
New Jersey Educational Facilities Authority

Post-Issuance Compliance Policy For Tax-Advantaged Obligations

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Purpose

This Post-Issuance Compliance Policy (the “Policy”) sets forth policies of the New Jersey Educational Facilities Authority (the “Authority”) designed to monitor compliance of tax-advantaged obligations issued by the Authority (the “Obligations”) ¹ with (a) applicable provisions of the Internal Revenue Code of 1986 as amended (the “Code”) and regulations promulgated thereunder (“Treasury Regulations”) , (b) requirements of the U.S. Securities and Exchange Commission (the “SEC”) and the Municipal Securities Rulemaking Board (“MSRB”) under SEC Rule 15c2-12 (the “Rule”) regarding secondary market disclosure filings relating to the Obligations, and (c) contractual agreements relating to the Obligations.

The Authority recognizes that compliance with applicable provisions of law is an ongoing process, necessary during the entire term of the Obligations. Accordingly, analysis of information and implementation of this Policy will require continual monitoring and likely, ongoing consultation with bond counsel. Further policies and procedures may be identified from time to time by Authority staff in consultation with bond counsel.

Financing Program

The New Jersey Educational Facilities Authority (the “Authority”) was created pursuant to Chapter 271 of the Public Laws of 1967, *N.J.S.A. 18A:72A-1 et seq.*, as amended and supplemented (the "Act"), to provide a means for New Jersey public and private colleges and universities (the “Institutions”) to

¹ For purposes of this Policy, Obligations include (a) obligations the interest on which is excludable from gross income for federal income tax purposes pursuant to the Code and Treasury Regulations, and (b) obligations the interest on which is not excludable from gross income for federal income tax purposes, but federal law otherwise requires such obligations to satisfy requirements of the Code and Treasury Regulations applicable to tax-exempt obligations.

construct facilities through the financial resources of a public authority empowered to sell taxable and tax-exempt bonds, notes and other obligations. The Authority also, from time to time, issues bonds for various purposes that are secured by a contract with the State Treasurer to pay principal of and interest on such bonds subject to appropriations being made, from time to time, by the New Jersey State Legislature.

The Authority finances and refinances various types of educational facilities projects for the Institutions, including but not limited to, the acquisition and construction of residential, academic and auxiliary service facilities, renovation and rehabilitation of existing educational facilities.

The obligations issued by the Authority are special and limited obligations of the Authority and are not a debt or liability of the State of New Jersey or of any political subdivision thereof other than the Authority, and are not a pledge of the faith and credit of the State of New Jersey or of any such political subdivision thereof. The Authority has no taxing power. The obligations issued by the Authority are payable solely from amounts received by the Authority under the bond documents and amounts on deposit in certain funds established under the bond documents. Certain state-backed bond programs for higher education and public library facilities provide that debt service will be paid by the State Treasurer pursuant to a contract between the Authority and the State Treasurer, subject to annual appropriation by the Legislature.

Policy Statement

After Obligations are issued, the compliance process includes a focus on use and investment of proceeds of the Obligations and includes:

- Tracking bond proceeds spending for qualified and nonqualified purposes;
- Maintaining detailed records of expenditures and investments;
- Ensuring that the facilities financed are used in a manner consistent with legal and tax requirements;
- Providing necessary disclosure information regarding financial and operating status.
- Maintaining adequate records.

Policy Sections

I. Organizational Responsibility

The Executive Director has overall responsibility for post-issuance compliance for Obligations issued by the Authority and may delegate such responsibilities to a “Compliance Officer” who will have primary responsibility for post-issuance compliance to ensure and monitor post-issuance matters with respect to Obligations. The Compliance Officer shall initially be the Director of Risk Management and the Executive Director shall be responsible for assuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

In the case of Obligations for which the Authority must review and approve requisitions, the Authority's Accounting Department shall review requisitions to assure that proceeds are expended on projects as authorized in the applicable bond documents, that reimbursement of pre-issuance costs are permissible, and to determine when projects are completed and/or placed in service (including for Build America Bonds). Where required by bond documents, the Accounting Department shall also direct investment of proceeds, review monthly bank statements from trustees or custodians and engage a Rebate Service Provider for each issue of Authority obligations and provide copies of written reports to the Institution and the Compliance Officer. Accounting will consult with the Compliance Officer if questions arise relating to the foregoing matters.

The Compliance Officer shall work with the Institutions to provide information and training on developing and implementing post-issuance compliance policies, tracking expenditures, allocating sources of funding between proceeds and other funds, identifying and monitoring private use and reviewing rebate reports.

II. Tracking Expenditures

The Authority's bond documents shall require the Institutions to maintain records regarding the use and allocation of bond proceeds and other sources of funding for financed facilities. In cases where the Institution submits requisitions to the Authority, the Authority's Accounting Department shall maintain copies of approved requisitions and copies of invoices. Requisitions must be accompanied by copies of invoices for Contractor/Architect/Engineering bills and any other items over \$20,000 before being approved.

For bonds issued after 2011, the Authority's bond documents will also require the Institutions to monitor the application and use of bond proceeds on an ongoing basis and to inform the Authority of events relating to use of bond proceeds and financed facilities which may result in private use or other issues which must be analyzed for compliance with federal tax law. The documents will also require the Institutions to cooperate with the Authority in seeking advice from bond counsel and remediation, if necessary. For Obligations with open trustee held accounts, the Authority will require the Institutions to review use and investment of bond proceeds with the Authority at least once a year until the final allocation is made. The Compliance Officer will work with the Institutions and bond counsel, if necessary, to assist in making a final allocation of expenditures for a bond-financed project when required under the Code and applicable regulations. For Obligations for which a final allocation has been made, the Authority will send an annual questionnaire to the Institutions, asking for updated information about use of financed facilities and other appropriate matters.

III. Private Business Use

Private business use refers to the use of bond-financed property in a trade or business by any person other than a state or local governmental entity in the case of an Institution that is a state college or a 501(c) (3) entity or a state or local governmental entity, or by a 501(c) (3) entity in an unrelated trade or business entity in the case of an Institution that is a 501(c) (3) entity. The Authority's Obligations will lose their tax advantaged status if more than a specified percentage² of the proceeds (in the case of state colleges) or net proceeds³ (in the case of 501(c)(3) institutions) of the bond issuance are used for any private business use and are repayable or secured by "private business payments". Because the IRS considers the use of bond proceeds to finance bond issuance costs of 501(c)(3) entities as PBU, the allowable PBU percentage is reduced by the cost of issuance percentage⁴.

Special legal entitlements to property financed with Obligations include leases of financed property, management contracts, sponsored research agreements, naming rights, licenses of facilities for use by cell phone service providers, energy providers and the like. Typical examples of private use in a college setting often include food service contracts, book store contracts, private research and summer camps. Exceptions exist to private business use for short term and incidental use arrangements.

The Authority's bond documents will require the Institutions to consult with the Compliance Officer when contracts or arrangements that might involve private use are entered or modified and to maintain copies of relevant contracts and arrangements. The Compliance Officer will seek the advice of bond counsel where appropriate. The Compliance Officer will confirm as part of the annual review referred to in Section II that the requirements relating to private business use are met.

IV. Record Retention

Authority bond documents will require the Institutions to maintain all relevant records relating to Authority Obligations. In addition, the Authority will retain documents it receives directly from the Institutions or third parties. These documents include closing transcripts, investment and other agreements to which the Authority is a party, bank statements, rebate reports and requisitions if the foregoing documents are provided to the Authority. Both the Institutions and

² The specified percentage is in the case of state colleges, 10%, unless the private business use is unrelated or disproportionate to the governmental use, in which case the limit is reduced to 5% and in the case of 501(c) (3) entities, 5%.

³ Under IRC section 150(a)(3), "net proceeds" means the proceeds of the issue (which under IRS Regulation 1.141-1 generally means the sale proceeds plus investment proceeds less proceeds held in a reserve fund).

⁴ IRC Section 147(g) limits the amount of bond proceeds that may be applied to finance the costs associated with the issuance of qualified 501(c)(3) bonds to 2% of the proceeds of the bond issue.

the Authority shall maintain records for the length of time required to comply with IRS regulations. Currently, records of issuance and related post issuance compliance documentation must be maintained for the life of the bond issue, plus any refunding, plus three years per IRS regulations.

Basic records relating to Obligations include the transcript as well as documentation evidencing the:

- Expenditures and investment of bond proceeds;
- Use of debt-financed property; and
- Sources of payment or security for the bonds.

The Authority will rely on the Institutions for specific records relating to application of bond proceeds and possible private business use. The Authority will provide a Post Issuance Compliance Checklist at the closing of each new issue of Obligations to each Institution which will assist the Institution in identifying the specific department of thereof with responsibility for aspects of post issuance compliance monitoring and record keeping requirements. The Post Issuance Compliance Checklist will identify classes or other sources of training and manners of record retention (whether physical or electronic). No employee of the Authority or an Institution shall discard or destroy any information identified in the inventory during the period such records are required to be maintained.

V. Arbitrage and Rebate

Obligations lose their tax advantaged status if they are classified as “arbitrage bonds.” In general, arbitrage is earned when the gross proceeds of a bond issue are used to acquire investments that earn a yield that is “materially higher” than the yield on the bonds issued. The Code contains two separate sets of requirements that must be complied with to ensure that Obligations are not arbitrage bonds. They are:

- Yield Restriction requirements, which generally provide that in the absence of an applicable exception, bond issue proceeds may not be invested at a yield in excess of the bond yield; and
- Rebate requirements, which generally provide that when arbitrage is earned on an issue in excess of permitted amounts, unless an exception is met, the excess earnings must be paid to the U.S. Department of Treasury, even if an exception to the yield restriction requirements applies.

The NJEFA will engage the services of an Arbitrage Compliance Servicer, as necessary, to provide written reports to assist the Authority and the Institutions in monitoring yield on investments and calculating any rebate that may be due. The Compliance Officer will work

with the Accounting Department and each Institution and Servicer to review the yield on investments as reported by the Servicer and to ensure the accuracy of the Servicer's calculations of possible rebate liability. If the Servicer provides a written report that rebate is due, the Institution will make any required payments to the IRS .

VI. Credit Enhancement or Other Agreements Relating to Bonds.

Authority bond documents will require the Institutions to notify the Compliance Officer of any extension or alteration of any credit enhancement relating to an Institution's tax-exempt debt or of any changes to other agreements relating to Authority Obligations such as guaranteed investment contracts or derivative products. The Compliance Officer will work with the Institutions to assure that any changes meet post-issuance compliance requirements. The Compliance Officer will also monitor information relating to the ratings of the Institutions and counterparties to such agreements to assure that provisions of such agreements are fulfilled.

VII. Disclosures and Filings

For Obligations to which SEC Rule 15c2-12 applied, the Authority requires each Institution to enter into Continuing Disclosure Agreements with the trustee for the applicable Obligations. Pursuant to these Agreements, the Institutions agree to comply with continuing disclosure requirements under SEC Rule 15c2-12. In addition, the Authority will require in bond documents, or will request, as applicable, copies of reports sent to credit providers and insurance companies and other parties to transactions, information about the condition and use of buildings and compliance with covenants of the borrowers including financial covenants.

VIII. Continuity and Training

The Compliance Officer will receive periodic training regarding the tax and other requirements applicable to Obligations and provide periodic training to staff with responsibilities relating to the procedures set forth above. Such training will cover the purposes and importance of these procedures. The Compliance Officer will also interact with and train or provide information about training to applicable representatives of the Institutions.

To provide for continuity of compliance with post-issuance debt requirements, the Authority will periodically review this policy to assure that it comports with current law.

IX. Remedial Action

Authority bond documents will require that the Institutions notify the Authority of events which may affect the permissible use and investment of bond proceeds and to cooperate with the Authority in seeking remedial action with respect to such events. The Compliance Officer, either directly or through workshops and conferences will interact with the Institutions to inform them about private use, changes in use and other events which could necessitate remedial action pursuant to Treasury Regulation 1.141.-12 or seeking a Voluntary Closing Agreement (VCAP).