

Non-Conforming Agreements & Private Business Use:

What Finance and Planning Units Need to Know

Certain sponsored agreements—known as **Non-Conforming (NC) agreements**—create additional compliance obligations that directly affect Georgia Tech’s (GT) tax-exempt bond status. Finance and Planning units play a critical role in early identification, accurate tracking, and proper coding of these agreements.

What Is a Non-Conforming (NC) Agreement?

An NC agreement is a sponsored arrangement that results in **Private Business Use (PBU)** of facilities financed by tax-exempt bonds. These agreements are non-conforming because they provide exclusive benefits to non-governmental entities—such as proprietary deliverables, exclusive lab access, or up-front preferential commercialization rights—and therefore fail to meet the IRS public-good threshold.

By contrast, the research our Pls conduct under federal sponsors such as NIH and NSF is broadly considered to serve the public good. These agencies require open publication of findings and prohibit up-front, exclusive commercialization rights to third parties, ensuring research results remain broadly accessible. As a result, most federally funded projects - such as those sponsored by NIH and NSF - generally satisfy the IRS public-good threshold and do not generate PBU. The distinction matters: misclassification exposes Georgia Tech to material financial and regulatory risk.

Why This Matters: Financial and Regulatory Risk

Excessive PBU in tax-exempt bond-financed facilities can trigger:

- IRS scrutiny and potential loss of tax-exempt bond status
- Costly remediation payments and retroactive compliance measures
- Reputational and audit risk for the Institute

Note: PBU compliance obligations apply only to the bond-financed portion of a facility – not the building as a whole. Where a facility is only partially financed by state or local government tax-exempt bonds, PBU limits are assessed proportionally against that financed share - making accurate room-level space tracking especially critical for compliance.

Grants & Contracts (G&C) Accounting and Treasury Services conduct periodic reviews of PBU exposure in key facilities (e.g., Habersham, MoSE, CNES) using room-level funding ratios—however, **front-line compliance depends on unit-level action.**

Unit Responsibilities: Three Critical Controls

Control	Required Action
Proactive Partnership	Engage Office of Sponsored Programs (OSP) Contract Officers early on any agreement involving IP rights, publication constraints, or access restrictions—before execution.
Accurate Space Tracking	Maintain precise, room-level space assignments tied to active projects in Archibus (GT’s space system). Inaccurate space data distorts PBU calculations.
Proper Coding	Ensure sponsored projects are accurately structured and coded from the outset. NC agreements must be flagged appropriately in the Contract Information System (CIS).

KEY TAKEAWAY

Early identification and correct classification of NC agreements is not an administrative formality - it is a compliance imperative that protects the Institute's tax-exempt financing and safeguards GT's financial position. Questions? Contact G&C or Treasury Services.