CONSIDERATIONS FOR DEVELOPING POST-ISSUANCE TAX COMPLIANCE PROCEDURES

National Association of Bond Lawyers

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CONSIDERATIONS FOR DEVELOPING POST-ISSUANCE TAX COMPLIANCE PROCEDURES

The National Association of Bond Lawyers (NABL) has prepared this publication in coordination with the Government Finance Officers Association (GFOA) to assist issuers and conduit borrowers[1] and their advisors in establishing effective procedures to comply with tax rules relating to tax-advantaged bonds, including tax-exempt bonds, tax credit bonds and taxable direct-pay bonds. In this paper, we refer to such policies and procedures collectively as "post-issuance tax compliance procedures." When reviewing the considerations for procedures presented herein, readers may find it helpful to refer to the GFOA alert "Developing and Implementing Procedures for Post-Issuance Tax Compliance for Issuers of Governmental Bonds"[2] released together with this paper, to the joint publication by NABL and GFOA concerning post-issuance compliance checklists released in 2007 (the "NABL/GFOA Checklist Publication") and to the GFOA best practices for debt management policies released in 2012.[3] A copy of the NABL/GFOA Checklist Publication is attached as Appendix D to this paper.[4]

What are Post-Issuance Tax Compliance Procedures?

Post-issuance tax compliance procedures describe the courses of action to be taken by an entity to maximize the likelihood that tax rules applicable to "tax-advantaged" bonds are followed after the bonds are issued and while the bonds remain outstanding.

The term "bonds" for purposes of post-issuance tax compliance procedures should be read to include all types of tax-advantaged debt financings an issuing or borrowing entity may be involved with, including but not limited to bonds, notes, financing leases, loans and certificates of participation.

A bond is "tax-advantaged" if (1) interest on the bond is excluded from "gross income" to the bondholder under federal tax law, (2) the bondholder receives federal tax credits as a result of holding the bond, or (3) the issuer of a so-called "direct-pay bond"

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[1] A conduit borrower is an entity that borrows bond proceeds from the governmental issuer of the bonds. While this paper generally refers to compliance procedures for issuers, similar principles will often apply to compliance procedures for conduit borrowers.

[2] The alert is available online at http://gfoa.org/sites/default/files/GFOA%20Alert%20-%20Post%20Issuance%20FINAL.pdf.

[3] The debt management policies best practices publication is available online at http://gfoa.org/debt-management-policy.

[4] The NABL/GFOA checklist, which was prepared in 2007, is also available online at http://gfoa.org/sites/default/files/u2/PostIssuanceCompliance.pdf. Legal developments since 2007 necessitate revision of the checklist should it be used to guide post-issuance compliance efforts. For example, the checklist makes reference to Rev. Proc. 97-14, which was superseded by Rev. Proc. 2007-47, and to Securities and Exchange Commission Rule 15c2-12's list of 11 material events, which was expanded to 14 material events. The checklist also refers to Revenue Procedure 97-13, concerning safe harbors for management contracts. The IRS has since issued Revenue Procedure 2016-44 that also deals with management contracts.

receives subsidy payments from the federal government in respect of interest paid on the bonds. Congress may develop additional types of bonds in the future that will also be tax-advantaged, and it is likely that those bonds will be subject to other special tax rules that may need to be addressed in revisions to the entity's post-issuance tax compliance procedures.

Post-issuance tax compliance procedures may be part of an entity's general debt management policies or be in the form of separate procedures. They may be adopted by formal action of the entity's governing board or be developed independently by management to ensure tax compliance. Post-issuance tax compliance procedures should be adopted and implemented in a form and manner that will best result in a regular review of the investment and expenditure of proceeds and uses of the bond-financed facilities. Of course, an entity may have its own administrative and legislative processes that it may need to follow before implementing procedures.

What Tax Rules Apply to Tax-Advantaged Bonds?

Broadly speaking, the tax rules applicable to tax-advantaged bonds address four principal categories of issues: (1) expenditure of proceeds; (2) use of financed assets; (3) investment of proceeds; and (4) recordkeeping. These four categories define the focus of well-drafted post-issuance tax compliance procedures. A summary of these tax issues follows.

Expenditure of Proceeds. At the time bonds are issued, the issuer must expect to spend proceeds promptly and, in some cases, must actually spend such proceeds by specific deadlines set forth in the Internal Revenue Code and Treasury Regulations. The proceeds must be spent for purposes that are permitted for the type of bonds being issued. To ensure compliance with these rules, an issuer should establish accounting procedures that help with tracking the expenditure of proceeds. Such accounting procedures should be sufficient to, among other things, (a) clearly track expenditures of proceeds or clearly evidence the allocation of proceeds to financed assets and other permitted costs using reasonable and consistently applied accounting methods, (b) evidence compliance with the deadlines of applicable spending limitations, (c) distinguish between sources of funding such as equity, taxable borrowing proceeds and proceeds of tax-advantaged bonds, (d) distinguish between and make proper allocations for capital expenditures and working capital expenditures, and (e) identify and make proper allocations to reimbursements for prior capital expenditures.

Use of Financed Assets. The Internal Revenue Code and Treasury Regulations limit how the issuer may use assets financed with proceeds of tax-advantaged bonds. For example, in the case of governmental purpose bonds and qualified 501(c)(3) bonds, detailed rules restrict the direct and indirect use of bond-financed assets by private entities, including businesses and the federal government. For these types of bonds, the issuer is permitted a limited amount of private business use (including use by the federal government). Use in excess of the applicable limit may cause such bonds to fail to remain tax-advantaged bonds. In the case of governmental purpose bonds, use by a 501(c)(3) organization is generally treated as private business use. In the case of a qualified 501(c)(3)

bond, the 501(c)(3) organization must ensure that its use of the bond-financed facility (e.g., in an unrelated trade or business) does not lead to the bond no longer being a "qualified bond." To ensure that such assets are used within the limits prescribed by federal tax law, the issuer must (a) accurately identify the financed assets, (b) monitor the use and any disposition of such assets throughout the term of the related bonds (and whether applicable private business (which includes use by the federal government or nonprofit organizations) use limitation is exceeded), (c) review changes in how the assets are used over time, (d) review any leases, contracts or arrangements with third parties involving the assets, and (e) determine whether actions can be taken to remediate the failure (to the extent the issuer anticipates that it will not adhere to the tax rules).

For each type of qualified private activity bond, there are other specialized rules that must also be met for the facilities to continue to qualify for tax-advantaged financing. In the case of qualified private activity bonds, the issuer or conduit borrower must ensure that financed assets continue to meet other specific ongoing restrictions, such as tenant income limits for multifamily housing projects and restrictions on the input for sewage and solid waste disposal facilities.

Investment of Proceeds. The tax rules applicable to tax-advantaged bonds attempt to encourage the prompt expenditure of proceeds for the governmental purposes of the bonds and remove the incentive to (a) issue bonds earlier than needed, (b) leave bonds outstanding longer than necessary, or (c) issue more bonds than necessary for the governmental purposes of the issue. Accordingly, issuers must ensure that, except during permitted "temporary periods," gross proceeds of bonds generally are not invested at a yield materially higher than the yield on the bonds and that any permitted investment earnings above the yield on the bonds are rebated to the federal government not less frequently than every five years after the issuance of the bonds and within a certain period after the bonds are no longer outstanding.[5] Compliance with these rules requires careful planning prior to the bond issuance, recordkeeping during the term of the bonds and in many cases engaging professionals to determine whether payments to the federal government are required and the proper amount of such payments.

Recordkeeping. The Internal Revenue Code provides a general rule for the proper retention of records for federal tax purposes. Under this rule, every person liable for tax imposed by the tax code must, among other things, keep such records as are sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown in any return of such information. In the case of tax-advantaged bonds, the issuer is not typically the party liable to the federal government for tax (the bondholders are), but the issuer will have covenanted in the bond documents for the benefit of the bondholders to maintain the tax-advantaged status of the bonds, and in audits the issuer is treated initially as the taxpayer. Accordingly, the issuer should retain sufficient records to support

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[5] The planning and recordkeeping required to facilitate compliance with the rules concerning investment and the rebate of earnings would also facilitate the computation and remittance of any yield reduction payments that need to be made.

the continuing tax-advantaged status of the bonds, and to prove compliance with the rules for expenditure of proceeds, use of the financed assets and investment of proceeds.

Why are Post-Issuance Tax Compliance Procedures Important?

Post-issuance tax compliance procedures have two fundamental purposes: to enhance the likelihood of compliance with rules and to facilitate and streamline the entity's administrative functions. There are convincing reasons to adopt post-issuance tax compliance procedures for both purposes.

Most important from a financial perspective is the issuer's need to uphold its promise to bondholders to maintain the tax-exempt or tax credit status of its bonds. With respect to direct-pay bonds, the issuer has a direct stake in ensuring that it continue to receive subsidy payments from the federal government. An issuer's promise to bondholders regarding tax exemption or tax credit status constitutes an important contractual obligation in any bond financing, and noncompliance may lead to a default that can permit a bondholder to demand early repayment of its bond or cause the interest rate on the bond to increase significantly. In the case of direct-pay bonds, failure to comply can mean that the anticipated federal subsidy payments to the issuer are eliminated.

The Internal Revenue Service is tasked with overseeing and enforcing the post-issuance tax compliance aspects of tax-advantaged bonds. In this role, the Internal Revenue Service has systematically increased its efforts to encourage issuers and conduit borrowers to adopt effective procedures relating to post-issuance tax compliance. For instance, the Internal Revenue Service requires an issuer to state on its Form 8038 information report[6] whether it has written procedures in place when it issues bonds. Conduit borrowers must make similar statements on Schedule K of Form 990 (if one is required to be filed by the borrower).[7] A statement of this type is usually also required in responses to random compliance questionnaires and bond audits from the Internal Revenue Service.

Outright denial by the Internal Revenue Service of the tax-exempt or tax credit status of bonds or cancellation of subsidy payments has not occurred frequently.[8] Most tax issues are resolved in settlements with the Internal Revenue Service under which the issuer pays a settlement amount and promises to take certain other actions, such as redemption of

[6] The Form 8038 information report is submitted by the issuer of tax-advantaged bonds at or about the time the bonds are issued. A copy of the information report is typically included in the transcript for the bonds. There currently are three main types of Form 8038 information reports (the 8038, the 8038-G and the 8038-TC). Which type is filed depends on the category of tax-advantaged bonds issued.

[7] The Form 990 tax return is typically required to be filed by organizations exempt from income tax under section 501(a) of the Tax Code. Most governmental units that are eligible to issue tax-advantaged bonds and affiliates of governmental units are not required to file Form 990. An issuer or conduit borrower should contact its legal counsel to determine whether the issuer or borrower needs to submit Form 990.

[8] It should be noted that Internal Revenue Service adjustments to include bond interest in gross income only occur at the individual bondholder level. Before such bondholder adjustments are undertaken, however, the issuer is able to negotiate with the Internal Revenue Service and may, in many cases, enter into a settlement agreement to resolve any tax deficiency.

all or a portion of the bonds. The ability to fix post-issuance tax compliance problems by settling with the Internal Revenue Service should not be viewed as a cost-effective solution to addressing these problems. Settlements may require hefty remediation payments by the issuer and, if made public, may reflect badly on the issuer in the bond markets. Effective procedures that are implemented will help avoid post-issuance tax compliance problems in the first place.

In addition to assisting with post-issuance tax compliance, procedures also facilitate and streamline the entity's general administrative functions. Many of these functions may not be driven by tax benefits of bonds but by other considerations. For instance, procedures formalize the process by which organizational knowledge can be shared among different functions of the entity and transferred to future generations of employees.

Retention and maintenance of records relating to bonds, which is a key aspect of a sound post-issuance tax compliance program, will also permit an issuer to appreciate which projects may be good candidates for tax-advantaged financing or refinancing in the future. The issuer should also be in a better position to take timely action to fix tax problems that come up in the future if bond-financed or refinanced facilities are sold or used by entities other than the issuer.

An important but sometimes overlooked benefit of post-issuance tax compliance procedures is that procedures enable more efficient responses to Internal Revenue Service audits because information regarding the bond issue is likely to be more readily available. For the same reason, difficulties in audits are less likely to arise because there is a lower probability that errors are made in responses. Time saved in responding to audits means fewer issuer resources are used and attorney charges are better managed.

When are Procedures Effective?

An issuer should use common sense in determining what types of post-issuance tax compliance policies are effective in addressing the principal tax issues that arise in connection with tax-advantaged bonds. There is no industry standard for procedures. Instead, procedures that comprehensively address the substance of applicable tax rules while being tailored to the issuer's operational needs and supported by management and implemented in practice by the issuer's staff are most likely to lead to effective post-issuance tax compliance.

The Internal Revenue Service has stated that reliance solely on the closing documents of a particular bond issuance (including the tax certificate or tax agreement) may not be enough to optimize post-issuance tax compliance. This is understandable because closing documents are prepared to facilitate the bond closing and may not address the issuer's processes for complying with ongoing covenants.

The Internal Revenue Service does not mandate a particular form for procedures but has published information materials intended to describe certain post-issuance tax

requirements for governmental bonds and private activity bonds. These materials are available for download from the Internal Revenue Service web site.[9]

Characteristics of Effective Procedures

The Internal Revenue Service states in its publications that there are certain common characteristics that it believes are important for procedures to address tax rules effectively. In IRS Publication 5091 (March 2016), the Internal Revenue Service recommends that the following subjects be included in written post-issuance tax compliance procedures: (1) identification of an individual who is responsible for coordinating post-issuance tax compliance; (2) due diligence review at regular intervals; (3) training for compliance officials; (4) retention of adequate records to substantiate compliance; (5) procedures that are expected to timely identify potential noncompliance; and (6) procedures that will ensure that the issuer takes steps to correct identified noncompliance in a timely manner. Each of these subjects is discussed in detail below. In preparing the entity's compliance procedures, the drafter may want to use these topics as an outline.

Designating Compliance Official. A critical first step for setting up effective compliance procedures is the designation of an individual (a "compliance official") who will be responsible for overseeing the entity's compliance efforts. The compliance official should be the entity's "chief issue spotter" who is tasked with flagging any potential or actual noncompliance with the tax rules relating to tax-advantaged bonds. If the compliance official has not had experience with tax-advantaged bonds, the individual should receive initial training upon assuming post-issuance tax compliance responsibilities. Sufficient resources should be made available to provide ongoing training for the compliance official and any individuals supporting the official in carrying out the compliance duties.

The compliance official should be given broad authority for implementing the compliance procedures. Specifically, the individual will need to be empowered to request information from others within the entity concerning the status of the expenditure of bond proceeds, the use of financed assets, the investment of proceeds and the collection and retention of all records relating to the bonds. For example, the official should be able to receive from the entity's facilities management team or contracts committee information regarding use of the assets. The compliance official should also be involved in any decisions by the entity to change the use of financed assets or to sell the financed assets. The chief financial officer, finance director or treasurer of the entity may already have many of these powers and often will be a logical designee for heading the compliance efforts. In larger entities, a debt administrator may be the appropriate compliance official, but additional delegation of authority could be needed if the debt administrator is not

[9] *See* Internal Revenue Service, Publication 4079, Tax-Exempt Governmental Bonds, available at http://www.irs.gov/pub/irs-pdf/p4079.pdf; Internal Revenue Service, Tax-Exempt Private Activity Bonds, available at http://www.irs.gov/pub/irs-pdf/p4078.pdf; and Internal Revenue Service, Publication 4077, Tax-Exempt Bonds for 501(c)(3) Charitable Organizations, available at http://www.irs.gov/pub/irs-pdf/p4077.pdf.

already empowered to interact and require information from other departments within the entity regarding the use of bond-financed assets. In smaller entities with limited staffing resources, the entity may decide to hire an outside consultant to lead the compliance efforts.

The compliance official should maintain and, when necessary, propose updates to the post-issuance tax compliance procedures to make sure the procedures address any changed circumstances affecting the tax-advantaged bonds and the financed assets. To properly oversee compliance, the individual should be given the power to consult with bond counsel and other compliance advisors, such as the issuer's rebate consultant, as necessary. The compliance official should also be the point person, or should be able to appoint a point person, to collect all documentation with respect to bonds, such as the investment of gross proceeds of the bonds and all records necessary to calculate arbitrage rebate or to demonstrate that no rebate is due.

A sample policy statement designating a compliance official and setting forth the official's authority for implementing procedures is included in Appendix A hereto.

Regular Due Diligence Reviews. The key to tax compliance is to conduct regular reviews of how well the issuer is complying with the tax rules described above (or any other rules that may be described in the transaction documents for the bonds) and to identify potential problems early. The frequency and timing of due diligence reviews will depend on the complexity of the issuer's outstanding bond issues and the administrative resources available to the issuer. Reviews should ideally be conducted at least annually. Some issuers have elected to do this review at the same time as the issuer's year-end financial reporting is completed to minimize additional administrative burdens. Other issuers have elected to complete reviews during periods in which there are fewer competing demands for resources. Reviews less frequently than annually are not recommended because of the potential for discovering tax issues later when it may be more difficult to take needed corrective actions or effect a reallocation of proceeds. The issuer's compliance official should be the individual tasked with initiating these regular due diligence reviews. A sample policy statement concerning due diligence reviews is included in Appendix A hereto.

The first step in the ongoing diligence process for every bond issue may be to complete or update the post-issuance compliance checklist for the bond issue. A sample checklist is included in the NABL/GFOA Checklist Publication referenced above. A completed checklist is a useful reference guide for continuing diligence reviews because the checklist will lay out many of the facts that are relevant to ensuring compliance with the four main categories of tax issues. The official may also want to set up processes to collect investment information for the various funds and accounts that contain bond proceeds or amounts used to pay debt service on the bond issue and a system to transmit the necessary information to the entity's investment advisor and rebate consultant.

During each regular review, the compliance official will want to take an inventory of all remaining unspent bond proceeds to determine whether proceeds are spent according to the applicable expenditure limitations and catalog the current uses of the financed assets. The review should include a review of any new arrangements affecting the use or

ownership of financed assets, such as leases, management and service contracts and licenses with third parties or sales of financed assets to third parties.[10] It is especially important to remember in this context that use by the federal government or nonprofit organizations may be limited by applicable rules regarding the permitted use of financed assets. Any arrangements with the federal government or nonprofit organizations for use of financed assets should be reviewed as diligently as arrangements with unrelated businesses and individuals. The compliance official may find it helpful to send annual surveys to the various departments within the entity to identify how financed assets are being used. The procedures may also want to provide for annual review of any new arrangements by the entity's bond counsel.

The procedures should also provide for review of whether any new proceeds have been created since the last review, such as through creation of a sinking fund, pledged fund or defeasance escrow, and ensuring that applicable yield limitations are being met.

As part of the regular due diligence review, the compliance official will also want to confirm that remaining bond proceeds continue to be invested within any applicable yield limitations of the Internal Revenue Code and Treasury Regulations and that rebate payments are made on a timely basis. To make this determination, the official should update its records of any unspent bond proceeds, review investment reports and coordinate the preparation of rebate calculations and payments with the entity's rebate consultant.

Training for Compliance Official. A crucial task of effective procedures is to provide for thorough training of the compliance official and his or her assistants. A sample policy statement concerning training is included in Appendix A hereto. The compliance official, in particular, must have a firm understanding of the four key categories of tax issues affecting tax-advantaged bonds and must be familiar with the covenants and instructions contained in the tax documents for the bonds. The procedures may provide for training by requiring attendance at educational seminars or training sessions offered by industry groups such as the GFOA or NABL, or encouraging the compliance official to meet with bond counsel, financial advisors or other professionals on a periodic basis. The entity should be prepared to budget for the cost of such training and meetings on a recurring basis.

Training should address not only the tax rules relating to the entity's outstanding tax-advantaged bonds, but also the more practical aspects of compliance. For example, the procedures should lay out how and from whom the compliance data is to be collected. This is particularly important if the entity has many different functions overseeing different aspects of how bond proceeds may be used. A facilities department may be the best source for information regarding leases, but a separate contracts department may have oversight of management and service contracts. The compliance official will also need to know when data must be requested from third parties such as trustees or investment managers.

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[10] Ideally, post-issuance tax compliance procedures would automatically be involved whenever the sale of bond-financed assets is contemplated, so that the cost of remediation would be considered as part of the sale transaction.

Training for the individual should be only one component of effective procedures. It is equally important to implement systems that will support overall institutional training that emphasizes group and organizational learning concepts. Group learning occurs when knowledge of compliance matters is shared within the entity and transferred from one generation to another. Group learning ensures that information is retained within the entity and is particularly important for bond issues that may be outstanding for several decades. Effective procedures should therefore ensure that succeeding generations of compliance officials have the opportunity to learn from outgoing generations, and outgoing generations should be required to take steps to transfer the information and knowledge they have accumulated and to transmit insights as to how that information and knowledge can best be captured in the future. Organizational learning happens when the entity itself adapts to processes that will facilitate post-issuance compliance. For example, the procedures may provide for recurring seminars available to all of the relevant departments within the entity that will have contact with the financed assets to assist those departments to more effectively support the compliance process.

Record Retention. Effective procedures for retaining records will provide that the entity has the necessary documentation to support the continued tax-advantaged treatment of its bonds. Though seemingly straightforward, the record retention requirement presumes ongoing diligence and an enduring system for maintaining institutional memory, an understanding of the types of records to be maintained, and procedures that are flexible enough to adapt to changes in the entity, changes in accounting practices and changes in technology. These issues are described in more detail below. In addition, the Internal Revenue Service has published recommendations that a reader may find helpful in considering record retention provisions for its procedures.[11] A sample policy statement setting forth record retention procedures is included in Appendix A hereto.

1. Ongoing Diligence and Institutional Memory. Effective procedures require the ongoing retention of records and promote the creation of institutional memory. In part, that is achieved by encouraging training for compliance officials as described above. A strong record retention policy, however, is also critical. The Internal Revenue Service states that material records relating to the tax-advantaged status of bonds should "generally" be kept for as long as the bonds are outstanding, plus three years after the final redemption date of the bonds. For certain federal tax purposes, a refunding bond is treated as replacing the original bond, which means that material records relating to the original bond should continue to be maintained even during the life of the refunding bond plus an additional three years. This can lead to a considerable time period for ensuring that documents are available. A bond issue may well remain outstanding for thirty years or more, and refundings with new issues of bonds can extend the effective maturity even further.

There are numerous retention problems that can result from the long-lived nature of tax-advantaged bonds. Effective post-issuance tax compliance procedures should address these problems head-on. For instance, the procedures

[11] See http://www.irs.gov/Tax-Exempt-Bonds/Tax-Exempt-Bond-FAQs-Regarding-Record-Retention-Requirements .

should describe how the entity will adjust its recordkeeping processes in the event of geographical moves of governmental headquarters and changes in the internal structure of the entity (for example, if the responsibility for keeping records with respect to a financed facility is moved from one department to another). The procedures should also contemplate how changes in accounting practices and technology will be handled, and how to minimize the risk that files and records deteriorate or are lost or damaged as a result of poor storage environments, inferior materials or natural catastrophes. In addition, if more than one person is responsible for collecting and maintaining records related to a bond financing, there should be specific procedures for assigning responsibilities that can help with the administration of the recordkeeping task. Procedures that adequately address these issues will ensure that institutional memory is retained over the long term. An entity will want to review any of its existing general document retention policies to determine whether these matters are already covered by those policies.

2. Types of Records. Effective procedures identify the basic types of records to be retained and the principles for determining when records are material. The types of records to be retained for a bond issue will depend on the characteristics of the transaction. As a general matter, the entity will want to retain the closing transcript for each bond issue, documentation evidencing how and when the bond proceeds were spent (including whether bond proceeds were used to reimburse any expenditures of the issuer paid before the bond closing), documentation evidencing how the financed property is used (including copies of any and all relevant management or service contracts and research agreements, and evidence of ongoing monitoring of use), documentation evidencing all sources of payment or security for the bonds, and documentation that relates to the investment of bond proceeds. Appendix B lists specific records an entity should consider retaining. The compliance official should be given the authority to discuss the relevance of records with internal legal counsel and, if needed, with bond counsel.

3. Flexibility. Effective procedures enable the compliance official to adjust recordkeeping processes to keep up with changes in accounting practices and technology developments. For example, the procedures should give broad authority to the compliance official to coordinate and, if needed, reorganize record collection processes from time to time such that all relevant parties have access to, are retaining and are properly transferring the correct records. In addition, the procedures should permit the official to retain and transmit records in electronic form instead of physical form, subject, of course, to any applicable state or local laws. It is typical to keep bond records in physical form, but the Internal Revenue Service has stated that electronic records are acceptable as long as certain requirements are satisfied. The Internal Revenue Service requirements for maintaining electronic records are summarized in Appendix C hereto.

Procedures to Identify Noncompliance. Regular due diligence reviews are the first lines of defense against noncompliance and should be undertaken at specified intervals, such as annual reviews of investments and use of financed facilities, and arbitrage rebate computations at least every five years. Regular reviews facilitate the record

collection process and help the entity react to noncompliant use of financed facilities or the noncompliant use or investment of bond proceeds. Effective procedures, however, should also incorporate processes that will help the entity proactively identify and avoid noncompliance. These processes would address (1) operational transformation and (2) triggers and corrective actions when potential noncompliance events are identified.

Operational transformation is an important component of effective procedures and refers to holistic changes in the way the entity works to ensure that compliance activities are efficient and effective. For example, the procedures may direct the entity to use standardized management and service contracts or other agreements concerning the use of bond-financed facilities that are drafted with a view towards avoiding private business use and to receive internal general counsel approval or review by outside bond counsel of nonconforming arrangements. The procedures may also require prior approval by the internal general counsel or the compliance official of any change in how bond-financed facilities are to be used or as a condition to the sale, lease or sublease of bond-financed facilities. Where bond-financed facilities are intended to be used by entities other than the issuer, the procedures should require that provisions be included in the applicable use agreement to receive reporting from such entities regarding any changes in use. These provisions should require interaction among the various departments of the entity. Other activities that will encourage operational transformation include (a) preparing and regularly updating forecasts with responsible departments to identify how and by whom financed facilities will be used in the future, (b) completing internal surveys regarding such use, and (c) finalizing the allocation of bond proceeds and other funding sources in mixed-use projects and sharing the allocation results with departments that have oversight of the use of the facilities and accounting responsibilities.

The second category of processes for proactively avoiding noncompliance focuses on actions the entity must take once a noncompliance event has occurred or is expected to occur. A noncompliance event is an event that may cause bonds to lose their tax-advantaged status. Some of these events may be outside of the control of the entity. In other cases, the events are within the control of the entity and are referred to in the federal tax rules as "deliberate actions." It can be difficult to determine if events outside the control of the entity will affect the tax-advantaged status of bonds. In many cases, such events will not impact the bonds because tax rules recognize that the entity has not done anything incorrectly to warrant adverse treatment. Deliberate actions, however, have a higher chance of giving rise to adverse tax consequences. With a deliberate action, the entity is affirmatively taking an action that may, for example, lead to an impermissible amount of private business use. An action may be treated as a deliberate action even if the issuer does not intend to violate any tax rules relating to the bonds. The best procedure in either case is to require the compliance official to contact bond counsel as soon as possible to discuss the significance of the event. As described below, certain actions may be available to correct the potential or actual noncompliance.

Timely Correction of Noncompliance. The procedures should ensure that the entity takes steps to timely correct noncompliance with tax rules. Such steps should include the immediate reporting of noncompliance to the compliance official, prompt review of the noncompliance by the compliance official and communication with the entity's general

counsel. The general counsel, or the compliance official with direction from the general counsel, should then follow up with bond counsel if necessary.

Other Considerations in Preparing Procedures

Preparing the written policy document is not typically the most difficult task in establishing post-issuance tax compliance procedures. Bond counsel and other professionals have templates that may assist the issuer during the drafting process. Rather, the more difficult tasks in the preparation of procedures include (1) finding support and resources within the entity to promote the policy-making process, (2) managing the preparation process in an efficient and organized manner that allows all applicable stakeholders to contribute, (3) considering appropriate methods of adopting or approving the procedures, (4) addressing succession needs, and (5) considering the entity's role as conduit issuer (if applicable).

Finding Support within the Entity. The governing body of the entity should lend sufficient credibility and authority to those individuals who are responsible for managing the policy-making process. The governing body should designate a sponsor (such as the governing body's president or treasurer or the entity's manager) to oversee the process. The sponsor should have a good understanding of the need for procedures and have the ability to marshal the necessary resources within the entity to move the process forward. This includes the ability to require members of different departments, such as the finance department or the facilities and contract departments, to cooperate in the policy-making process.

Managing the Preparation Process. The entity should carefully plan the preparation process to ensure that the process is completed in an efficient and organized manner and to enable all stakeholders to provide input. The first step to preparing post-issuance tax compliance procedures is to determine whether the entity has any similar or related policies in place that should be referred to or that need to be amended. If the entity has general debt management policies in place, for example, the entity would want to coordinate post-issuance tax compliance tasks with general debt management tasks. It may make sense to assign post-issuance tax compliance duties to the staff members who are responsible for general debt management because these staff members will already have an understanding of the entity's debt structure. Similarly, the entity would want to coordinate post-issuance tax compliance tasks with any existing policies that relate to the operations of the entity's facilities. For example, the existing facilities policies could be amended to refer to the special use, ownership and disposition rules applicable to facilities that have been financed by tax-advantaged bonds to ensure that changes that affect the tax status of the bonds are identified early. If an entity has a pre-existing record retention policy, that policy may also require additional review and consideration.

The second step is to determine the appropriate level of detail to be contained in the post-issuance tax compliance procedures. Procedures may consist of "bare bones" procedures, "intermediate" procedures and "best practices" procedures. Bare bones procedures list the four principal categories of post-issuance tax compliance and designate a person responsible for compliance, without prescribing specific steps that are needed to

conduct compliance activities. The benefits of a bare bones approach are that few organizational resources are needed to establish the procedures, and the person responsible for overseeing compliance is given flexibility to implement the procedures. Bare bones procedures can be appropriate for smaller entities or entities that issue obligations infrequently and for projects that are not prone to difficult post-issuance tax compliance problems. The downside, of course, is that the continuing success of such procedures depends on the ability of the responsible person to independently search for and identify post-issuance problems and convey acquired knowledge when the oversight role transitions to another person.

Intermediate procedures not only list the principal categories of post-issuance tax compliance but provide specific tasks for each category that are tailored to the entity's operations. Intermediate procedures may, for example, direct the responsible person to conduct reviews of investments and uses of proceeds at specific intervals that best match the entity's accounting calendar, and designate individuals in other relevant departments as liaisons for assisting in the continuing compliance effort. Intermediate procedures will require more planning and discussions within the entity to integrate all of the entity's stakeholders in the preparation process.

Best practices procedures can be more time-consuming and costly than intermediate procedures but provide the greatest level of detail and integration with all of the entity's other existing policies. Best practices procedures still address the four principal categories of post-issuance tax compliance but are written with an eye towards promoting organizational learning. This category of procedures will affect how other departments within the entity operate to ensure that potential post-issuance tax compliance problems are identified at the earliest possible time. For example, the contracts department may be instructed to take over the responsibility for determining whether potential agreements give rise to private business use or comply with any then available safe harbors under the federal tax rules. The procedures may also provide for special training for members of the entity's finance department to identify tax issues relating to the investment of bond proceeds. In a best practices approach to compliance, the goal is to make post-issuance tax compliance a fundamental part of the operations of the entity as a whole.

Regardless of whether the entity pursues a bare bones, intermediate or best practices approach, a primary consideration for establishing effective procedures is to ensure that procedures do not represent a competing bureaucracy within the entity. The only way to accomplish this is to involve all of those stakeholders within the entity who possess the key pieces of information relevant to continuing tax compliance.

Adopting or Approving the Procedures. There is no "one size fits all" approach to adopting or approving procedures given the large diversity of types of issuers and manners of operation that are specific to each given issuer. Federal tax law does not attempt to prescribe how procedures should be adopted or approved. Some entities may prefer that the procedures be formally adopted by the governing body to ensure that there is a general understanding within the whole entity of the importance of (and top level support for) continuing compliance. Other entities may feel that specific departments within the entity are already well equipped to establish procedures that will be implemented effectively. In

any case, the procedures should be prepared in written form and communicated to all affected individuals within the entity.

Addressing Succession. An essential consideration in preparing procedures is to determine how to transition responsibility for overseeing compliance from one generation to another while bonds remain outstanding. Without effective transition provisions, the entity risks losing the knowledge that has been accumulated by prior generations. A sample policy statement concerning succession is included Appendix A hereto.

Issuer as Conduit Issuer. Special post-issuance tax compliance considerations arise when the entity acts as a conduit issuer. A conduit issuer is an entity that issues bonds and makes loans of the bond proceeds to conduit borrowers. In these cases, the entity will need to decide how many of the compliance activities are to be delegated to conduit borrowers. In financings where it is important to comply with limitations on the use, ownership and disposition of financed property, for example, the conduit borrower will be the appropriate party to monitor these limitations. The documents evidencing the loan to the conduit borrower would include this delegation. Entities that frequently act as conduit issuers may find that it can be efficient to establish form procedures that each conduit borrower must adopt as a condition to receiving a loan. These "conduit borrower procedures" would describe all post-issuance tax compliance duties delegated to the borrower.

Conclusion

Post-issuance tax compliance procedures describe the courses of action that are to be taken by an entity to maintain compliance with tax rules that apply to tax-advantaged bonds throughout the life of such bonds. The four principal categories of ongoing tax compliance rules address (1) the expenditure of bond proceeds, (2) the use of bond-financed assets, (3) the investment of bond proceeds, and (4) the gathering and maintenance of records relating to the bonds. Procedures assist the entity in complying with tax and document covenants, in the transfer of knowledge and to streamline the entity's financing operations, all for the purpose of maintaining the tax benefits associated with the bonds. Procedures must be effective in order to be useful. The Internal Revenue Service has stated that procedures can be effective when they identify an individual who is responsible for coordinating post-issuance tax compliance, provide for due diligence reviews at regular intervals and training for compliance officials, promote the retention of adequate records, address the timely identification of noncompliance and ensure that the entity takes steps to correct identified noncompliance in a timely manner. In preparing procedures, the entity should also consider how to find support within the entity for the preparation and adoption of procedures, how to effectively and efficiently manage the preparation process, how to formally adopt or approve procedures, how compliance tasks will be transitioned to future generations, and how to address compliance tasks in conduit bond issuances. This publication is intended to provide practical advice regarding these matters. In light of today's ever-changing tax laws and practices, however, entities will want to include bond counsel or other professionals in any discussion concerning post-issuance tax compliance procedures.

APPENDIX A

SAMPLE POLICY COMPONENTS[12]

The following sample statements are intended to guide in the drafting of policies that address characteristics of effective procedures. These statements should be adjusted as necessary to integrate and harmonize the tax compliance tasks with any procedures the entity may already have in place. These statements are suggested components for inclusion in procedures and are not *intended to set forth a complete policy template.*

Designation of Compliance Official

The issuer has assigned to the [TITLE] of the issuer (the "Responsible Person") the responsibility for ensuring post-issuance and remedial action compliance with the requirements of any tax and financing documents for the issuer's outstanding bonds. This responsibility is included in the job description for the Responsible Person, and such person has or will review any prior post-issuance compliance and remedial action procedures, these policies, any tax documents for any of the issuer's bonds heretofore or hereafter issued by it, the related information returns, if any, filed in connection with any bonds (such as IRS Forms 8038, 8038-G, 8038-TC or 8038-CP) and the instructions to such information returns. The Responsible Person will consult with bond counsel and other professionals as needed.

Regular Due Diligence Reviews

The Responsible Person (see the definition above) will review these policies, tax and financing documents relating to the issuer's outstanding bonds, information returns for such bonds (and the instructions to such returns), and the status and use of the bond-financed or refinanced property on at least an annual basis and at the following intervals: (a) six months prior to each five-year anniversary of the issue or the execution and delivery date of the bonds; (b) within 30 days of the date the bonds are finally retired, defeased, refunded or terminated; (c) when any rebate payment is made; (d) when property financed or refinanced with proceeds of bonds is placed in service; (e) if the issuer determines that property planned to be financed or refinanced with proceeds of bonds will not be completed; and (f) if any of the representations, statements, circumstances or expectations of the issuer that are set forth in the tax or financing documents for bonds are no longer true, have changed or have not come to pass. This review will be made for the purposes

[12] Another example of a post-issuance compliance policy is in the 2013 report of the Advisory Committee on Tax-Exempt and Government Entities, a committee composed of private-sector individuals that advises the Internal Revenue Service. The report contains a draft of a publication that the Advisory Committee suggested the IRS issue. The IRS has not done so. *See* Katherine A. Newell, J. Sue Painter & Lorraine Tyson, *Tax-Exempt Bonds: A Roadmap to Arbitrage Requirements for Tax-Exempt Governmental Bonds and Qualified 501(c)(3) Bonds of Small Issuers and Conduit Borrowers, Appendix B, in* Advisory Committee on Tax-Exempt and Government Entities, 2013 Report of Recommendations, Dep't of the Treasury, Internal Revenue Serv., Pub. 4344 (Rev. 6-2013), available at https://www.irs.gov/pub/irs-tege/tege_act_rpt_12.pdf.

of identifying any possible violation of federal tax requirements related to the bonds and to ensure the timely correction of those violations pursuant to the remedial action provisions outlined above or through the voluntary closing agreement program of the Internal Revenue Service. If any possible violation is identified, the Responsible Person will notify the issuer's general counsel or the issuer's bond counsel so that any existing or expected violation can be corrected.

Training for Compliance Official

Compliance training for the Responsible Person (see the definition above) and for any persons to whom the Responsible Person specifically delegates any duties in these policies should include, among other things, annual meetings with bond counsel to discuss monitoring compliance with applicable tax laws and attendance at post-issuance compliance trainings organized by bond counsel or the Internal Revenue Service or entities such as the National Association of Bond Lawyers, the Government Finance Officers Association or similar organizations.

Record Retention

Management and retention of records related to the issuer's bonds will be supervised by the Responsible Person. The Responsible Person will retain for the life of the bonds plus the life of any refunding bonds plus three years records relating to (1) general information regarding the bond issue, (2) expenditure of bond proceeds, (3) use, ownership and disposition of bond-financed facilities, and (4) investment of gross proceeds of the bonds. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.[13]

Succession Planning

The issuer will ensure that, when the current Responsible Person leaves such person's current position at the issuer, the responsibility for tax compliance will be explained in detail to his or her successor and such successor will be provided compliance training (see description of training above).

[13] A list of the types of records to be retained by the Responsible Person is shown in Appendix B.

APPENDIX B

SPECIFIC RECORDS TO RETAIN

Each bond financing is unique. Accordingly, the types of records to be maintained will differ based on the characteristics of each financing. Obviously, as a general matter, the closing transcript for each bond issue is an important record to be kept in the file. However, a number of other types of records are also key to evidencing ongoing compliance with the four principal categories of tax issues described in this publication. Effective procedures will direct the compliance official to retain records of the type listed below.

Basic transaction documents:

- Tax returns such as Internal Revenue Service Forms 8038 and 8038-G;
- Minutes and resolutions authorizing the issuance of the bonds and the use of proceeds, whether or not created or adopted before bond issuance;
- Certifications of the issue price of the bonds;
- Elections for bond financings (for separate issue treatment, for example);
- Appraisals, demand surveys or feasibility studies;
- Documents related to gifts or grants relating to the bond project;
- Trustee statements for the funds and accounts created for the bonds; and
- Correspondence with the Internal Revenue Service relating to the bonds or the financed property.

Records regarding expenditures and assets:

- Records to show the allocation of bond proceeds to expenditures;
- Copies of requisitions, draw schedules, draw requests, invoices, bills and evidence of payment relating to the expenditure of bond proceeds;
- Copies of contracts entered into for the construction, renovation, equipping or purchase of financed facilities;
- Records of expenditures paid before the bonds were issued for which the entity received a reimbursement from the proceeds of the bonds;
- Asset lists or schedules of all financed property, including information showing the expected useful lives and costs of the property;
- If applicable, any depreciation schedules for financed property; and
- Records that track the purchases and sales of the financed assets.

Records regarding the use of assets:

- Records of trade or business activities by or with nongovernmental entities with respect to the financed property;
- Copies of the following agreements (current and past) if the agreements relate to the financed property:

  - Management and other service contracts;
  - Research contracts;
  - Naming rights contracts;
  - Ownership documentation (deeds, mortgages);
  - Leases;
  - Subleases;
  - Leasehold improvement contracts;
  - Joint venture arrangements;
  - Limited liability corporation arrangements; and
  - Partnership arrangements.

Records regarding the investment of bond proceeds:

- Records to show the investments and earnings relating to the bonds;
- Records relating to investment contracts, credit enhancement transactions (bond insurance contracts or letter of credit documents, for example), financial derivatives (swaps and caps, for example) and bidding of financial products; and
- Arbitrage documents including calculations of the bond yield, computations of rebate and yield reduction payments, arbitrage rebate payments (including Internal Revenue Service Forms 8038-T) and requests for recovery of any overpayments (including Internal Revenue Service Forms 8038-R).

APPENDIX C

MAINTAINING ELECTRONIC RECORDS

The Internal Revenue Service permits records relating to tax-advantaged bonds to be maintained in electronic format if certain requirements are satisfied. The requirements are generally set forth in Revenue Procedure 97-22, 1997-1 C.B. 652. The following is a summary of the requirements for the use of an electronic storage system:

1. The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves and reproduces all transferred information.

2. The system must include reasonable controls and quality assurance programs that (a) ensure the integrity, accuracy and reliability of the system, (b) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records, (c) institute regular inspections and evaluations, and (d) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.

3. The information maintained in the system must be cross-referenced with the taxpayer's books and records in a manner that provides an audit trail to the source document or documents.

4. The taxpayer must maintain and provide to the Internal Revenue Service upon request a complete description of the electronic storage system including all procedures relating to its use and the indexing system.

5. During an examination, the taxpayer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Internal Revenue Service and provide the Internal Revenue Service with the resources necessary to locate, retrieve, read and reproduce any electronically stored books and records.

6. The system must not be subject, in whole or in part, to any agreement that would limit the access by the Internal Revenue Service to and use of the system.

7. The issuer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.

The entity will want to make sure that any electronic storage and retention of documents satisfies all applicable state and local laws and regulations.

APPENDIX D

POST ISSUANCE COMPLIANCE CHECKLIST

The NABL/GFOA checklist on the following pages, which was prepared in 2007, is also available online at http://gfoa.org/sites/default/files/u2/PostIssuanceCompliance.pdf. Legal developments since 2007 necessitate revision of the checklist should it be used to guide post-issuance compliance efforts. For example, the checklist makes reference to Rev. Proc. 97-14, which was superseded by Rev. Proc. 2007-47, and to Securities and Exchange Commission Rule 15c2-12's list of 11 material events, which was expanded to 14 material events. The checklist also refers to Revenue Procedure 97-13, concerning safe harbors for management contracts. In addition to issuing Notice 2014-67, amplifying Rev. Proc. 97-13, the IRS has recently issued Revenue Procedure 2016-44, which supersedes both Rev. Proc. 97-13 and Notice 2014-67.

POST ISSUANCE COMPLIANCE CHECKLIST

The National Association of Bond Lawyers ("NABL") and the Government Finance Officers Association ("GFOA") have jointly developed the following checklist to assist bond counsel in discussing with issuers and conduit borrowers, as applicable, post issuance compliance matters. The checklist is divided into three parts: tax, securities and State law matters. The checklist can serve as a framework for discussion at an appropriate time during the transaction or as a written document prepared by bond counsel and furnished to the issuer or conduit borrower after completion of the financing. Bond counsel may need to explain various items on the checklist to provide the issuer with a more complete understanding of the noted concept. The checklist can be amended or supplemented as needed to address the particular financing issue. Issuers and conduit borrowers are encouraged to contact bond counsel at any time they may have questions or concerns pertaining to tax, securities or State law issues.

In the "document reference" column, where applicable, the financing document pertaining to the referenced point should be named. This will assist others on the finance team – present and future – to be able to locate the original notation. The "responsibility" column should list the various offices/desks within the government or legal or other professional that have been engaged for the purpose of that section who is/are responsible for maintaining the noted task. This list covers a broad spectrum of financing purposes of which only some will apply to your financing. Instances where each line will be completed are unlikely. However, you are encouraged to review the entire document and complete the lines that are applicable to your financing.

The checklist is intended to help issuers and/or borrowers throughout the entire lifetime of the financing to identify matters that need to be analyzed by the issuer and perhaps by counsel. Issuers are encouraged to retain and distribute the checklist to all "responsible" parties and others who may find it useful during the lifetime of a financing. **Keeping the checklist throughout the lifetime of the financing is important. Thus, issuers are encouraged to keep the document with the transcript.**

The completion and distribution of this checklist does not presume a contractual obligation on parties to complete these tasks.

POST ISSUANCE COMPLIANCE CHECKLIST

TRANSACTION PARTIES

Overall Responsible Office for Debt Management Activities	______________________
Bond Counsel	______________________
Trustee	______________________
Paying Agent	______________________
Rebate Specialist	______________________
Other:______________________	______________________
Other:______________________	______________________
Other:______________________	______________________

A. TAX LAW REQUIREMENTS	**Document Reference**	**Responsibility**
1. **General Matters**.		
(a) Proof of filing Form 8038, 8038-G or 8038-GC. Copies of Form 8038, etc., to State authorities as required by State procedures.		
(b) "Significant modification" to bond documents results in reissuance under Treas. Reg. § 1.1001-3. Proof of filing new Form 8038, etc., plus final rebate calculation on pre-modification bonds.		
2. **Use of Proceeds: Governmental Bonds or Qualified 501(c)(3) Bonds**.		
(a) No private business use arrangement with private entity (includes federal government) beyond permitted *de minimis* amount unless cured by remedial action under Treas. Reg. § 1.141-12.		
(i) Sale of facilities.		
(ii) Lease.		
(iii) Nonqualified management contract. Rev. Proc. 97-13.		
(iv) Nonqualified research contract. Rev. Proc. 97-14.		
(v) "Special legal entitlement."		

(b) Additional requirements for qualified 501(c)(3) bonds.		
(i) No unrelated business activity income in facility beyond permitted *de minimis* amount.		
(ii) No activities jeopardizing 501(c)(3) exemption of 501(c)(3) borrower.		
(c) Remedial action may consist generally of redemption or defeasance of bonds (with notice of defeasance to IRS). Where disposition is a cash sale, remedial action may be an alternative qualifying use of proceeds. If bonds are 501(c)(3) bonds, alternative use must have "TEFRA" hearing and elected official approval prior to sale of original facilities. Proof of filing new Form 8038, etc.		
3. **Private Activity Bonds**. **IRC §142.**		
(a) Exempt facilities—in general.		
(i) Continuing use of exempt facilities in accord with basis of tax exemption.		
(ii) Use excess proceeds for redemption or defeasance (with notice of defeasance to IRS) within 90 days of determination that proceeds will not be spent, or date financed facility is placed in service. Treas. Reg. § 1.142-2(c).		
(b) Residential rental project bonds.		
(i) Meet low-income requirements for qualified project period. IRC §142(d).		
(ii) Proof of filing annual reports of compliance by project operator on Form 8703.		
(c) Qualified mortgage bonds.		
(i) Good faith compliance efforts for mortgage eligibility. IRC §143(a)(2).		
(ii) Spend proceeds or redeem bonds within 42 months of issuance; use mortgage prepayments after first 10 years to redeem bonds at next semiannual debt service date after receipt.		

(iii) Proof of filing annual reports of mortgagor income due 8/15. Treas. Reg. § 1.103A-2(k)(2)(ii).		
(d) Small issue manufacturing bonds using $10,000,000 ($20,000,000 for 2007) capital expenditure limit: monitor capital expenditures during three years after issuance for compliance with limit. IRC §144(a).		
(e) Acquisition of existing facilities: make qualifying rehabilitation within 24 months unless covered by exceptions. IRC §147(d).		
4. **Arbitrage**.		
(a) Rebate. IRC §148(f).		
(i) First installment of arbitrage rebate due on fifth anniversary of bond issuance plus 60 days.		
(ii) Succeeding installments every five years.		
(iii) Final installment 60 days after retirement of last bonds of issue.		
(iv) Monitor expenditures prior to semi-annual target dates for six-month, 18-month, or 24-month spending exception.		
(b) Monitor expenditures generally against date of issuance expectations for three-year or five-year temporary periods or five-year hedge bond rules.		
(c) For advance refunding escrows, confirm that any scheduled purchases of 0% Securities of State and Local Government Series are made on scheduled date.		
5. **Special Rules for Pool Bonds**.		
(a) Redeem bonds at one-year and three-year expenditure target dates. Pay 95% of costs of issuance within 180 days. IRC §149(f), as amended 2006.		
(b) 501(c)(3) pools: redeem bonds at one-year expenditure target date. IRC §147(b)(4).		
6. **Record Retention**.		

(a) Maintain general records relating to issue for life of issue plus any refunding plus three years.		
(b) Maintain special records required by safe harbor for investment contracts or defeasance escrows. Treas. Reg. § 1.148-5.		
(c) Maintain record of identification on issuer's books and records of "qualified hedge" contract. Treas. Reg. § 1.148-4(h)(2)(viii) and § 1.148-11A(i)(3).		
(d) Maintain record of election not to take depreciation on leased property that must be treated as owned by a governmental unit. Treas. Reg. § 1.103(n)-2T Q/A7.		
(e) Maintain record of agreements and assignments between governmental units that affect volume cap allocations under IRC §146. Treas. Reg. § 1.103(n)-3T Q/A8, 13 & 14.		
(f) Maintain record of election to utilize the $10,000,000 small issue bond limit on the books and records of the issuer. Treas. Reg. § 1.103-10(b)(2)(vi).		
7. **Allocations of Bond Proceeds to Expenditures**. Make any allocations of bond proceeds to expenditures needed under Treas. Reg. § 1.148-6(d) and § 1.141-6(a) by 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years after the bonds were issued or 60 days after the issue is retired.		
B. DISCLOSURE REQUIREMENTS		
1. **SEC Rule 15c2-12 Requirements**.		
(a) Determine applicability of continuing disclosure undertaking ("CDU").		
(b) Identification of "obligated person" for purposes of Rule 15c2-12. Governmental Bonds: Issuer. Private Activity Bonds: Issuer or Borrower.		
(c) Name of Dissemination Agent, if applicable.		
(d) Periodically determine that required CDU filings have been prepared, sent to and received by NRMSIR's.		

(e) Information required to be provided to NRMSIR and SID:		
(i) Annual Reports.		
(1) Quantitative financial information and operating data disclosed in official statement.		
(2) Audited financial statements.		
(ii) Other information.		
(1) Change of fiscal year.		
(2) Other information specified in CDU.		
(f) Material Event Disclosure. Notification by obligated person to SID and each NRMSIR, in timely manner, of any following events with respect to bonds, if event is material within the meaning of the federal securities laws:		
(i) Principal and interest payment delinquencies.		
(ii) Non-payment related defaults.		
(iii) Unscheduled draws on debt service reserves reflecting financial difficulties.		
(iv) Unscheduled draws on credit enhancements reflecting financial difficulties.		
(v) Substitution of credit or liquidity providers, or their failure to perform.		
(vi) Adverse tax opinions or events affecting the tax-exempt status of the bonds.		
(vii) Modifications to rights of holders of the bonds.		
(viii) Bond calls.		
(ix) Defeasances.		
(x) Release, substitution or sale of property securing repayment of the bonds.		

(xi) Rating changes.		
(g) Failure of the obligated person to timely file financial information (including audited financial statements) and operating data with SID and either each NRMSIR or MSRB.		
2. **Notification to Underwriters of Bonds**. Determination of whether bond purchase agreement requires issuer of the bonds to notify underwriters for a specified period of time of any fact of event that might cause the official statement to contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.		
3. **Information Required to be Filed with Other Entities**.		
(a) Trustee.		
(b) Rating Agency(ies).		
(c) Bond Insurer.		
(d) Credit Enhancer.		
Examples: (i) Financial records.		
(1) Annual.		
(2) Quarterly.		
(ii) Budgets.		
(iii) Issuance of additional bonds.		
(iv) Events of default.		
(v) Notices of redemption.		
(vi) Amendments to bond documents.		
4. **Local Disclosure**. State and/or local requirements.		

C. MISCELLANEOUS STATE LAW AND DOCUMENT REQUIREMENTS		
1. **Security**.		
(a) Proof of filing UCC statements with appropriate authorities as required by State procedures.		
(i) Initial UCC financing statements filed with appropriate authorities. UCC 9-515(a).		
(ii) Continuation statements filed by fifth anniversary. UCC 9-515(d).		
(iii) Transfer by government or governmental unit not requiring a UCC statement. UCC 9-102(a)(45) (UCC exception adopted in certain jurisdictions).		
(iv) Public finance transaction in connection with debt securities (all or portion of securities have initial stated maturity of 20 years; obligated party is State or State governmental unit) qualifies for 30-year filing. UCC 9-515(b)		
(v) Other local requirements or exceptions.		
(b) Proof of filing recorded mortgages, deeds of trust with appropriate authorities and proof of delivery of originals to trustee or custodian.		
2. **Insurance**.		
(a) Proof of receipt of final title policy and proof of delivery to trustee or custodian.		
(b) Monitor compliance with property and casualty insurance requirements.		
3. **Financial Covenants**. Monitor compliance with rate covenant or other covenants not included in B(3) above.		
4. **Transfer of Property**.		
(a) Restrictions on transfer of cash.		
(b) Restrictions on releases of property.		
(c) Restrictions on granting liens or encumbering property.		

5. **Investments**. Compliance with permitted investments.		
6. **Derivatives**. Entering into and ongoing compliance of derivatives contracts is complex and a universe in and of itself. GFOA has created a Derivatives Checklist and a Recommended Practice on the Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy to assist issuers with understanding these products. These documents can be found at: http://gfoa.org/services/rp/debt.shtml.		