

Post-Bond Issuance Monitoring Procedures and Policy Suggestions

Include the following:

General

- Who will be responsible for monitoring post-issuance tax compliance?
 - What are the procedures for transferring this responsibility in the future?
 - Describe training or educational resources to personnel that are responsible for insuring compliance.
- Identify those persons responsible for different aspects of utilizing bond proceeds, and coordination of record-keeping and review.
- Describe the nature of the compliance activities required. Establish appropriate procedures for maintaining and storing important documents, including those obtained from bond counsel, and other books and records relating to investment and expenditure of bond proceeds.
- Determine frequency for review of procedures implemented and documents maintained. Compliance checks should be at least annual throughout the life of the bond.
- Describe identification and prevention procedures.
- Provide record retention procedures (recommend for the life of the bonds plus 3 years), and describe the medium used to maintain bond records.
- Confirm filing of Form 8038, Form 8038-G or Form 8038-GC with IRS. Usually occurs at or soon after closing.
- Establish written procedures to ensure that any violations of federal tax requirements are timely identified and corrected through the Tax-Exempt Bonds Voluntary Closing Agreement Program if self-remediation is not available under applicable regulations.

Utilizing Bond Proceeds & Arbitrage

- Select appropriate accounting method with respect to bond proceeds and interest earnings, investment and expenditures.
- Compute “yield” of bonds, and develop procedures to track investment returns.
- Develop procedures for allocation of bond proceeds, and interest earnings to expenditures, including reimbursement of pre-issuance expenditures.
- Monitor compliance with “temporary period” expectations. Typically three years for new money bonds.
 - Provide for yield restriction of investment or “yield reduction payments” if expectations are not met.
- Ensure investments acquired with bond proceeds are purchased at fair market value. These procedures can include use of bidding under the regulatory safe harbor.
- Determine those funds which must be invested at restricted yield, prior to committing the use of those funds to pay debt service on bonds.
- Identify and monitor situations in which compliance with yield restrictions depends on later investments.

- Prior to engaging in any post-issuance credit enhancement (bond insurance, letter of credit) or hedging transactions (interest rate swap, etc.), consult with bond counsel.
- Monitor compliance with 6-month, 12-month, 18-month, or 2-year spending exceptions to rebate requirement.
- Compute rebate liability timely to ensure payment of rebate and timely filing of Form 8038-T (ordinarily due at 5-year intervals).
- Engage outside arbitrage/rebate consultants to compute any necessary calculations and “yield reduction payments.”
- Determine whether a reissuance has occurred, where old bonds have been refunded with new bonds as a result of any post-issuance change to bond terms.

Private Activity Bond Use & Allocation

- **Develop Procedures for:**
 - The allocation of bond proceeds with their respective expenditures.
 - Identifying which outstanding bond issues finance which facilities and their respective amounts, ensuring that bond proceeds are used for qualifying costs.
 - The separate allocation of bond proceeds and funds from other sources used for a bond-financed project.
 - Ensuring expenditures of bond proceeds are for qualifying costs:
 - Government Bonds – may be used for a broad range of capital projects and for working capital, subject to arbitrage restraints.
 - Charitable 501(c)(3) organizations – may borrow from governmental issuers of bonds for a broad range of uses. Organizations must ensure, however, that 501(c)(3) status is maintained by avoiding the use of bond proceeds in connection with unrelated trade or business activities.
 - Exempt facility and other special use bonds.
- **Monitor private use of bond-financed facilities:**
 - Ensure compliance with applicable percentage limitations
 - Review amount of existing private use periodically
 - 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.
 - Consult with bond counsel regarding any private use of bond-financed facilities to determine any “remedial action” for the “change of use” of facilities, which may result in redemption or defeasance of bonds or expenditures for other qualified purposes within specified time periods.
 - Determine whether any “remedial action” as a result of “change of use” must be treated as a reissuance.