property is determined according to the average percentage of private business use of that property during the measurement period.
- Measurement Period:
 - Starts: later of the issue date of the bonds or the date the property is placed in service
 - Ends: earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of the bonds.
- Track the private business use on an annual basis and then average the annual use over the measurement period.

Types of Use (Overview)

- Ownership
- Leases
- Management Contracts
- Output Contracts
- Sponsored Research Agreements
- Other actual or beneficial use
 - Special Legal Entitlements
 - Priority Rights



Unrelated or Disproportionate Use

How the Test Works

Treas. Reg. § 1.141-9(a)

The Rule

- An issue meets the private business tests if private business use and private security or payments attributable to unrelated or disproportionate use exceed 5% of the proceeds of the issue
- Only use that is unrelated to a government use, or related but disproportionate to it, counts toward this 5%

Two-Step Order of Application

- Step 1 — Is the private business use related to a government use financed with the same proceeds?
- Step 2 — If related, is that private use disproportionate in amount to the government use it relates to?

All unrelated use and all disproportionate use are aggregated together against the single 5% ceiling

Private business use that is neither unrelated nor disproportionate does not reduce the amount available under this test

Unrelated Use: Definition & Standard

Treas. Reg. § 1.141-9(b)(1)-(2)

Governing Standard

- Determined case-by-case, emphasizing the operational relationship between the government use and the private business use
- As a general matter, a facility used for a related private business use must be located within, or adjacent to, the governmentally used facility

Same-Purpose Carve-Out

- Private use for the same purpose as the government use is not unrelated use, so long as the government use is not insignificant
 - A privately operated pharmacy inside a government hospital is not unrelated use merely because it also serves outside patients
 - Parking spaces used by a nongovernmental person are not unrelated use if more than an insignificant portion of the garage serves government use (or related private use)

Location Drives the Unrelated Use Analysis

Treas. Reg. § 1.141-9(b)(1)



A facility used for a related private business use generally must be located within, or adjacent to, the governmentally used facility. Use at a remote site with no operational connection is unrelated use, regardless of the underlying purpose.

Unrelated Use —Example 1

Cautionary example

School & Remote Cafeteria (fails)

- County X issues \$20M of bonds: \$18.1M for a new school, \$1.9M for a privately operated cafeteria in an administrative building at a remote site, secured in part by the cafeteria
- The cafeteria has no operational connection to the school — it is unrelated use
- \$1.9M exceeds 5% of \$20M (\$1.0M) — the issue meets the private business tests

Unrelated Use —Example 2

Compliant example

Adjacent but Disconnected Garage (passes)

- City Y issues \$50M:
 - \$30.5M for a public safety building
 - \$15M for courthouse improvements
 - Includes \$3M for privately managed cafeteria located in courthouse
 - \$1.5M privately operated parking garage adjacent to a private office building
- The garage use is unrelated to any government use financed by the issue
- Total unrelated/disproportionate use stays under 5% of \$50M — test not met
 - \$3M related-but-not-disproportionate cafeteria item is excluded from 5%

Disproportionate Use

Definition and Standard

Governing Standard

- A private business use is disproportionate to a related government use only to the extent the proceeds used for the private use exceed the proceeds used for the related government use
- Example rule of thumb: \$100 of related private use against \$70 of government use produces \$30 of disproportionate use

Aggregation & Allocation

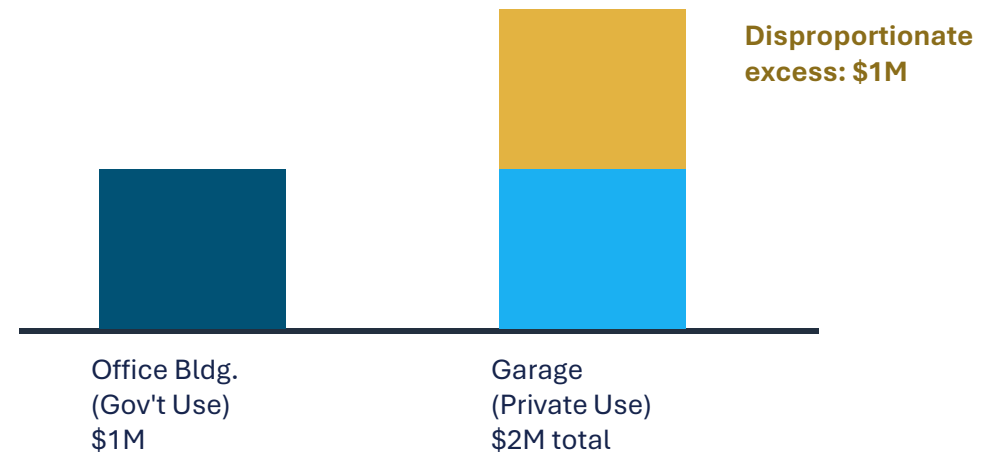
- If two or more private business uses relate to a single government use, those private uses are aggregated before the excess is measured
- Where a private use relates to more than one government use, issuers may: (i) reasonably allocate proceeds among the related uses, (ii) aggregate directly related government uses, or (iii) allocate the private use to the government use to which it is primarily related

Disproportionate Use

Example

- County Z issues \$20M of bonds: \$17M for a hospital (no private use), \$1M to renovate an office building (no private use), and \$2M for a garage used entirely for private business, related to the office building
- The garage's private use (\$2M) exceeds the related government use it serves (\$1M) by \$1M — that \$1M excess is disproportionate use
- Because the \$1M of disproportionate use does not exceed 5% of the \$20M of proceeds (\$1M threshold), the bonds are not private activity bonds on these facts

Proceeds Used: Office Building vs. Garage



■ Matches related government use

■ Disproportionate excess

Unrelated Use vs. Disproportionate Use

Side-by-Side Comparison

	Unrelated Use	Disproportionate Use
Threshold Question	Is the private use operationally connected to a government use financed by the same proceeds?	Is the related private use greater in amount than the government use it relates to?
Governing Provision	Treas. Reg. § 1.141-9(b)	Treas. Reg. § 1.141-9(c)
Key Factor	Operational relationship; generally must be on-site or adjacent	Dollar-for-dollar excess of private proceeds over related government proceeds
Same-Purpose Carve-Out	Use for the same purpose as a non-insignificant government use is not unrelated	Not applicable — excess amount is measured regardless of purpose match
Illustrative Example	Cafeteria at a remote administrative site, unconnected to school construction	Garage used entirely for private business, exceeding the office building's cost it relates to
Result if Threshold Crossed	Counted in full toward the 5% ceiling	Only the excess amount is counted toward the 5% ceiling

Private Business Use: Exceptions

General Public Use Exception

Use as a member of the general public is not private business use.

- Use by non-governmental (or non-exempt) persons in their trade or business is treated as general public use if
 1. The property is available for use by the general public and
 2. The use is on the same basis as the general public use.
- Use that provides priority rights or preferential benefits is not general public use.
- Use that is available for free or on the basis of generally applicable rates is not priority use
 - Discounts for volume purchases do not result in priority use if the rates are reasonable and customary
- Limitation: Can't have an arrangement for use that exceeds 200 days.

General Public Use: Examples



- Park or gardens on school grounds that are open to the public.



- Short-term rentals: Space in the University Student Center can be rented on an hourly or daily basis pursuant to a rate schedule. So, either natural persons or business entities can rent it, but it is available to either group at the same price.
 - What if student groups get a special price or are free? Generally not a problem as long as private entities don't pay a lower price.



- Parking: A parking garage on or near campus is primarily for use by students and faculty, but a nearby business leases 10 spots for its employees. The leases are for 6 month periods and renew at current prices.

Short Term Use Exceptions

— 50 Day Short Term Use Exception

— Use by a nongovernmental person is not PBU if

- Term not greater than 50 days
- Negotiated arm's length arrangement with fair market value compensation
- The property was not financed for the principal purpose of providing that property for use by that nongovernmental person
- Renewal options: for this purpose, it means a provision providing either party a legally enforceable right to renew the contract

— Does not include “evergreen” provisions if either party can cancel

— 100 Day Short Term Use Exception

— Only applies if facilities aren't available for use by the public (i.e. prisons)

Other Exceptions

- Temporary use by developers and construction companies
 - Example: Infrastructure improvements such as roads and storm sewers at a new housing development for sole use by developer during construction
- Agents
- Incidental use exception
 - Incidental uses of a financed facility are disregarded for purposes of the PBU limits to the extent that they do not exceed 2.5% of the proceeds of the bond issue used to finance the facility
 - The use is non-possessory, i.e., it does not involve a transfer of space that is separated from the rest of the facility with walls or partitions
 - Examples: ATMS, pay phones, vending machines, kiosks, advertising displays, and use for television cameras

Private Business Use: Common Examples

Leases and Use Agreements

- A lease or similar arrangement for a financed facility is generally considered private use.
- Relevant factors:
 - Degree of control over the property
 - Risk of loss
 - Federal tax treatment (i.e., is the lessee treating it as a lease on their taxes)
 - Example: A pizza restaurant (restaurant space leased to the business owner) on the first floor of a tax-exempt bond financed facility.
- If a lease has a sufficiently long term, it may constitute ‘ownership’ for federal tax purposes.

Management Contracts 101

What is a management contract?

- A management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility.
 - Examples: Contract for management of dining services, incentive payment contract for physician services at a hospital.
- Can result in private business use unless:
 - The Regulations specifically say it is not treated as a management contract.
 - The contract is a “qualified management contract” under Revenue Procedure 2017-13.
 - The contract under the “facts and circumstances” does not result in a net profits arrangement or otherwise constitute private business use.
- Net profit compensation is a problem 

Research Agreements

What is a research agreement?

- An agreement by a nonqualified person to sponsor research performed by a qualified person.
 - Might also be called Collaboration Agreement, Material Transfer Agreement.
- Applied Research vs. Basic Research
- Revenue Procedure 2007-47 Safe Harbors
 - “NERF”
 - Fair Market Value

Naming Rights

- Naming rights to a bond financed facility may give rise to Private Use. (Private Letter Ruling 200323006)
- Agreement may give sponsor legally enforceable rights with respect to the facility for a number of years.
- Despite the sponsor not having ownership, lease, management rights, contract provisions requiring the facility to be referred to with the name of the sponsor, the power to control how the facility is used, etc., gives rise to PBU.

Donor Recognition

- Is the donor a natural person not acting in a trade or business?
 - If yes, no PBU.
- If the donor is a business, consider:
 - Is the gift conditioned on the use of their name?
 - Do they have any rights with respect to the facility?
- University should retain ultimate control over whether or not to recognize the donor and be able to remove the donor's name at any time for any reason.



“Other actual or beneficial use”

- City finances construction of parking lot adjacent to Corp A’s factory. Corp A transfers the land to the City subject to covenant that it will always be used as a parking lot. Lot is available for use by the general public, but Corp A has the right to approve the rates.
- City builds pollution control facility on land adjacent to factory owned by Corp N. City will operate the facility, but Corp N is expected to be the only user. Facility is functionally related and physically proximate to factory; Corp N gets special economic benefit
- Also look out for any arrangements that give private users the right to revenues derived from the project or to control use of the project

Top 5: Examples of PBU on Campus

1. Campus shops
2. Dining contracts
3. Sponsored research
4. Summer camps
5. Naming rights

Remedial Action

Remedial Action, VCAP, Audits

- Remedial Actions

- In some cases, you can take a remedial action to ‘fix’ a change in use that would otherwise cause bonds to be private activity bonds
- Redeem nonqualified bonds
- Alternative use of disposition proceeds or facilities
- 90-day window

- Voluntary Compliance Agreement Program (VCAP)

- IRS Examinations/Audits



Bond Compliance 201

Session Break

Agenda

Post-Issuance Tax Compliance Training

Bond compliance 201

1. Investments
 - Intro to arbitrage and rebate
 - Temporary periods and other exceptions
 - Rebate calculations and spending exceptions
2. State grant agreements
3. State tax documentation
4. IRS enforcement
5. Continuing disclosure
6. Private business use
 - Qualified equity and mixed use projects
 - Measurement examples, including refundings
 - Management contracts 201
- I. Sponsored Research

Investments

Introduction to Arbitrage

- Arbitrage is the ability to earn yield by borrowing money at a lower rate (by issuing tax-exempt bonds) and investing it at a higher rate (in the taxable market)
 - Positive arbitrage – earnings above the arbitrage yield
 - Negative arbitrage – earnings below the arbitrage yield
- Congress enacted rules to ensure tax-exempt bonds are issued for a governmental purpose and not to create arbitrage profits



Yield Restriction and Rebate

- Two sets of rules:
 - Yield restriction – “Can you earn it?”
 - Rebate – “Can you keep it?”
- Both sets of rules must be applied to each fund containing “gross proceeds” of the bonds
- For State bond issues, the State takes primary responsibility for arbitrage compliance



Gross Proceeds

- Sale proceeds
 - Amount received from the sale of the bonds (Issue Price)
 - Includes amounts used for underwriter's discount
- Investment proceeds
- Transferred proceeds
 - Only applies in refundings
 - Tax documentation at closing will describe any expected transferred proceeds
- Replacement proceeds
 - Debt Service Funds
 - Reserve Funds
 - Other amounts that are pledged or expected to be used to pay debt service
 - Can arise if bonds are outstanding longer than necessary
 - Safe harbor if term of bonds does not exceed 120% of the useful life of the project



General Yield Restriction Rule

- Gross proceeds will be:
 - Invested at unrestricted yield during an allowable **temporary period**;
 - Invested at unrestricted yield as part of a “**minor portion**” not exceeding the lesser of \$100,000 or 5% of the issue;
 - Invested at unrestricted yield as part of a **reasonably required reserve fund**; or
 - **Yield restricted**—i.e., not invested at a yield that is materially higher than the yield on the bonds
- Yield: Bond or arbitrage yield for fixed rate issues is determined at closing and will be included in the tax certificate and on the Form 8038G
- Materially higher: Definition depends upon the category of funds

Exceptions to Yield Restriction

Temporary Periods

1. Construction and other capital projects – 3 years if test is met:
 - $\geq 85\%$ of net sale proceeds reasonably expected to be spent within 3 years;
 - Within 6 months of issue date, substantial binding obligation to spend $\geq 5\%$ of net sale proceeds; and
 - Construction or acquisition proceeds with due diligence
2. Debt service fund – 13 months
3. Replacement proceeds – 30 days
4. Miscellaneous (working capital) – 13 months
5. Current refunding escrow – 90 days
 - Reasonably Required Reserve Fund – sizing requirements
 - Investment in “Tax-Exempt Bonds” that are not considered “investment property”

Yield Restriction

- At closing:
 - If yield restriction is expected, the tax certificate will describe the funds to be restricted.
 - Bond counsel will help structure allowable investments, such as SLGS or open market securities purchased through a bidding process
- Post-closing:
 - For example, if you have project funds remaining after the 3-year temporary period or if replacement proceeds arise unexpectedly, then yield restriction may be needed
 - If you have questions, contact bond counsel or hire a rebate consultant
- Yield Reduction Payments:
 - In some cases, you can make yield reduction payments to reduce the yield on your investments. This can be easier to manage than constantly monitoring the yield.

Rebate: Exceptions

- If an exception applies, rebate may not be required:
 - 6 month exception
 - Refundings and new money
 - 18 month exception
 - Acquisitions and construction
 - 2 year exception
 - Construction only
 - Not available for some types of qualified private activity bonds
 - Bona fide debt service funds
 - Full exception
 - Exception \$100,000 in earnings
- Reserve funds do not have an available exception. Rebate will always apply to excess earnings.



Rebate Computation and Payments

- When?

- Computation Dates

- There is some flexibility in choosing computation dates, but they cannot be later than 5 years after issue date and every 5 years thereafter
 - Date of redemption or final maturity of the bonds (“final computation date”)

- Payment

- At least 90% must be paid ≤ 60 days after each computation date
 - 100% must be paid ≤ 60 days after final computation date

- What?

- Difference between the amount actually earned on nonpurpose investments and the amount that would have been earned if investments had a yield equal to the yield on the bonds

- How?

- Form 8038-T
 - Rebate consultant can help



Arbitrage Tips

1. Look to tax certificate and 8038 or 8038G form for the arbitrage yield and expectations regarding:
 - Applicable temporary periods
 - Potential rebate exceptions
 - Funds subject to yield restriction
2. Commingled funds or investments can complicate tracking. Invest bond proceeds in separate accounts whenever possible.
3. Proceeds are tracked until expended (allocated). Know the rules for when proceeds are considered expended for tax purposes.
4. Keep detailed records of expenditures and investments.

Arbitrage Tips (cont.)

5. Changing interest rate environment:

- Possible to earn positive arbitrage
- Investment yield is blended over time* so exceeding the bond yield temporarily may not be a problem.

6. First rebate calculation is due not later than 5 years after the issue date.

7. Get help when needed! Hire a rebate consultant or talk to bond counsel if you have questions.



**The blending rules differ for yield restriction and rebate requirements.*

State Documentation

State Documentation: Overarching Agreement

Debt management agreement (OST, HECC, DAS, university)

- Pre-June 2015 State bonds to be paid by universities
 - E.g., Article XI-f(1), Article XI-Q, certificates of participation
 - Schedule of university repayment obligations
- Tax compliance
 - Agree to enter into an tax compliance agreement (e.g. PITC)
- Refunding process
- Process for future State issued bonds
- Shared services
 - Statement of Work (Shared Legacy Debt Services). The host university has agreed to provide certain services related to tracking, calculating and reporting interest earnings and private use of certain facilities in relation to the requirements for bonds issued with interest exempt from federal income tax.

State Documentation

Grant Agreement Provisions

- Article XI-G:
 - To provide funds with which to acquire, construct, improve, repair, equip and furnish **buildings, structures, land and other projects, or parts thereof**, that the Legislative Assembly determines will benefit higher education institutions or activities ...
- Match
 - At least equal to the amount of the indebtedness
 - Must be used for the same or similar purposes as the proceeds of the indebtedness
 - May consist of moneys appropriated from the General Fund or any other moneys available to the constructing authority for such purposes (but not State bond proceeds)
- ORS 286A.851 requires that the grant contract include:
 - A certification that the requirement for a matching amount is satisfied
 - Tax requirements
 - Terms and conditions indemnifying the State against regulatory or bondholder liability due to the action or inaction of the public university related to the Article XI-G bonds

State Documentation

Grant Agreement Provisions

— Article XI-Q:

- Acquiring, constructing, remodeling, repairing, equipping or furnishing real or personal property that is or will be owned or operated by the State of Oregon.
 - Pursuant to ORS 352.113, legal title to all real property is held in the name of the State, acting by and through the Board.
 - The State, acting by and through the Board, also owns personal property financed with the proceeds of State Article XI-Q bonds during the term of the bonds.



State Documentation

Grant Agreement Provisions

- Type of bond (XI-G or XI-Q)
- Project
 - Project description
 - Project budget
 - Qualifying costs
- Any applicable match requirements
- Project reporting requirements
- Other



State Documentation

Loan Agreement Provisions

Type of bonds

— Article XI-F(1) bonds:

- Purpose: to acquire, construct, improve, repair, equip and furnish buildings, structures, land and other projects, or parts thereof, that the legislative assembly determines will benefit higher education institutions or activities.
- State repaid from University revenues including all funds available to the constructing authority except amounts appropriated by the legislative assembly from the General Fund. Article XI-Q bonds

— Article XI-Q bonds:

- Purpose: For costs of acquiring, constructing, remodeling, repairing, equipping or furnishing real or personal property that is or will be owned or operated by the State of Oregon.

State Documentation

Loan Agreement Provisions

1. Type of bond (XI-F(1) or XI-Q)
2. Project
 - Project description and budget
 - Qualifying costs
3. *Repayment provisions*
 - *Cash flow sufficiency affirmation*
Loan repayment schedule
4. Project reporting requirements
5. Other requirements



State Documentation

Qualifying Costs Definition

Qualifying costs

- Meets constitutional purpose
- Capital cost:
 - Capitalized under GASB;
 - Not capitalized but solely because below \$5,000; or
 - Costs for abatement and pollution remediation to the extent required by law to complete the Project
- Eligible or permitted uses of the Grant under the Act and the Contract
- If tax-exempt:
 - Capital expenditures for federal income tax purposes
 - Not internal costs or payments to Related Parties, except to the extent that those costs represent out-of-pocket payments to or for the benefit of unrelated parties, such as employees of the Recipient or of the State, made or to be made no later than 5 days after the date on which proceeds of Bonds are allocated to such expenditure.

State Tax Documentation

Tax Certificate Provisions

Treatment of parties as related parties

- Expenditures
 - Payment of proceeds of the Grant to the University or a Related Party of the University
 - Not an expenditure of those proceeds for federal tax purposes
- An expenditure is a current outlay of cash
 - I.e., an outlay expected to occur not later than 5 banking days after the date as of which the allocation of expenditure is made) to an unrelated third party
- Timing of expenditures

Funds and accounts

- Proceeds of the bonds
- Arbitrage
- Yield restriction and rebate

Project

- Private Business Use
- Mixed Use Projects

Other

- Document Retention



State Tax Documentation

Joint Post-Issuance Tax Compliance Agreement (PITC)

- Among OST, DAS and the Universities
- Identifies post-issuance tax compliance obligations for State bonds
 - Arbitrage
 - Maintain records, follow DAS/OST instructions, pay allocable rebate or yield restriction payment
 - Private business use
 - Provide notice of new “Specified Arrangements” that may give rise to PBU  consultation
 - Sales of Financed Assets
 - Leases of Financed Assets (other than residential leases),
 - Management contracts not identified in Revenue Procedure 97-13, as clarified by Notice 2014-67,
 - Contracts for basic research outside of the guidelines specified in Revenue Procedure 2007-47,
 - The sale or provision of electricity, water, or steam heat produced by the Financed Assets to buildings or structures that are in whole or in part used in a manner that gives rise to PBU, and
 - Contracts that convey special legal entitlements for the beneficial use of Financed Assets comparable to those conveyed by the contracts identified above
 - Procedures for transferring/addressing PBU
 - Annual PBU compliance report
- Annual compliance training
- Excess PBU; remedial actions; VCAP

IRS Audits and Updates

IRS Enforcement Updates

Trends in Enforcement

- Volume trends
- Staffing trends
- Resolution timing

ATTORNEYS

Bond lawyers struggling with IRS

By [Scott Sowers](#)

Published September 12, 2025, 1:23 p.m. EDT | Updated September 15, 2025, 11:21 a.m. EDT

2 Min Read

WASHINGTON DC

House kicks off 2027 appropriations, slashes IRS funding

By [Caitlin Devitt](#)

Published April 17, 2026, 1:25 p.m. EDT

IRS Audits

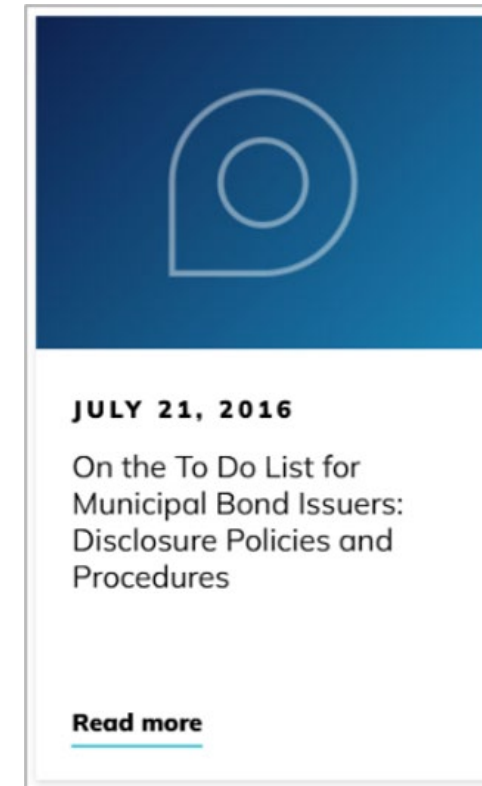
What to expect?

- "Information Document Request" sent by mail with a short response period.
- Typical questions asked.
- How to be prepared.

Continuing Disclosure

Post-Issuance Compliance: Securities Law

- University issuers
- Required under SEC Rule 15c2-12
 - Applies to all public bond sales
 - Duration = the life of the bonds
- Elements of an undertaking:
 - Annual financial and operating information
 - Notice of “listed” events
- Published on “EMMA”



Post-Issuance Compliance: Securities Law

- Sixteen notice events identified in Rule 15c2-12
 - Some must always be disclosed
 - E.g., rating change
 - E.g., defeasances and redemptions
 - Others must be disclosed only if material
 - E.g., defaults
 - E.g., incurrence of a new financial obligation
- Must disclose within **10 business days** 



Post-issuance contractual disclosure

In addition to disclosure required under 15c2-12, may have contractual requirement to disclose (e.g. to State)

- State grant agreement requires reporting during project period and also
- Requires reporting over the term, for example:
 - Pursuant to ORS 352.113(4)(b), the Recipient shall not **sell, transfer, encumber, lease or otherwise dispose of any property** paid for with disbursements of the Grant, unless the State has granted prior, written consent in accordance with the Post-Issuance Tax Compliance Agreement.
 - The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of the State.

Private Use 201

Qualified Equity and Mixed-Use Projects

Key Concepts

- Project definition
- Classifying use (good/bad)
- Measuring use (square footage, revenue etc.)
- Timeframe
- Qualified equity



Eligible Mixed-Use Projects

- Project means one or more facilities or capital projects, including land, buildings, equipment, or other property, financed in whole or in part with proceeds of the issue:
 - Issuers are given flexibility with how to define the Project or Projects financed.
- An Eligible Mixed-Use Project is defined as a project that is financed with:
 - Proceeds of tax-advantaged bonds and
 - Qualified equity pursuant to the same plan of financing.



The project must be wholly owned by one or more governmental persons or by a partnership in which at least one governmental person is a partner.

Divided and Undivided Portion Allocations

- Divided Portion: Equity is allocated to a specific portion of the Project expected to be used for private use (i.e. a restaurant space on the first floor) and bond proceeds are allocated to the rest of the building.
 - If the restaurant moved to a bond-financed portion of the Project, the private use would no longer be allocable to the equity.
- Undivided Portion (“floating” equity): The whole Project is treated as financed with bond proceeds and qualified equity, and qualified equity can be allocated to private business use (PBU) prior to bond proceeds (i.e., equity “floats”).
 - Under the final regulations, the undivided portion method can be used for Eligible Mixed-Use Projects.

Qualified Equity Definition

Qualified Equity (QE)

- Bonds that are not tax-advantaged bonds
 - Regular taxable bonds are not ‘tax-advantaged’
 - Build America Bonds and tax credit bonds are ‘tax-advantaged’
- Funds that are not derived from a borrowing (cash on hand; contributions).
 - State funds might be qualified equity if the funds aren’t proceeds of tax-advantaged bonds
 - Bond proceeds and equity are spent contemporaneously on the same project
- Amount of QE is included in the Fund Allocation Report provided to DAS

Not Qualified Equity

Qualified Equity (QE) does not include:

- Equity interests in real estate (FMV less debt).
- Funds used to redeem or repay governmental bonds
- QE also does not include amounts that are not part of the “same plan of financing” as the bonds



Start the Clock...

- No earlier than the date on which the expenditure would be eligible for reimbursement by proceeds of the applicable bonds
- Qualified Equity original expenditure must be within three years of the tax-exempt bond issuance, and
- Tax-exempt bond issuance must occur not later than 18 months after the later of:
 - The date the original expenditure was made, or
 - The date the project is placed in service or abandoned.
- Note: No reference to Official Intent



Stop the Clock...

- No later than the date on which the measurement period begins:
 - Qualified Equity must be expended prior to the placed in service date
 - Of the “Project” as a whole? Of a facility within the Project?
 - Exception for a reasonable retainage, which is an amount not to exceed 5% of ‘available construction proceeds’
 - Definition comes from rebate spending exceptions and isn’t entirely clear—should the 5% apply to the amount of QE? Of all of the Project costs?



When Is Placed in Service?

- Treasury Regulation 1.150-2(c) defines “placed in service”
 - Placed in service means, with respect to a facility, the date on which, based on all the facts and circumstances—
 - The facility has reached a degree of completion which would permit its operation at substantially its design level; and
 - The facility is, in fact, in operation at such level.
- Compare to “certificate of occupancy”



Measurement Example

- University plans to finance three buildings:
 - University Offices
 - Athletic Facility
 - Science and Research Facility
- University plans to use a mix of funding:
 - Tax-exempt bonds
 - State funding (not tax-exempt)
 - Capital campaign contributions



“Mixed Use Project” Allocation

- The administrative building, athletic facility and research facility can be treated as a single eligible mixed use project for purposes of allocating qualified equity and private use.
- Bond proceeds and other sources can be allocated to the project as a whole (undivided portion).
 - This works even if the equity is designated for a certain portion of the project, i.e., capital contribution for the athletic facility
- Each year, private business use will be measured for the project as a whole.
- Private business use in the project is allocated first to qualified equity and then to bond proceeds.

Other Options

- University can choose to treat each facility/building as a separate “project” for private business purposes.
- The qualified equity will be allocated to a particular facility:
 - If the equity is University cash on hand or is undesignated, then the University can choose which facility to allocate equity to.
 - If the equity has been designated by a donor or by the State for a particular facility, the equity is allocated to that facility.
 - The benefit of the qualified equity no longer “floats” between the facilities as needed.
- Why take this approach?
 - In some circumstances, it is easier to track each project separately.
 - For example, “Phased Projects.”
 - Note that internal policies can be more restrictive than the approach taken for tax-exempt purposes.

Later Improvements or Additions

Example 3 in Treas. Reg. 1.141-6(f) makes clear that subsequent improvements and replacements to a facility are not part of the same Project as the original facility.

- In the example, a hospital financed with 1998 Bonds and placed in service in 2001 has an addition constructed with proceeds of 2017 Bonds and Qualified Equity.
- The original hospital (the “1998 Project”) and the addition (the “2017 Project”) are separate Projects.
- The Qualified Equity only off-sets private business use with respect to the 2017 Project.

Refundings

Complexity

Two measurement options:

- Combined measurement period
- Start a new measurement period

Complications

- Tax-exempt to taxable to tax-exempt
- Multiple series being refunded
- New money and refunding combo



Private Use: Management Contracts

Management Contracts 201

Revenue Procedure 2017-13 sets forth the “safe harbor” requirements for a Qualified Management Contract

- If a contract doesn't meet the safe harbors, bond counsel generally will treat it as private business use
- Examples:
 - Food services
 - Concessions
 - Bookstore management

Qualified Management Contracts

No Net Profits Arrangements

Revenue Procedure 2017-13:

- Reasonable compensation for the services rendered.
- Compensation must not be a net profits arrangement:
 - Consider: eligibility for, amount of, and timing of compensation.
 - Incentive compensation

Qualified Management Contracts

No Bearing Net Losses

- Service Provider must not share in net losses from the operation of the managed property:
 - Amount and timing of payment
- Limitations on deferrals of payments

Qualified Management Contracts

Safe Harbor Compensation

- Revenue Procedure says these fees are not net profit or net loss arrangements:
 - Capitation fee
 - Periodic fixed fee
 - Per-unit fee
 - Certain incentive compensation
 - Or a combination of the above
- What about gross revenue or profit arrangements?

Qualified Management Contracts

Other Requirements

- Term Limitation
 - “Evergreen” provisions
 - Termination provisions
- Qualified user/University must retain control of the project
- Qualified user bears risk of loss upon damage or destruction of property.
- Provider must agree to take no inconsistent tax positions.
- Watch for management or ownership overlap

Campus Practices

Discussion



Private Use: Sponsored Research

Rev. Proc. 2007-47: Purpose and Scope

The Research Agreement Safe Harbor

Purpose:

- Modifies and supersedes Rev. Proc. 97-14
- Sets conditions under which a research agreement does not create private use under section 141(b)

Scope:

Applies whenever a sponsor uses bond-financed property under a research agreement

Covers issues subject to section 141 or section 145(a)(2)(B)

Basic Research:

Original investigation to advance scientific knowledge without a specific commercial objective

Product testing supporting a sponsor's trade or business does not qualify as basic research

The Two Safe Harbors

Corporate-Sponsored vs. Industry/Federally-Sponsored Research

Safe Harbor 1: Corporate-Sponsored Research

- For basic research funded by a single corporate sponsor
- Any license or use of resulting technology by the sponsor must be on the same terms the university would offer any unrelated, non-sponsoring party
- The sponsor must pay a competitive, fair market price, fixed when the results become available for use
- The university need not actually license others — but the sponsor's price cannot be less than a non-sponsor would pay

Safe Harbor 2: Industry or Federally-Sponsored Research

- For single- or multi-sponsor arrangements funding governmentally performed basic research
- The sponsor(s) agree to fund basic research performed by the university
- The university determines the research and how it is performed, including choice of personnel
- Title to any resulting patent or product vests exclusively in the university
- Sponsors receive no more than a nonexclusive, royalty-free license to the results

Bayh-Dole Act Overlay

Federal Rights Do Not, By Themselves, Break the Safe Harbor

Federal Government Rights

- The Bayh-Dole Act gives the federal government a nonexclusive, nontransferable, paid-up license to inventions from federally funded research
- It also grants “march-in rights” allowing the sponsoring federal agency to license third parties in limited circumstances
- Rev. Proc. 2007-47 expressly accommodates these rights

Practical Checklist

What to Verify on Every Sponsored Research Contract

- IP title: confirm the university retains exclusive title to patents and products from bond-financed research facilities
- Initial license scope: confirm sponsor and government rights are limited to nonexclusive, royalty-free licenses
- Pricing (corporate sponsors): confirm the sponsor pays a fair market, competitively priced license fixed when results become available
- Research control: confirm the university, not the sponsor, determines the research agenda, methods, and personnel

Sponsored Research Examples

- Sponsorship Agreement with Industry sponsor:
 - University grants to sponsor a fully-paid, non-exclusive, royalty-free license for internal use only.
- Sponsorship Agreement with Federal Agency:
 - “Intangible property produced under the award is subject to the Federal Purpose license in accordance with the requirements of 2 CFR Part 200.315. The recipient grants to the Government all necessary and appropriate licenses as a condition of this award.”
 - 2 CFR Part 200.315 says, in part, title vest with the non-Federal entity, to be used for the originally authorized purpose. Federal agency reserve a royalty-free, nonexclusive right to the property.

Sponsored Research Examples

- Sponsorship Agreement with Private Pharma:
 - “Principal Investigator” is named in contract. If PI’s employment status changes, University may replace with a new PI acceptable to the sponsor.
 - University has sole and exclusive authority to conduct, manage, control and direct the project and to supervise all personnel
 - University will own all project intellectual property
 - Sponsor has an option to purchase an exclusive license to any project intellectual property on reasonable commercial terms to be agreed upon by the parties

Not Research Agreements

- License agreements are not research agreements.
 - These agreements are entered into **after** the research has concluded and the intellectual property (IP) or technology has been developed.
 - The University may sell licenses for exclusive or non-exclusive use of the IP or technology to any third parties at a negotiated price (assuming the licensee did not sponsor the research).
- Clinical trials are not research agreements, so the safe harbors do not apply.
 - There is little guidance from the IRS regarding whether clinical trials create private business use, so talk to your bond counsel.



Research: Tracking and Compliance Issues

- How to track and measure?
 - Time and space
 - Revenue based
- Creating “IP Flags”
- Tracking by sponsor type
- Using “Qualified Equity”
- Issuing 501(c)(3) bonds

Questions?

A Note: This presentation is for informational purposes and does not provide legal advice. It is not intended to be used or relied upon as legal advice in connection with any particular situation or facts.



Contact Us

Alison Benge

Partner

Alison.Benge@pacificallawgroup.com
[206.602.1210](tel:206.602.1210)



SCAN FOR BIO

Stacey Crawshaw-Lewis

Partner

Stacey.Lewis@pacificallawgroup.com
[206.245.1714](tel:206.245.1714)



SCAN FOR BIO