

California School Finance Authority

Post-Issuance Tax Compliance Procedures For Tax-Advantaged Bonds

May 20, 2021

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds, tax credit bonds or other federally tax-advantaged obligations (“Bonds”) issued by the California School Finance Authority (“Authority”) so as to maximize the likelihood that certain applicable post-issuance requirements of federal income tax law needed to preserve the tax-advantaged status of the Bonds are met. The Authority reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Authority also reserves the right to change these policies and procedures from time to time.

Background

Upon the issuance of bonds, the issuer and borrower have a number of post-issuance obligations with regard to monitoring an issuance for compliance with federal tax rules in order to maintain the tax-exempt status on the bonds.

A few examples of the many post-issuance compliance obligations include:

- Tracking the proceeds of a tax-exempt bond issuance to ensure that they are used for qualified purposes.
- Keeping detailed records of all expenditures and investments related to bond funds.
- Ensuring the project financed is used in a manner consistent with the legal requirements.
- Providing annual required disclosure information regarding the project’s financial and operating status.

Borrowers should develop and maintain a vigorous post-issuance compliance program to track their compliance with all applicable requirements. The Internal Revenue Service (IRS) recommends that material tax records be retained for the life of a bond issue, plus three years. Borrowers that have effective post-issuance tax compliance programs in place are more likely to successfully respond to IRS inquiry. In addition, borrowers with an established program will be well positioned to effectively judge the possible benefits of future refunding opportunities.

The most important step in a compliance monitoring program is to consult with members of the finance team, including bond counsel, at the time of bond issuance to determine the borrower’s obligations. Compliance responsibilities last, at minimum, for the length of the bond term.

General

Inasmuch as the Authority is a responsible conduit issuer authorizing the issuance of Bonds for non-profit and government agency borrowers, the Authority now identifies post-issuance tax compliance procedures for all Bonds issued by the Authority on behalf of nonprofit and government agency borrowers, as well as the Authority's expectations of and requirements for all such borrowers (each a "Borrower") concerning these procedures.

Post-Issuance Compliance Requirements

External Advisors / Documentation

The Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-advantaged status. The Borrower also shall consult with bond counsel and/or other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

The Borrower shall be responsible to determine (or obtain expert advice to determine) whether arbitrage rebate calculations have to be made for the Bond issue. If it is determined that such calculations are or are likely to be required, the Borrower shall engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds. Borrowers shall make any rebate payments required on a timely basis.

Unless otherwise provided by the indenture (or similar document) relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee or other financial institution to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the bond issuer if it so requests.

Arbitrage Rebate and Yield

It is the Authority's policy that the Borrower shall be responsible for compliance with all requirements under the Federal arbitrage regulations. As more fully set forth in the Model Borrower Procedures, the Borrower is responsible for:

- Determining the likelihood of complying with an arbitrage rebate exemption;
- If necessary, engaging the services of a Rebate Service Provider and, prior to each rebate calculation date, require the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;

- Provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- Monitor efforts of the Rebate Service Provider;
- Assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;
- During the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements, including during each 6-month spending period up to 6 months, 18 months or 24 months, as and if applicable, following the issue date of the Bonds;
- Retain copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements” and, upon request, providing such copies to the bond issuer; and
- Establish procedures to ensure investments acquired with Bond proceeds are purchased at fair market value.

Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

It is the Authority’s policy the Borrower shall be responsible for:

- Monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- Maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- Consulting with bond counsel and other legal counsel and advisers in the review of any change in use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- Maintaining records for any contracts or arrangements involving the use of Bond-financed or refinanced assets as described below under “Record Keeping Requirements”;
- Conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discuss any existing or planned use of Bond-

financed or refinanced assets and to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds; and

- To the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds or take other remedial action, if such counsel advises that a remedial action is necessary.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for the tasks listed above.

All relevant records and contracts shall be maintained as described below.

Record Keeping Requirement

It is the Authority's policy that the Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- A copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- A copy of all material documents relating to expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds;
- A copy of all contracts and arrangements involving the use of Bond-financed or refinanced assets; and
- A copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for retaining the records listed above.