POLICY NAME: Tax-Exempt Bond Compliance Policy

PURPOSE OF POLICY:
The use of tax-exempt debt plays an important role in funding a significant Middlebury’s capital infrastructure. As a result, Middlebury realizes the importance of complying with federal and institutional requirements regarding the issuance and ongoing management of its tax-exempt bonds (TEBs). Tax-exemption on bonds and access to the capital markets can be lost, along with application of certain penalties if certain applicable federal laws do not remain satisfied.

This policy is intended to explain the guidelines and practices that Middlebury follows to remain in compliance with rules related to TEBs during both pre-and post-issuance phases, which extend through and beyond the life of the bonds.

The practices outlined in this document help support and directly relate to the debt management policy.

POLICY:
It is Middlebury’s policy to comply with all applicable laws, regulations, and contracts applicable to its TEBs. This includes the Internal Revenue Code and regulations promulgated thereunder, including IRC sections 145-150 and related regulations.

Middlebury also complies with the recommendations contained in IRS publication 4077, Tax-Exempt Bonds for 501(c)(3) Charitable Organizations Compliance Guide and the report of the Advisory Committee on Tax Exempt and Government Entities, After the Bonds are Issued: Then What?

Responsibilities:
General Responsibility
The Board of Trustees of Middlebury (the “Board”) has final responsibility for monitoring and enforcing post-issuance compliance under this Policy. The Board has designated Middlebury’s Treasurer as the primary official responsible for effecting this Policy. The Treasurer, as primary official, is authorized and directed to take all necessary action to ensure Middlebury officials, employees and staff comply with this Policy, and to delegate responsibilities under this policy when appropriate.

Advice and Counsel
The Board recognizes that the requirements under the Internal Revenue Code of 1986 (the “Code”) for post-issuance compliance are numerous and complex, and as such, outside resources, including use of professional financial service providers and legal counsel, may be necessary to properly comply with this Policy. The Board has authorized and directed the
Treasurer to execute and deliver any agreements or documents with qualified provider(s) that the Treasurer deems necessary to ensure compliance with this Policy.

**Records Retention**

**Duration**

All records required to be retained under this Policy must be kept until at least three years after the final maturity date for the bond issue.

**Form**

All records, required to be retained under this Policy, must be kept as paper or in electronic form such that they can easily be produced on paper. Records should be conspicuously labeled and to the extent possible, stored in a central location for each bond issue.

**Documents required to be retained**

The following list sets forth the documents that must be retained. It is the responsibility of the Treasurer or delegate to ensure that all of these documents are retained.

- TEB documents (closing documents, transcript of the proceedings, all agreements that occurred at the time of the bond issue, etc.)
- TEB proceed expenditures (purchase contracts, construction contracts, progress payment requests, support of vendor payment, payment of bond issuance costs, reimbursement and pre-issuance expenditures, etc.)
- Investments of TEB proceeds, including any agreements or contracts (such as swaps) that could be construed as investments under the Code
- Receipts of earnings on TEB proceed investments
- Certificate of Official Intent for reimbursement of pre-bond issue costs
- Documents demonstrating calculations for arbitrage spending exceptions
- Documents demonstrating arbitrage rebate calculations
- Documents filed with the IRS regarding arbitrage spending exceptions, arbitrage rebate amounts and payments of arbitrage rebate amounts (e.g., Form 8038-T)
- Refunding bond documents (all refunding documents must be maintained with the refunded bond issue documents)
- Yield-restricted advance refunding investments
- Escrow investments (statements)
- Redemption and Defeasance documents
- List of all TEB-financed property
- Contracts regarding use of any TEB-financed property or facilities, including management, service and use contracts with nongovernmental entities, as well as documentation that such contracts do not adversely affect the tax-exempt status of the bonds financing the property
- Additional documents regarding bonds and use of TEB-financed property (e.g., litigation involving TEB proceeds or TEB-financed property)
- Form 990 filings for any year in which a TEB financing was outstanding

The Treasurer or delegate shall conduct a review of the records for each TEB issue every five years in order to confirm continued record retention compliance.
Arbitrage Calculations and Reporting

**Definition**
Arbitrage is defined as investment earnings on TEB proceeds in excess of the bond interest paid to bondholders during the construction period, adjusted for certain expenses.

**Responsibility**
The Treasurer or delegate, working in conjunction with any contracted professional financial service provider and/or bond counsel, shall perform all necessary calculations to meet arbitrage requirements each fiscal year. Such calculations shall include, but not be limited to:

(a) computing “yield” of bond proceeds in investments, including investments in financial investment agreements such as swaps and guaranteed investment contracts
(b) determining applicable arbitrage spending exceptions and monitoring spending compliance during the applicable exception time period
(c) determining allocation of bond proceeds and investment earnings to project expenditures, including reimbursement and pre-issuance expenditures
(d) monitoring compliance with “temporary period” expenditures of bond proceeds and providing for yield restriction or yield reduction payments if expectations are not met, and
(e) determining/computing arbitrage rebate amounts.

All such calculations shall be documented and retained in order to demonstrate, in the event Middlebury is audited by the IRS, that Middlebury has complied with Code requirements for arbitrage yield restriction and rebate requirements.

**Filing**
The Treasurer or delegate, working in conjunction with any contracted professional financial service providers and bond counsel, shall file all necessary arbitrage calculation and rebate documents and pay any necessary arbitrage rebate amounts to the IRS for each applicable fiscal year.

**Miscellaneous**
(a) The Treasurer or delegate, working in conjunction with any contracted professional financial services providers and bond counsel, shall adopt procedures to ensure that investments acquired with bond proceeds are purchased at fair market value.
(b) The Treasurer or delegate shall review all funds created and used to pay debt service to determine whether such funds must be invested at restricted yield.

**Private Business Use of Bond-Financed Property and Remedial Action**
Use of bond proceeds and bond-financed property by entities other than Middlebury may cause the interest on tax-exempt bonds to become taxable. Accordingly, Middlebury desires to monitor and prevent non-Middlebury use of bond proceeds and bond-financed properties except as when it is determined to be in the best interest of Middlebury.

Examples of private business use include 1) unrelated trade or business use and 2) use of the TEB-financed property by parties other than Middlebury such as summer camps and third-party conferences. Generally, no more than 5 percent of the net proceeds of TEBs may be used for private business use of the TEB-financed property. For purposes of the 5 percent limit on private
business use, bond issuance costs (including underwriters’ discount) financed with bond proceeds (maximum 2 percent) are included as private business use.

The Treasurer or delegate shall monitor the facilities for private business use in accordance with the requirements of the tax certificate for each TEB issue. In the event that the Treasurer finds that private business use exceeds or is expected to exceed permissible allowances, then the Treasurer will initiate remedial action in consultation with Middlebury’s counsel and bond counsel as provided for in the applicable tax certificate and federal income tax law as necessary to maintain the tax-exempt status of the interest payable on the TEB issues.

**Procedures to Undertake Corrective Actions**
Upon discovering any violation of Applicable Federal Law including, but not limited to, excess Private Business Use, violation of Arbitrage restrictions or sale of Bond-financed assets, the Treasurer or delegate shall promptly consult with legal counsel to determine appropriate remedial action to correct such violation. If remedial action is not available, Middlebury will undertake to remedy the violation through the IRS Voluntary Closing Agreement Program (VCAP).

**Other Miscellaneous**

*Calendar System*
The Treasurer or delegate shall maintain a calendar system to assure that any deadlines for rebate calculation or payments, yield restriction, filings with the IRS, continuing disclosure obligations and other dates particular to TEBs are monitored and actions can be taken sufficiently in advance of such deadlines to assure compliance with the required task.

*Training and Education*
The Treasurer and / or delegate is encouraged to attend seminars and other educational events, to acquire reference materials, and to setup internal educational sessions with the assistance of bond counsel, financial advisors, and other professionals knowledgeable with respect to bond compliance, so as to ensure adequate knowledge and understanding to carry out responsibilities under this policy.