

## Exhibit

### **AFTER THE BONDS ARE ISSUED: THEN WHAT?**

The closing date of a tax-exempt bond issue usually is the culmination of weeks or months of negotiation and planning. That process includes extensive fact-gathering and analysis by bond counsel to ensure that the bonds will be in compliance with federal tax law requirements. At closing, bond counsel delivers an opinion that interest on the bonds is properly excluded from the gross income of the bondholders. That opinion is based upon a reasonable expectation that tax law requirements will be complied with throughout the time the bonds remain outstanding. Frequently bond documents include covenants by issuers and conduit borrowers as to post-issuance tax law compliance.

This section is intended to assist treasurers, comptrollers, chief financial officers, and other responsible officials of state or local government issuers of tax-exempt bonds, or of private, nongovernmental conduit borrowers which are allowed to borrow at tax-exempt rates from such governmental issuers, in developing policies, procedures and systems which will ensure that the bonds remain tax-exempt.

Because most tax-exempt bonds will remain outstanding for many years, it is important to have procedures which can be understood and implemented over time even as the responsible officials may change. The particular procedures which are appropriate may vary substantially, depending upon the size and complexity of the issuer/borrower, the complexity of the financing, the number of bond issues to be monitored, and the type of bond issue involved, e.g., governmental general obligations, qualified 501(c)(3) bonds, multifamily housing bonds. Most important is to assign responsibility for post-issuance tax law compliance and to be sure that sufficient information is routinely identified and maintained to allow those who later inherit that responsibility to successfully continue the job. It is appropriate to ask bond counsel at the time of closing to assist in the development of a procedural framework for post-issuance tax compliance.

Whenever possible, monitoring of tax law compliance should be integrated with existing accounting systems so that those who directly manage bond-financed assets will be prompted to identify relevant facts at the time any changes are contemplated and to communicate such plans to the appropriate finance officials. For example, bond-financed property could be specially coded on an existing plant ledger in order to require advance review of contemplated sales, leases, or other contractual arrangements involving bond-financed property.

Because of the long term of many tax-exempt bonds, and the need to verify tax-law compliance throughout the term, special care should be given to record retention policies. Record retention requirements may differ from and be more stringent than those required under state law or other governing rules. See [Tax Exempt Bond FAQs regarding Record Retention Requirements](#) [link] and the discussion of record retention in the [2005 Report of the Advisory Committee on Tax Exempt and Government Entities](#)

[link]. In Notice 2006-63, the IRS solicited comments as to appropriate record retention standards, including recordkeeping limitation programs, and is currently considering industry comments.

The goal of the types of procedures described here is to identify on a timely basis the facts relevant to the continued tax-exemption of outstanding bonds. The analysis of those facts and the crafting of solutions to potential problems may require on-going consultation with bond counsel. Issuers and borrowers should recognize that such consultation may go beyond the scope of bond counsel's initial engagement.

Post-bond issuance tax compliance may include the following:

- Procedure
  - Identify who will be responsible for post-issuance tax compliance and steps to be taken to transfer that responsibility and accumulated information in the future.
  - Where different persons are responsible for different aspects, for example investment of bond proceeds and expenditure of bond proceeds on projects, coordinate record-keeping and review.
  - Determine frequency for review of various items and plan of implementation.
- Issuance
  - Obtain and store “closing bible” of crucial documents prepared by bond counsel.
  - Confirm filing of Form 8038, Form 8038-G or Form 8038-GC with IRS, usually overseen by bond counsel at or soon after closing.
  - Establish plan for keeping relevant books and records as to investment and expenditure of bond proceeds.
- Arbitrage
  - Choose accounting method with respect to bond proceeds and interest earnings, investment, and expenditures.
  - Obtain computation of “yield” of bonds and establish procedure to track investment returns.
  - Establish procedure for allocation of bond proceeds and interest earnings to expenditures, including reimbursement of pre-issuance expenditures.

- Monitor compliance with “temporary period” expectations for expenditure of bond proceeds, typically three years for new money bonds, and provide for yield restriction of investment or “yield reduction payments” if expectations are not satisfied.
- Establish procedures to ensure investments acquired with bond proceeds are purchased at fair market value. These can include use of bidding procedures under regulatory safe harbor.
- Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on bonds without determining in advance whether such funds must be invested at restricted yield.
- Consult with bond counsel before engaging in post-issuance credit enhancement transactions (e.g., bond insurance, letter of credit) or hedging transactions (e.g., interest rate swap, cap).
- Identify situations in which compliance with applicable yield restrictions depends upon later investments, e.g., purchase of 0% SLGS from U.S. Treasury, and monitor implementation.
- Monitor compliance with 6-month, 18-month, or 2-year spending exceptions to rebate requirement.
- Arrange for timely computation of rebate liability and, if rebate is payable, for timely filing of Form 8038-T and payment of rebate. Rebate is ordinarily due at 5-year intervals.
- Arrange for timely computation and payment of “yield reduction payments,” if applicable.
- Issuers/borrowers frequently engage outside arbitrage/rebate consultants to do such computations.
- Private Activity
  - Establish procedure for mapping which outstanding bond issues financed which facilities and in what amounts. Note that a single facility may be financed by multiple bond issues (as well as by other funds), a single bond issue may finance multiple facilities, and a single bond issue may be partially or fully refunded by multiple subsequent bond issues.
  - Establish procedure for allocation of bond proceeds to expenditures, including reimbursement of pre-issuance expenditures. These procedures must be consistent with those used for arbitrage purposes.

- Establish procedure for allocation of bond proceeds and funds from other sources within a bond-financed project to ensure that bond proceeds are used for qualifying costs.
- Monitor expenditure of bond proceeds for qualifying costs.
  - Governmental bonds may be used for a broad range of capital projects and for working capital, subject to arbitrage constraints.
  - Charitable 501(c)(3) organizations can borrow from governmental issuers of bonds for a similarly broad range of uses. However, borrowers must ensure that 501(c)(3) status is maintained and that bond proceeds are not used in connection with an “unrelated trade or business”.
  - Exempt facility and other special use bonds have particular rules as to what are qualifying costs. In some cases, such as housing bonds, there are continuing reporting requirements to the IRS.
- Monitor private use of bond-financed facilities (in the case of qualified 501(c)(3) bonds, monitor non-501(c)(3) private use) to ensure compliance with applicable percentage limitations.
  - Establish procedure for review of amount of existing private use on periodic basis.
  - Establish procedure for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, or other arrangement involving private use of bond-financed facilities.
  - Promptly consult with bond counsel as to any possible private use of bond-financed facilities. “Remedial action” for such “change of use” may require redemption or defeasance of bonds or expenditures for other qualified purposes within specified time periods.
- Reissuance
  - Identify any post-issuance change to terms of bonds which could be treated as a current refunding of “old” bonds by “new” bonds, often referred to as a “reissuance”.
  - Confirm whether any “remedial action” in connection with a “change of use” must be treated as a “reissuance”.

Post-issuance tax compliance is an integral part of an issuer or borrower's debt management process. In some organizations, compliance may be adequately supported by ad hoc procedures or by the efforts of a single individual. However, consideration should be given to whether ongoing timely, reliable institutional compliance should be supported by practices integrated within the core policies and procedures of the institution. Such practices may assist newly elected or appointed officials in quickly identifying and understanding existing policies and remedies and who is responsible for their implementation in order to avoid a disruption of necessary activities.

Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on investments of bond proceeds and use of bond-financed property. It will require identifying existing policies, the responsible people, the applicable procedures, and the affected population. The facts will differ for every issuer or borrower. The questions may differ as well. The need for effective policies, procedures, and systems to ensure compliance will not.