



**National Association
of Bond Lawyers**

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August 16, 2007

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Re: Tax Compliance Checklist – Post Issuance

Dear Sirs:

As you may recall, in letters dated August 25, 2005, and September 7, 2006, the National Association of Bond Lawyers (NABL) shared with you Tax Compliance Checklists - Governmental Bonds for Capital Projects and 501(c)(3) Bonds, respectively, prepared as joint efforts with the Government Finance Officers Association (GFOA). The sample checklists were intended to be available for use by bond counsel for issues of governmental and 501(c)(3) bonds.

Believing that similar checklists would be useful, members of the NABL/GFOA task force and staff have prepared the enclosed Tax Compliance Checklist – Post Issuance. The task force members consider this checklist particularly timely in light of the recently released report regarding post-issuance bond compliance by the IRS Advisory Committee on Tax Exempt and Governmental Entities. A list of the NABL/GFOA task force members is also enclosed.



Please let me or Elizabeth Wagner know if you have any questions. I can be reached at clew@sycr.com or 949/725-4237 and Elizabeth can be reached at ewagner@nabl.org or 202/682-1499.

Sincerely,



Carol L. Lew
President

Enclosures

cc: Michael J. Desmond
John. J. Cross, III
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MEMBERS OF THE NABL/GFOA TASK FORCE

TAX COMPLIANCE CHECKLIST – POST ISSUANCE



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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.



National Association of Bond Lawyers

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 <i>de minimis</i> 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 <i>de minimis</i> 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).		
<p>7. Allocations of Bond Proceeds to Expenditures.</p> <p>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.</p>		
B. DISCLOSURE REQUIREMENTS		
1. SEC Rule 15c2-12 Requirements.		
(a) Determine applicability of continuing disclosure undertaking ("CDU").		
<p>(b) Identification of "obligated person" for purposes of Rule 15c2-12.</p> <p>Governmental Bonds: Issuer. Private Activity Bonds: Issuer or Borrower.</p>		
(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.		
<p>2. Notification to Underwriters of Bonds.</p> <p>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.</p>		
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.		

<p>5. Investments.</p> <p>Compliance with permitted investments.</p>		
<p>6. Derivatives.</p> <p>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.</p>		