



TENNESSEE LOCAL DEVELOPMENT AUTHORITY
JUNE 25, 2020
AGENDA

1. Call Meeting to Order
2. Approval of minutes from the TLDA meetings of May 21, 2020, and June 9, 2020
3. Request from the City of Memphis to issue USDA WIFIA Bonds in an amount not to exceed \$159,000,000 million and Sewer System Revenue and Refunding Bonds in an amount not to exceed \$124,000,000 million senior to its SRF loans.
4. Consideration and adoption of the Post-Issuance Compliance Procedures
5. Adjourn

TENNESSEE LOCAL DEVELOPMENT AUTHORITY
May 21, 2020

Pursuant to the provisions of Executive Order 16, as amended by Executive Order 34, the Tennessee Local Development Authority (the Authority or TLDA) met without a physical location on Thursday, May 21, 2020, at 12:20 p.m. via WebEx. The Honorable Tre Hargett, Secretary of State, was present and presided over the meeting.

The following members were also present via WebEx:

The Honorable Justin P. Wilson, Comptroller of the Treasury
Kevin Bradley, Proxy for the Honorable David H. Lillard, Jr., State Treasurer
Angela Scott, Proxy for Commissioner Butch Eley, Department of Finance and Administration

The following members were absent:

The Honorable Bill Lee, Governor
Dr. Kenneth L. Moore, House Appointee
Mr. Pat Wolfe, Senate Appointee

Mr. Hargett called the meeting to order, and asked Ms. Sandi Thompson, TLDA Assistant Secretary and the Director of the Office of State and Local Finance (OSLF) to conduct a roll-call:

Mr. Hargett—Present
Mr. Wilson—Present
Mr. Bradley—Present
Ms. Scott—Present

Recognizing a quorum present, Mr. Hargett read the following statement:

“Governor Bill Lee, a member of this entity, has previously declared a state of emergency to facilitate Tennessee’s response to Coronavirus Disease 2019 (COVID-19). His Executive Order No. 16, as amended by Executive Order No. 34, allows governing bodies to meet electronically regarding essential business in light of COVID-19, so long as they provided electronic access to the public and met certain safeguards established in that Order to ensure the openness and transparency of the proceedings. In the Notice for this meeting, we indicated the meeting would be conducted through WebEx Events and provided information and the steps for public electronic participation. At this time we need a motion to make a determination pursuant to the provisions of Executive Order 16, as amended, that meeting electronically without a physical location is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak and the matters listed on the agenda for this meeting relate to the essential business of this board and the necessary safe guards have been taken.”

Mr. Wilson made a motion to approve, and Mr. Hargett seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Hargett— Aye
Mr. Wilson— Aye
Mr. Bradley— Aye
Ms. Scott—Aye

The motion carried to conduct the TLDA meeting in this manner.

Mr. Hargett stated that the next item of business was a request from Big Creek Utility District (the “District”) and recognized Ms. Thompson to present the request. Ms. Thompson stated that as required by the provisions set forth in the SRF loan agreements and guidelines set forth in the *TLDA/SRF Policy and Guidance for Borrowers*, the

District had submitted a request for approval to issue a United States Department of Agriculture (USDA) Bond in an amount not to exceed \$2,600,000 with a lien position subordinate to its outstanding State Revolving Fund (SRF) loan agreements. She stated that the District had requested a waiver of section 7(m) of the loan agreements which prohibits the issuance of debt secured by a system's revenues unless the audit of the most recent fiscal year end was filed within six months of the fiscal year end. She further stated that a letter indicating the District's reasons for filing a late audit was included with the meeting materials. She continued, saying that in addition to the waiver of section 7(m), the District was also requesting approval of the proposed debt issuance. Ms. Thompson stated that the OSLF had determined the proposed debt would be secured by revenues of the wastewater system, that the District had a history of timely repayments on its SRF loans, and that it had a security deposit in place in the amount of \$170,000. She reported its current and projected debt service coverage ratio had either met or exceeded the 1.2 times requirement. Furthermore, she stated that its projected revenues ranged from 1.35 times to 1.42 times through fiscal year 2023. Ms. Thompson noted that although it was not under the jurisdiction of the Utilities Management Review Board (UMRB), it was necessary to disclose that the UMRB recommended a merger between Griffith Creek Utility District and Big Creek Utility District. She stated that following the merger, Big Creek would assume the debt of Griffith Creek, including its SRF debt. She then concluded, saying that based on the analysis conducted by the OSLF, the District would have sufficient cash and revenues to meet its obligations, and it appeared to meet the TLDA's guidelines for approval to issue bonds with a subordinate lien position to its outstanding SRF loan agreements. Mr. Hargett inquired if the District's Bond Counsel, Mr. Jeff Oldham, with Bass, Berry, & Sims was present. He had not yet joined the meeting. Mr. Hargett then asked Mr. David Burn, Assistant Attorney General for the State of Tennessee, if the TLDA could make a motion to approve both items (3a. & 3b.) at the same time. Mr. Burn responded affirmatively.

Mr. Hargett asked if the members had any questions. Hearing none, he made a motion to approve item 3 (a) and (b). Mr. Wilson seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Hargett— Aye
Mr. Wilson— Aye
Mr. Bradley— Aye
Ms. Scott—Aye

The motion was unanimously approved.

Mr. Hargett stated that the next item on the agenda was a request from the Water Authority of Dickson County (WADC) to issue promissory notes in an amount not to exceed \$260,000 subordinate to its SRF loan agreements. He called upon Ms. Thompson to present the request. Ms. Thompson stated that in accordance with the *TLDA SRF Policy and Guidance for Borrowers*, the WADC had submitted a request to borrow money by way of a promissory note. She stated that the proposed debt would be subordinate to its SRF loan agreements, and further stated that the debt issuance would provide funding to purchase two large dump trucks. Ms. Thompson then stated that the borrower had a history of timely repayments on its SRF loans, had timely filed its audited financial statements, and that it had a security deposit in place in the amount of \$782,000. She continued, saying that the WADC's most recent financial statements reflected a positive net change in position, and that its current and projected debt service coverage ratio met or exceeded the 1.2 times requirement. She concluded, saying that based on analysis conducted by the OSLF, the WADC would have sufficient cash and revenues to meet its obligations, and that it appeared to meet the TLDA's guidelines for approval to issue additional debt subordinate to its outstanding SRF loan agreements. Mr. Hargett inquired if Ms. Thompson's analysis was complete. She responded affirmatively. Mr. Hargett then asked Mr. Benjamin Regan, WADC's Bond Counsel, if he had anything to add. He responded, saying he had nothing further to add, and that Ms. Thompson's analysis was complete and correct.

Mr. Hargett made a motion to approve, and Ms. Scott seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Hargett— Aye
Mr. Wilson— Aye
Mr. Bradley— Aye

Ms. Scott—Aye

The motion was unanimously approved.

Mr. Hargett then stated that the next item on the agenda was a request from Nashville Metro and Davidson County to issue three new SRF loans on parity with its outstanding Water and Sewer Revenue Bonds. Once again, he called upon Ms. Thompson to present the request. Ms. Thompson referred to Nashville Metro's SRF loans that were on today's meeting agenda to be presented to the TLDA for approval and stated that it had requested approval to issue the loans on parity with its outstanding Water and Sewer Revenue Bonds. She stated that this would provide a better lien position in securing the SRF loans and would be in the public's best interest. She noted that Metro Government understood that it must obtain the TLDA's consent to issue any future bonds on parity with its SRF loans. Mr. Hargett inquired again if Mr. Oldham was present. He also inquired if Mr. Kevin Crumbo, Metro Nashville's Finance Director, and Amanda Deaton-Moyer, Assistant Director of Metro Water Services were on the line. There was no reply. Ms. Thompson stated that they may be having difficulties with the electronic connection.

Mr. Hargett asked if there were any questions. Hearing none, he made a motion to approve, and Mr. Wilson seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Hargett— Aye
Mr. Wilson— Aye
Mr. Bradley— Aye
Ms. Scott—Aye

The motion was unanimously approved.

Mr. Hargett inquired if Mr. Crumbo's audio was working. He answered affirmatively, stating that he was there with Mr. Oldham, Ms. Deaton-Moyer, and Metro's Deputy Law Director, Margaret Darby. Mr. Hargett then stated that Nashville Metro's request had already been approved and that the TLDA would get back to them.

Mr. Hargett stated that the next item on the agenda was a report on the notification from the City of Crossville submitted to comply with *TLDA SRF Policy and Guidance for Borrowers*. He recognized Ms. Thompson to present the report. Ms. Thompson stated that the City had submitted notification to the TLDA as required by the *TLDA SRF Policy and Guidance for Borrowers*. She stated that the proposed debt would be secured by water and sewer revenues and that it would be issued subordinate to its pledge of revenues in favor of the City's SRF loans. Mr. Hargett acknowledged that the item was a report item and no further action was necessary.

Mr. Hargett stated that the next item on the agenda was a request for consideration of approval for Clean Water State Revolving Fund (CWSRF) loans and stated that, unless there was any objection, the TLDA would hear the four loan requests prior to asking for a motion to approve. Hearing none, he recognized Ms. Felicia Freeman, Environmental Manager for the Tennessee Department of Environment and Conservation (TDEC), to present the loan requests. Ms. Freeman first presented the unobligated fund balance. She stated the balance was \$62,009,399 as of March 6, 2020. Since that time, the unobligated balance had increased by \$393,899 with the return of previous loan funding from Lincoln County and the City of Lewisburg. With this addition the approval of the loan requests to be presented totaling \$16,018,000, the funds available for loan obligations would be \$46,385,298. She then described the CWSRF loan requests.

- **Nashville Metro (SRF 2020-446)** Requesting \$11,600,000 for an infiltration and inflow (I/I) correction (rehabilitation of approximately 20,550 linear feet of 8-inch to 42-inch diameter existing sewer lines by cured-in-place pipe lining; rehabilitation of approximately 110 sewer service renewals by lining and excavation methods; manhole rehabilitation and installation of clean out); recommended interest rate of 0.95% based on the Ability to Pay Index (ATPI); Priority ranking 31 of 72 (FY 2018); Term 20 years.

- **Huntland (CG6 2019-426)** Requesting \$1,000,000 (\$900,000 (90%) loan; \$100,000 (10%) principal forgiveness) for decentralized wastewater treatment system (construction of a 0.17 million gallons per day (MGD) decentralized wastewater treatment facility and the installation of a septic tank/treatment tank effluent pumping (STEP) wastewater collection system to serve customers with failing septic tanks; recommended interest rate of 0.32% based on the ATPI; Priority ranking list 18 of 67 (FY2017); Term 30 years.
- **Huntland (SRF 2019-427)** Requesting \$2,925,000 for decentralized wastewater treatment system (construction of a 0.17 MGD decentralized wastewater treatment facility and the installation of a STEP wastewater collection system to serve customers with failing septic tanks; recommended interest rate of 0.32% based on the ATPI; Priority ranking list 18 of 67 (FY2017); Term 30 years.
- **Caryville-Jacksboro (CW8 2020-444)** Requesting \$493,000 (\$443,700 (90% loan; \$49,300 (10%) principal forgiveness) for wastewater treatment plant improvements (construction of 3rd clarifier and associated appurtenances project; recommended interest rate of 0.54% based on the ATPI; Priority ranking list 1 of 82 (FY2019); Term 20 years

Mr. Hargett stated that Nashville Metro was available to answer any questions. Hearing none, he made a motion to approve the loans, and Mr. Wilson seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Hargett— Aye
 Mr. Wilson— Aye
 Mr. Bradley— Aye
 Ms. Scott—Aye

The motion was unanimously approved.

Mr. Hargett stated that the next item on the agenda was consideration of approval for Drinking Water State Revolving Fund (DWSRF) loans. He stated that the TLDA would hear the two loan requests prior to asking for a motion to approve. He then called upon Ms. Freeman to present the loan requests. Ms. Freeman stated the DWSRF unobligated balance was \$70,213,713 as of March 6, 2020. Upon approval of the loan requests to be presented totaling \$32,493,000, the funds available for loan obligations would be \$37,823,928. She then described the DWSRF loan requests.

- **Nashville Metro (DG8 2020-223)** Requesting \$5,000,000 for green – distribution system improvements (construction of a new 2.5 million gallon (MG) 38th Ave water storage tank; upgrade/improvements to the 8th Ave water storage tank; and replacing approximately 14, 340 linear feet (LF) of 2-inch through 8-inch diameter cast iron waterlines with 8-inch diameter waterlines in the 12th Ave S area; recommended interest rate of 0.65% based on the ATPI; Priority ranking 10, 27, 28 of 43 (FY2019); Term 20 years.
- **Nashville Metro (DWF 2020-224)** Requesting \$27,493,000 for green- distribution system improvements (construction of a new 2.5 MG 38th Ave water storage tank; upgrade/improvements to the 8th Ave water storage tank; and replacing approximately 14, 340 LF of 2-inch through 8-inch diameter cast iron waterlines with 8-inch diameter waterlines in the 12th Ave S area; recommended interest rate of 0.95% based on the ATPI; Priority ranking list 10, 27, 43 of 21 (FY2018); Term 20 years.

Mr. Hargett again stated that Nashville Metro was present to answer questions. Hearing none, he made a motion to approve the loans, and Mr. Wilson seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Hargett— Aye

Mr. Wilson— Aye
Mr. Bradley— Aye
Ms. Scott—Aye

The motion was unanimously approved.

Mr. Hargett stated that the next item on the agenda was a report on SRF borrowers that had not submitted a request for project expense reimbursement. He called upon Ms. Freeman to present the report. Ms. Freeman stated that all borrowers listed on the report were in compliance with their project schedules; however, TDEC was in the process of reviewing a request from Lebanon to revise its schedule. She noted that both Cleveland and Lebanon were preparing to submit requests for reimbursement, and that Dyersburg and Bell Buckle had already submitted their requests to the SRF loan program. She then reported that the Hamilton County Water and Wastewater Treatment Authority had planned to exhaust funds from its capitalization grant loan before requesting reimbursements from its SRF loan. In addition, Chattanooga and Humboldt were also supplemental loans and planned to exhaust funds from two other loans before drawing down on the accounts listed in the report. She stated that although the Jasper loan project was in compliance, it had encountered some issues with its contractor. The Town had indicated to the SRF loan program that it should be able to resolve the dispute by September of this year. She continued, saying that the City of Johnson City was in compliance, but that it was unsure of its path forward with funding for the project due to construction bids that came back higher than expected. The City would notify TDEC how it planned to proceed.

Hearing no other business, Mr. Hargett asked for a motion to adjourn. Mr. Wilson made a motion to adjourn, and Ms. Scott seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Hargett— Aye
Mr. Wilson— Aye
Mr. Bradley— Aye
Ms. Scott—Aye

The meeting was adjourned.

Approved on this ____ day of _____, 2020.

Respectfully submitted,

Sandra Thompson
Assistant Secretary

TENNESSEE LOCAL DEVELOPMENT AUTHORITY
June 9, 2020

Pursuant to the provisions of Executive Order 16, as amended by Executive Order 34, the Tennessee Local Development Authority (the Authority or TLDA) met on Tuesday, June 9, 2020, at 2:00 p.m. via WebEx with certain members being physically present in the Executive Conference Room, Ground Floor, State Capitol, Nashville, Tennessee. The Honorable Tre Hargett, Secretary of State, was present and presided over the meeting.

The following members were also present:

The Honorable Justin P. Wilson, Comptroller of the Treasury
Kevin Bradley, Proxy for the Honorable David H. Lillard, Jr., State Treasurer
Angela Scott, Proxy for Commissioner Butch Eley, Department of Finance and Administration
Dr. Kenneth L. Moore, House Appointee
Mr. Pat Wolfe, Senate Appointee

The following member was absent:

The Honorable Bill Lee, Governor

Mr. Hargett called the meeting to order, and asked Ms. Sandi Thompson, TLDA Assistant Secretary and the Director of the Office of State and Local Finance (OSLF) to conduct a roll-call:

Mr. Wilson—Present
Mr. Bradley—Present
Mr. Hargett—Present
Ms. Scott—Present
Dr. Moore—Present
Mr. Wolfe--Present

Recognizing a quorum present, Mr. Hargett read the following statement:

“Governor Bill Lee, a member of this entity, has previously declared a state of emergency to facilitate Tennessee’s response to Coronavirus Disease 2019 (COVID-19). His Executive Order No. 16, as amended by Executive Order No. 34, allows governing bodies to meet electronically regarding essential business in light of COVID-19, so long as they provided electronic access to the public and met certain safeguards established in that Order to ensure the openness and transparency of the proceedings. In the Notice for this meeting, we indicated that the meeting would be held in the Executive Conference Room of the State Capitol, which is currently closed to the public as well as conducted through WebEx Events and provided information and the steps for public electronic participation. At this time we need a motion to make a determination pursuant to the provisions of Executive Order 16, as amended, that meeting electronically and electronic access is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak and the matters listed on the agenda for this meeting relate to the essential business of this board and the necessary safe guards have been taken.”

Mr. Wilson made a motion to approve the necessity pursuant to Executive Order 16 , and Mr. Bradley seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Wilson— Aye
Mr. Bradley— Aye
Mr. Hargett— Aye
Ms. Scott—Aye
Dr. Moore—Aye
Mr. Wolfe—Aye

The motion carried to conduct the TLDA meeting in this manner.

Mr. Hargett stated that the next item of business was a report on the notification from the City of Paris submitted to comply with *TLDA SRF Policy and Guidance for Borrowers*. He called upon Ms. Thompson to present the report. Ms. Thompson stated that the City of Paris had submitted notification to the TLDA as required by the *TLDA/SRF Policy and Guidance for Borrowers*. She stated that the City intended to issue United States Department of Agriculture (USDA) debt in the form of interim financing with local financial institutions. Ms. Thompson explained that there would be two separate USDA interim financings. One to finance water system improvements in an amount not to exceed \$7,200,000, and that it would be secured by a pledge of revenues subordinate to the pledge of revenues in favor of the City's four DWSRF loans, and the other would finance sewer system improvements in an amount not to exceed \$11,900,000, which would be secured by a pledge of sewer revenues subordinate to the pledge of revenues in favor of the City's two CWSRF loans. She stated that this was notification only and no action was required. Mr. Hargett asked if there were any questions or comments about the report. Hearing none, he moved on to the next agenda item.

Mr. Hargett stated that the next item on the agenda was a request for approval from the City of Paris to transfer, through issuance of new SRF loans with the same terms, the City's SRF loans to the Paris Utilities Authority (the "Authority"). He then stated that agenda items three and four would have a lengthy description, but were necessary for the record. Ms. Thompson responded affirmatively, and stated that items three and four would be presented together. She reported that the City of Paris had proposed to establish the Paris Utility Authority pursuant to the Municipal Energy Authority Act and to transfer the assets and liabilities of the City's water and sewer system (the "System") to the Authority. Furthermore, she stated that pursuant to the Act, the Authority must retire, defease, or assume, (in this case, it was assuming), the outstanding debt of the City related to its System as a condition of the transfer of the System from the City to the Authority. Ms. Thompson stated that the City and the Authority were also requesting approval from the TLDA to assign the City's six SRF loan agreements from the City to the Authority. In addition, she stated that since the SRF loans would need to be payable from and secured by a pledge of a shared senior lien on the revenues of the System, the City was requesting that the TLDA consent to each of the SRF loan agreements being payable from and secured by a pledge of revenues of the System as a whole instead of each respective water or sewer system. She noted that the City had additional debt (three capital outlay notes with an outstanding balance of \$1,500,000) related to the System which it intended to transfer to the Authority. Furthermore, she explained that the Authority intended to issue three bonds with terms matching the notes for the purpose of retiring the notes and that it was requesting TLDA approval to issue the bonds on parity with the SRF loans with a shared senior lien position on the revenues of the System. She continued, saying that the Authority intended to issue an additional \$200,000 in Water and Sewer Revenue Bonds for capital improvements and was requesting TLDA approval to issue the debt with the same parity lien position with the SRF loans with a shared senior lien position on the revenues of the System. She stated that upon approval of the transfer of the City's SRF loan obligations to the Authority, the Authority would be required to obtain approval from the TLDA to issue any future debt. Ms. Thompson stated that the OSLF had conducted its due diligence on the requests and stated that the City had adopted a resolution that would permit it to take the necessary steps to form the Authority and to transfer all of the City's utility assets to the Authority on the condition that the Authority assume all liabilities of the City's utility debt. She further stated that the execution of new loan documents in the name of the Authority and an Assignment, Assumption, and Termination agreement was required. She noted that the outstanding balance of the six SRF loans obligations totaled approximately \$8,000,000 and that five of those loans are in repayment and current with one loan not in repayment since the project was still under construction. She continued, saying that upon approval, the Authority would be required to fund a security deposit equal to MADS for each loan totaling \$430,966. She then said that the Authority had timely filed its audited financial statements through fiscal year 2019 and had a debt service coverage ratio that exceeded the required 1.2 times. Ms. Thompson stated that based on the analysis conducted by the OSLF and considering the Authority would assume the operations of the City's water and sewer system, the Authority should have the capacity to assume the City's SRF loans and to meet its other debt obligations. Furthermore, the Authority appeared to meet the TLDA's requirements for approval to issue debt to retire the City's outstanding system debt on parity with the SRF loans; therefore, TLDA staff recommended approval of these requests contingent upon proper execution of the appropriate required documents. Mr. Wilson inquired if this would impede the ability of the TLDA to collect on the SRF loans. Ms. Thompson responded that it would not. Mr. Hargett

stated that although agenda items three and four were presented together, he would request a motion to approve separately. He then restated item three, saying that it was a request for approval from the City of Paris to transfer (through issuance of new SRF loans with the same terms) the City's SRF loans to the Paris Utilities Authority.

Mr. Hargett asked if there was any discussion. Hearing none, Ms. Scott made a motion to approve, and Mr. Wolfe seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Wilson— Aye
Mr. Bradley— Aye
Mr. Hargett— Aye
Ms. Scott—Aye
Dr. Moore—Aye
Mr. Wolfe—Aye

The motion was unanimously approved.

Mr. Hargett stated that the next item was a request for approval from the Paris Utilities Authority to issue on parity with its SRF loans, three new bonds with the same terms as three existing capital outlay notes issued by the City of Paris and a Water/Sewer Revenue Bond. He noted that the item had already been described and recommended by staff.

Mr. Hargett asked if there was any discussion. Hearing none, Dr. Moore made a motion to approve, and Mr. Wolfe seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Wilson— Aye
Mr. Bradley— Aye
Mr. Hargett— Aye
Ms. Scott—Aye
Dr. Moore—Aye
Mr. Wolfe—Aye

The motion was unanimously approved.

Mr. Hargett then stated that the next item on the agenda was a request from the City of Portland to issue Water and Sewer Revenue Bonds in an amount not to exceed \$19,000,000 on parity with its outstanding SRF loan agreements. He called upon Ms. Thompson to present the request. Ms. Thompson stated the City of Portland was requesting approval from the TLDA to issue Water and Sewer Revenue Bonds on parity with its outstanding SRF loan agreements. She said that the request for approval was required by the provisions set forth in the SRF loan agreements and the guidelines set forth in the *TLDA/SRF Policy and Guidance for Borrowers*. She continued, saying that the proposed new money debt would be issued in an amount not to exceed \$19,000,000 and would be secured by revenues of the water and wastewater system. She stated that the OSLF had conducted its due diligence on the request and noted that the outstanding balance for its SRF loan obligations totaled approximately \$800,000 (in repayment and current), that the City had timely filed its audited financial statements for fiscal year 2019, and its debt service coverage ratio either met or exceeded the required 1.2 times. Ms. Thompson continued, saying that the City's projected debt service coverage through fiscal year 2023 ranged from 1.3 times to 1.44 times. She stated that based on the analysis conducted by the OSLF, the City would have enough cash and revenues to meet its obligations, and it appeared to meet the TLDA's guidelines for approval to issue bonds with a parity lien position to its outstanding SRF loan agreements.

Mr. Hargett asked if there was any discussion. Hearing none, Mr. Wilson made a motion to approve, and Mr. Bradley seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Wilson— Aye

Mr. Bradley— Aye
Mr. Hargett— Aye
Ms. Scott—Aye
Dr. Moore—Aye
Mr. Wolfe—Aye

The motion was unanimously approved.

Hearing no other business, Mr. Hargett asked for a motion to adjourn. Mr. Wilson made a motion to adjourn, and Dr. Moore seconded the motion. Mr. Hargett called upon Ms. Thompson to conduct a roll-call vote:

Mr. Wilson— Aye
Mr. Bradley— Aye
Mr. Hargett— Aye
Ms. Scott—Aye
Dr. Moore—Aye
Mr. Wolfe—Aye

The meeting was adjourned.

Approved on this ____ day of _____, 2020.

Respectfully submitted,

Sandra Thompson
Assistant Secretary



JUSTIN P. WILSON
Comptroller

JASON E. MUMPOWER
Deputy Comptroller

June 3, 2020
City of Memphis
Request for Approval of Lien Position of SRF Loans

The City of Memphis (the "City") is requesting approval from the Tennessee Local Development Authority (TLDA) to modify the lien position of the existing State Revolving Fund (SRF) loan agreements to be subordinate to a proposed WIFIA (Water Infrastructure Finance and Invocation Act loan Program) Bond in an amount not to exceed \$159 million and proposed Sewer System Revenue and Refunding Bonds, which will be issued simultaneously with the WIFIA Bonds, in amount not to exceed \$124 million. These bonds are being issued pursuant to the 1981 Bond Resolution or Master Resolution which states "the City will not hereafter create or permit the creation of or issue any revenue bonds, notes, warrants or other obligations or create any additional indebtedness which rank on a parity with or have priority over the charge and lien on Revenues except that additional series of Bonds [issued under this 1981 Bond Resolution], including Bonds to refund any Bond or Bonds may be issued from time to time ... ". Request for approval is required by provisions set forth in the State Revolving Fund (SRF) loan agreement and guidelines set forth in the *TLDA/SRF Policy and Guidance for Borrowers*.

1. The requestor is a:

- Utility District or Water/Wastewater Authority planning to issue Revenue Debt
 Will the proposed debt be secured by revenues other than revenues of the water/wastewater system (e.g. electric, gas)? Yes No
- Municipality (town/city/county) planning to issue:
 General Obligation Debt
 Revenue Debt – Will the proposed debt be secured by revenues other than revenues of the water/wastewater system (e.g. electric, gas)? Yes No

2. Lien Position:

- The borrower is requesting to issue the Bonds on parity with its outstanding SRF loan(s).
 The borrower is requesting to subordinate its outstanding SRF debt to the proposed debt issuance.
 The borrower is not requesting a modification of lien position and the proposed debt will be issued subordinate to the SRF debt.

3. The purpose of the proposed debt issuance is:

- Refunding
- New Money

4. Description and Additional Information:

The City plans to issue revenue bonds for the following purposes:

- To enter into a direct placement loan (to be financed as a single revenue bond) with the United States Environmental Protection Agency ("EPA") pursuant to the Water Infrastructure Finance and Innovation Act of 2014 ("WIFIA").
- To fund the ongoing capital needs as identified in the City's capital improvement program for the Sewer System including funding a debt service reserve fund and paying costs of issuing the Bonds.
- To refund for debt service savings all or a portion of the outstanding Recovery Zone Economic Development Bonds, Series 2010; and the Sanitary Sewerage System Revenue Bonds, Series 2013 ("Refunding Bonds").

In August 2018, the City submitted a request to the TLDA to subordinate existing SRF debt to Sewer System Revenue Bonds to fund a portion of the City's approximately 5-year \$788 million Sewer System capital improvements, and received TLDA approval for a loan modification. The City is now planning to issue a single WIFIA Bond in an amount not to exceed \$159 million. The WIFIA Revenue Bond will be on parity with the City's outstanding Sewer System Revenue Bonds currently outstanding in the principal amount of approximately \$159 million; and in a senior lien position to the City's currently outstanding SRF Loans. Simultaneously with the issuance of the WIFIA Revenue Bond, the City plans to issue Sewer System Revenue Bonds (which includes the Refunding Bonds) in an amount not to exceed \$124 million

The City plans to issue the WIFIA Revenue Bond in the principal amount of approximately \$159 million as a direct placement financing with the EPA. Additionally, the City plans to issue the Series 2020 Bonds at a negotiated, public sale as a single series. The Series 2020 Bonds will include a refunding component and a new money component. The refunding component of the Series 2020 Bonds will be approximately \$15.5 million and is presently expected to generate net present value savings of \$1.5 million or 8.86% as a percent of the refunded par amount of the bonds. The new money component of the Series 2020 Bonds will be issued to fund \$135 million of various CIP projects. The WIFIA Revenue Bond and the Series 2020 Bonds will be issued in accordance with the City's Debt Management Policy and Procedures dated April 19, 2016.

Approval of this request will allow the City to continue with the issuance of its revenue bond program and take advantage of additional refunding opportunities.

5. The debt rating of the borrower is:

Please indicate N/R if not rated.

Aa2 Moody's
AA+ Standard and Poor's
N/R Fitch

6. The following SRF loans are currently authorized/outstanding:

Borrower	Memphis						
Date	5/7/2020						
Loan Type	Loan #	Status	Disbursements	Available to Draw	% Principal Forgiveness	Edison Balance @5/7/2020	MADS*
Sewer	SRF 06-195	Repayment	3,988,541.00	-	-	2,865,219.00	255,732.00
Sewer	SRF 13-309	Repayment	11,601,993.00	-	-	10,562,755.00	633,000.00
Sewer	SRF 13-311	Repayment	88,098,781.00	11,901,219.00	-	87,417,449.00	5,385,931.00
Sewer	SRF 15-355	Construction	18,651,624.00	6,348,376.00	-	18,651,624.00	1,346,483.00
Sewer	SRF 18-409	Construction	8,183,502.00	2,816,498.00	-	8,183,502.00	595,938.00
Sewer	SRF 19-421	Construction	2,063,885.00	4,436,115.00	-	2,063,885.00	365,720.00
Sewer	SRF 19-434	Approved		48,000,000.00	-	-	2,515,037.00
							11,097,841.00

7. Compliance with SRF Loan Agreement:

- **Timely repayments [4.(a)]**

Yes No

- **Security Deposit (UDs and Authorities) [8.] N/A**

Amount on deposit:

- **GAAP Accounting and Audited Annual Financial Statement Requirement [7.(g) and (m)(2)]**

The City timely filed its FY2019 audit report within six months of its fiscal year end.

- **Sufficient Revenues [7.(k)]**

Yes No

For the fiscal year ended June 30, 2019, the City's audited financial statements reflected operating income of \$35,500,000 and a positive change in net position of \$24,535,000 for the City's Sewer Collection and Treatment Fund. As of the fiscal year ended June 30, 2019, the City reported \$62,336,000 in equity in cash and investment pool and \$14,714,000 in investments in its Sewer Collection and Treatment Fund.

Maximum annual debt service projected by the City is \$57,724,00 in fiscal year 2026 in the nine-year period following the issuance of the WIFIA Bonds assuming all other things remain the same.

• **Debt Service Coverage Ratios** [7.(l) and (m)(3) &(4)]

The current and projected Debt Service Coverage Ratio meets or exceeds 1.2 times.

Yes No

If no, include a schedule of revised rates and fees. Included N/A

Most Recent Fiscal Year (m)(3):

The debt service coverage ratio for the City's Sewer Collection and Treatment Fund was 3.36X for fiscal year ended June 30, 2019. The City has met the debt service coverage requirement for fiscal year ended June 30, 2019. This information was obtained from the debt service coverage ratio calculation worksheet provided by the City. The City estimates that the debt service coverage ratio for fiscal year 2020 will be 2.79X.

Next Three Fiscal Years After Debt Issuance (m)(4):

The City prepared forecasted debt service coverage ratios and projects that it will meet the debt service coverage requirement for the next three years after issuance. Estimated debt service to net revenues ranges from 1.2X to 1.99X for fiscal years 2021 through 2029 after the issuance of the WIFIA Bonds.

Is the entity currently under the jurisdiction of the Utility Management Review Board (UMRB) or the Water and Wastewater Financing Board (WWFB)? [7.(n)]

Yes (Water Loss Financial Distress) No

8. State-Shared Taxes (SST): (Towns, Cities, Counties): N/A

\$100,864,805.66	Received in prior fiscal year
<u>\$ 11,097,841.00</u>	Total Maximum Annual Debt Service (with SST pledge)
\$ 89,766,964.66	Unobligated SSTs

9. Conclusion

Based upon our analysis, the City will have sufficient cash and revenues to meet its obligations. The City appears to meet TLDA's guidelines for approval to issue additional bonds with a senior lien position to its outstanding State Revolving Fund (SRF) loan agreements.

Attachments:

Debt Service Coverage & Three-year Financial Projection



TENNESSEE

JIM STRICKLAND
MAYOR

DIVISION OF FINANCE
Shirley Ford
Chief Financial Officer

May 4, 2020

Ms. Sandra Thompson, Director
Office of State and Local Finance
Tennessee Comptroller of the Treasury
Cordell Hull Building
425 Fifth Avenue North, 4th Floor
Nashville, TN 37243-3400

Re: City of Memphis, Tennessee – Request for State Revolving Fund Lien Modification

Dear Ms. Thompson:

The City of Memphis, Tennessee (the “City” or “Memphis”) respectfully submits this request for approval to the Tennessee Local Development Authority (“TLDA”) to modify the lien position of the City’s existing State Revolving Fund Loans (“SRF Loans”). Over the last several years, the City has been the recipient of seven (7) SRF Loans administered through the State of Tennessee’s Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs (together, the “SRF Program”).

The City manages a very active revenue bond program to finance its Sanitary Sewer System (“Sewer System”) infrastructure needs. In August 2018, the City submitted a request and received a loan modification for revenue bonds to fund a portion of the City’s approximately 5-year \$788 million Sewer System capital improvement program and refund certain outstanding bonds for debt service savings. This request will allow the City to continue with the issuance of its revenue bond program and take advantage of additional refunding opportunities (“Revenue Bonds”).

Purpose for Request

The City plans to issue Revenue Bonds for the following three purposes:

- To enter into a direct placement loan (to be financed as a single revenue bond) with the United States Environmental Protection Agency (“EPA”) pursuant to the Water Infrastructure Finance and Innovation Act of 2014 (“WIFIA”).
- To fund the ongoing capital needs as identified in the City’s capital improvement program for the Sewer System.

- To refund for debt service savings all or a portion of the outstanding Recovery Zone Economic Development Bonds, Series 2010; and the Sanitary Sewerage System Revenue Bonds, Series 2013 (“Refunding Bonds”).

WIFIA Loan Program

The WIFIA loan program is a federal credit program administered by the EPA for eligible water and wastewater infrastructure projects (“WIFIA Loan”). In 2018, the City submitted a loan application to the EPA to fund a portion of the costs related to the retrofit and upgrade of the T.E. Maxson Wastewater Treatment Facility (“Project”). The WIFIA Loan will provide a long term, cost-effective, fixed rate financing option to fund the Project (including cost of issuance and a debt service reserve fund) at approximately \$159 million representing approximately 49% of total eligible Project costs (\$325 million).

Revenue Bond Program

The City plans to enter into a loan agreement with the EPA and issue a single revenue bond (“WIFIA Revenue Bond”) via a direct placement financing pursuant to the City’s 1981 Sanitary Sewerage System Revenue Bond Resolution (“1981 Bond Resolution”). The WIFIA Revenue Bond will be on parity with the City’s outstanding Sewer System Revenue Bonds currently outstanding in the principal amount of approximately \$159 million; and in a senior lien position to the City’s currently outstanding SRF Loans. Simultaneously with the issuance of the WIFIA Revenue Bond, the City plans to issue Sewer System Revenue Bonds (which includes the Refunding Bonds) of approximately \$124 million (“Series 2020 Bonds”, and together with the WIFIA Revenue Bond, the “Revenue Bonds”) through a negotiated, public sale process.

The City is authorized to issue revenue and revenue refunding bonds through the 1981 Bond Resolution which states, “the City will not hereafter create or permit the creation of or issue any revenue bonds, notes, warrants or other obligations or create any additional indebtedness which rank on a parity with or have priority over the charge and lien on Revenues except that additional series of Bonds [issued under this 1981 Bond Resolution], including Bonds to refund any Bond or Bonds may be issued from time to time...”. Therefore, the SRF Loans must be placed in a subordinate security position prior to the issuance of the WIFIA Revenue Bond and the Series 2020 Bonds in order to maintain parity for the senior bondholders.

At the time of issuance of the WIFIA Revenue Bond and the Series 2020 Bonds, the City will authorize a new Bond Resolution (“2020 Bond Resolution”). The 2020 Bond Resolution will allow the City to introduce a new and improved bond document more in line with current debt issuance practices and provide greater financing flexibility going forward. The 2020 Bond Resolution will not become effective until authorized by sixty-six and two-thirds (66 2/3 percent) of all bondholders then outstanding.

It is the City’s intention to continue to utilize the SRF Program, in conjunction with an active revenue bond program or other cost-effective financing options. Without the requested lien modification for the proposed revenue bond issues, the City’s cost of capital could increase significantly which would put a strain on the City’s ability to meet its significant capital needs thus placing the health, safety and welfare of the citizens of Memphis at risk.

Sewer System Rate Increases

The City Council instituted several rate increases over the last eight (8) years. In 2011, a general rate increase was implemented to increase operating reserves as well as fund anticipated costs pursuant to the 2012 consent decree (“Consent Decree”) between the City, the EPA, the Department of Justice, the Tennessee Department of Environment and Conservation, and the Tennessee Clean Water Network. More recently, two rate increases were implemented: the first became effective January 2018, and the second, became effective January 2020. The last two rate increases were instituted specifically to fund or finance a portion of the Sewer System’s future capital needs. It is also anticipated that the City will request additional rate increases in the future as necessary and required. The City’s sewer management team has also developed a plan to minimize debt issuance by creating a PAYGO program to fund a portion of its capital expenditures from cash on hand in order to maximize the number of projects and lower the overall cost of borrowing. This effort, together with the SRF Program and the WIFIA program, will save the City millions of dollars in interest cost over the next 20 years.

City Participation in the SRF Loan Program

The City has utilized the SRF Program to fund a portion of the City’s current \$788 million 5-year CIP budget, and a portion of the remaining Federal Consent Decree mandate from the EPA (approximately \$71 million over the next four (4) years). Currently, there are seven (7) SRF loans outstanding or approved in the approximate principal amount of \$206.1 million as shown below:

SRF Loans Outstanding (000)		Authorized Outstanding			Status
Existing	Purpose	Loan Size	Balance	Completed	
SRF #1 - 2006 - 195	Loosahatchie Interceptor	\$ 3,989	\$ -	\$ 3,989	Amortizing
SRF #2 - 2013 - 309	Stiles (North) Plant	11,602	-	11,602	Amortizing
SRF #3 - 2013 - 311	Consent Decree	100,000	-	88,099	Amortizing
SRF #3 - 2013 - 311	Consent Decree		11,901	Expending	
SRF #4 - 2015 - 355	Maxson (South) Plant	25,000	9,913		Expending
SRF #5 - 2018 - 409	Maxson (South) Plant	11,000	3,046		Expending
SRF #6 - 2019 - 421	Consent Decree	6,500	4,436		Expending
SRF #7 - 2019 - 434	Maxson (South) Plant	48,000	48,000		Approved
Total SRF Loans		\$ 206,091	\$ 77,296	\$ 103,690	

Request for Lien Modification

It is the City’s position that granting the City’s lien modification request will not adversely affect the security for or timely payment of the SRF Loans from available Sewer System revenues. The City is currently in compliance with its SRF Loans and covenants, and is timely with payments and submissions of its financial information. The Sewer System is fiscally sound and maintains sufficient cash on hand at all times. The City Council has raised user fees as necessary and appropriate in order to fund its capital program. The City’s outstanding Sewer System revenue debt is highly rated (“AA+” by S&P and “Aa2” by Moody’s).

Pursuant to the TLDA SRF Policy & Guidance for Borrowers, a minimum of 1.20x debt service coverage (“DSC”) for SRF Loans must be maintained at all times. Currently, as demonstrated by the financial projections provided as Attachment A, the City expects to exceed 1.20x for all debt outstanding, including SRF Loans. This projected DSC also assumes the City will issue additional revenue bond issues over the next ten years. It is the City’s opinion that the request for lien modification would not, in any way, limit the City’s ability to pay debt service on the revenue bonds and SRF Loans; or provide adequate DSC as long as the SRF Loans are outstanding.

Factors for Consideration of Lien Modification

- *Compliance with SRF Loans, including the covenants and representations in SRF Loans* – As provided above, the City believes that it is in compliance with the terms of its outstanding SRF Loans.
- *Borrower’s history of timely repayments of SRF Loans* – The City confirms that it has consistently made timely payments on its outstanding SRF Loans.
- *Borrower’s timely filing of financial statements with the Division of Local Government Audit, Tennessee Comptroller of the Treasury* – The City believes it has timely filed its financial statements with the Division of Local Government Audit, Tennessee Comptroller of the Treasury on behalf of all its outstanding SRF Loans.
- *Borrower’s credit rating* – The City’s Sewer System bonds are currently rated “AA+” by S&P Global Ratings and “Aa2” by Moody’s Investors Service. See Attachment B.
- *Purpose and amount of proposed debt issuance* – The City plans to issue the WIFIA Revenue Bond in the principal amount of approximately \$159 million as a direct placement financing with the EPA. Additionally, the City plans to issue the Series 2020 Bonds at a negotiated, public sale as a single series. The Series 2020 Bonds will include a refunding component and a new money component. The refunding component of the Series 2020 Bonds will be approximately \$15.5 million and is presently expected to generate net present value savings of \$1.5 million or 8.86% as a percent of the refunded par amount of the bonds. The new money component of the Series 2020 Bonds will be issued to fund \$135 million of various CIP projects. The WIFIA Revenue Bond and the Series 2020 Bonds will be issued in accordance with the City’s Debt Management Policy and Procedures dated April 19, 2016.
- *Current and pro forma (projected) debt service coverage* – The current and pro forma projected debt service coverage currently exceeds 1.20x DSC for all Sewer System bonds and SRF Loans, including the proposed bonds. See Attachment A.
- *Amount of unobligated state-shared taxes* – The City will not secure the WIFIA Revenue Bond or the Series 2020 Bonds with unobligated state shared tax revenues.

- *The Sewer System's reliance on revenues generated from its largest user(s) as a percentage of total system revenues* – The System's ten largest users represents \$31.2 million or 25.2% of all Sewer System revenues. See Attachment C.
- *The lien position of the existing SRF debt remains the same or is improved* – The security and the ability to make timely payments for all SRF Loans remains unchanged if the City's WIFIA Revenue Bond and Series 2020 Bonds are granted a senior lien position. As required by applicable bond and loan documents, the City will maintain at all times a minimum coverage of 1.20x DSC for all Sewer System Revenue Bonds and SRF Loans. Pursuant to the SRF Loan Agreements, the City has also made an additional pledge of state-shared taxes for the repayment of the SRF Loans.
- *Impact on the health, safety, and well-being of the people of the State of Tennessee* – Over the next four (4) years, the City will complete the remainder of capital projects associated with the mandated Federal Consent Decree. Additionally, the City will also fund significant improvements to its wastewater treatment plants. Permitting this lien modification will allow the City to more efficiently fund its aggressive capital program. The inability to strategically fund the City's sizeable capital program would be detrimental to the health, safety and well-being of the citizens of Memphis.

COVID-19

The City is unable to predict the duration of the current worldwide COVID-19 outbreak or the extent to which it will ultimately affect the City's overall financial condition and operations. However, the City does not anticipate that the current COVID-19 pandemic will significantly impact or prevent the completion of the construction projects to be funded with the Revenue Bonds (as described herein). Furthermore, the City does not anticipate any change in its ability to maintain debt service on the Revenue Bonds and outstanding SRF loans, and to maintain the 1.20x debt service coverage ratio on all sanitary sewerage debt as required by the TLDA's policy guidelines.

Summary

The City would like to emphasize that the Sewer System is represented by an experienced sewer management staff, maintains sufficient revenues at all times in order to service its debt obligations, has the support of the City Council to enact necessary rate increases, maintains strong cash balances in the case of an emergency, and maintains the financial flexibility to adjust its debt decisions when necessary and prudent.

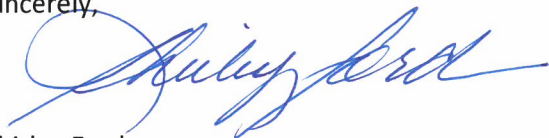
City of Memphis, Tennessee

May 4, 2020

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The City is very appreciative of the opportunity to participate in the SRF Program and respectfully requests the TLDA to grant the lien modification. Thank you for the opportunity to present to the TLDA. If you have any questions, please do not hesitate to contact me at (901) 636-6374 or shirley.ford@memphistn.gov, or André D. Walker, Deputy Chief Financial Officer at (901) 636-6324 or andre.walker@memphistn.gov.

Sincerely,



Shirley Ford
Chief Financial Officer

c: André D. Walker, Deputy Chief Financial Officer
Carol Ward, Debt Coordinator
Cherrell Hawkins, Debt Analyst
Cheryl M. Hearn, Senior Assistant City Attorney
Pamela Z. Clary, Co-Financial Advisor
Lauren S. Lowe, Co-Financial Advisor
Matt Schnackenberg, Co-Financial Advisor
Lillian M. Blackshear, Esquire, Co-Disclosure Counsel
Jeff Oldham, Esquire, Co-Disclosure Counsel
T. Kevin Bruce, Co-Disclosure Counsel
Miska L. Shaw, Esquire, Bond Counsel

Attachment A
City of Memphis, Tennessee
Current and Projected Debt Service Coverage

Fiscal Year	Audited 2019	Projected 2020	Projected 2021	Projected 2022	Projected 2023	Projected 2024	Projected 2025	Projected 2026	Projected 2027	Projected 2028	Projected 2029
Total Revenues	\$126,398	\$144,706	\$157,808	\$160,720	\$163,911	\$167,165	\$176,293	\$183,734	\$189,210	\$192,970	\$196,806
Total Operating Expenses	\$74,556	\$96,287	\$108,315	\$108,818	\$109,324	\$109,835	\$111,007	\$112,192	\$112,604	\$113,021	\$113,181
Net Revenue Available for Debt	\$51,842	\$48,419	\$49,493	\$51,903	\$54,587	\$57,330	\$65,286	\$71,542	\$76,606	\$79,949	\$83,625
Senior Bond Debt Service											
Existing Senior Revenue Bonds	14,050	14,839	14,217	14,205	11,750	11,727	11,688	9,512	7,242	7,212	5,781
Proposed Senior Revenue Bonds	-	-	-	7,124	13,331	19,150	25,694	31,022	32,017	33,198	33,748
Proposed WIFIA Loan	-	-	151	819	1,515	1,840	1,967	1,975	1,975	1,975	1,975
Subtotal Senior Debt Service	14,050	14,839	14,368	22,147	26,596	32,717	39,350	42,508	41,234	42,384	41,503
SRF Bond Debt Service (Subordinate)											
Existing SRF Bonds	1,400	2,512	10,457	13,926	13,928	13,922	13,921	13,923	13,918	13,917	13,919
Proposed SRF Bonds	-	-	-	-	411	1,293	1,293	1,293	1,293	1,293	1,293
WIFIA Proposed Loan (Subordinate)	-	-	-	-	-	-	-	-	-	-	-
Subtotal Subordinate Debt Service	1,400	2,512	10,457	13,926	14,339	15,215	15,214	15,216	15,211	15,209	15,211
Gross Debt Service	15,450	17,351	24,825	36,074	40,935	47,932	54,563	57,724	56,445	57,594	56,715
Senior Debt Service Coverage	3.69X	3.26X	3.44X	2.34X	2.05X	1.75X	1.66X	1.68X	1.86X	1.89X	2.01X
Senior & WIFIA Debt Service Coverage	3.69X	3.26X	3.44X	2.34X	2.05X	1.75X	1.66X	1.68X	1.86X	1.89X	2.01X
Total Debt Service Coverage	3.36X	2.79X	1.99X	1.44X	1.33X	1.20X	1.20X	1.24X	1.36X	1.39X	1.47X

Attachment C

City of Memphis, Tennessee Sanitary Sewerage System Ten Largest Industrial Customers Fiscal Year 2019

Name	Total Sewer Fee ^(a) (Thousands of Dollars)	Annual Flow (Millions of Gallons)
Solae (Protein Technologies)	\$ 9,092	1,253
Memphis Cellulose (Buckeye)	4,814	1,458
Chemours (DuPont)	4,590	1,599
KTG USA	2,835	883
Valero (Premcor) Refining	2,370	824
PMC Biogenix (Chemtura Corp.)	2,137	561
American Yeast	1,742	256
Blues City Brewery	1,353	320
Riviana Foods	1,335	179
Kellogg Company	902	295
Total of 10 Largest Customers	\$ 31,170	7,628
Percent of Overall System Total	25.2%	11.1%
Total	\$ 123,449	68,584

(a) Total Sewer Fee includes charges for biochemical oxygen demand, suspended solids and flow.

State of Tennessee

Post-Issuance Compliance Procedures Manual



Adopted on _____

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State of Tennessee Post-Issuance Compliance Procedures Manual

Section I. Introduction

The State of Tennessee (the “State”) acting by resolution of the State Funding Board (the “SFB”), the Tennessee State School Bond Authority (the “TSSBA”) and the Tennessee Local Development Authority (the “TLDA”) issue public securities to provide funding for capital projects or to refinance debt previously issued for this purpose. The State, TSSBA and TLDA are referred to singly as an “Issuer” and collectively as “Issuers”. Public securities issued by the Issuers are typically tax-exempt obligations, but also may include certain tax subsidy or tax credit bonds (together with tax-exempt obligations, the “tax-advantaged obligations”).

In order for the Issuers to treat the interest on an obligation as exempt from federal income tax (or in the case of tax credit or tax subsidy bonds, for the taxpayer to receive the expected credit or the issuer to receive the subsidy payment), the Issuers are required to comply with federal tax laws and related federal regulations. The applicable federal tax laws are primarily set forth in Sections 141-150 of the Internal Revenue Code (the “Code”). The Internal Revenue Service (“IRS”) has promulgated related federal regulations, revenue rulings, and revenue procedures that address how such applicable federal tax laws are to be applied. The State Comptroller of the Treasury (“Comptroller”), as the Secretary for the Issuers, has established the Division of State Government Finance (“SGF”) to assist the Issuers with their debt programs, including their compliance efforts. The term SGF shall also mean any successor division or office within the Comptroller’s Office to which responsibility for the Issuers is delegated.

In conjunction with the issuance of a tax-advantaged obligation, bond counsel issues an opinion that is, in part, based on the reasonable expectation that an issuer shall comply with federal tax law requirements to preserve the tax-exempt/subsidy eligible status of the obligation. The Issuers agree to comply with these requirements through representations made in tax compliance certificates.

With each new issue of a tax-advantaged obligation, an issuer files the applicable version of the IRS Form 8038 with the IRS. The IRS requires the filing of a Form 8038, 8038-G, 8038-GC, 8038-B, or 8038-TC, as applicable, to identify any new debt issue that receives a federal income tax preference. IRS Form 8038 series requires an issuer to indicate if it has established written procedures to ensure remediation of any non-qualified bonds of the issue to which the Form relates (i.e., comply with the private business use rules). IRS Form 8038 also requires an issuer to indicate if it has established written procedures to monitor compliance with the requirements of Section 148 of the Code with respect to arbitrage rebate compliance.

Issuers and borrowers are also required to disclose, on a periodic basis, financial information and certain other information that may impact their ability to service their debt. This ongoing reporting requirement is known as continuing disclosure. The requirements of continuing disclosure are set forth in Securities and Exchange Commission (“SEC”) Rule 15c2-12. Issuers agree in their official statements and other bond documents to comply with the requirements of Rule 15c2-12.

The purpose of the procedures set forth in this document is to establish a Post-Issuance Compliance (“PIC”) management program which ensures ongoing compliance with applicable federal tax laws, Rule 15c2-12, bond covenants, and continuing disclosure agreements.

This document shall be reviewed and updated periodically to ensure that it reflects current compliance requirements and that the procedures are both practical and administrable.

Section II. Compliance Program Administration

In order to successfully implement the PIC management program, the Issuers incorporate the responsibility of implementing the procedures established herein into the positions identified below. In addition to implementing the procedures, such individuals shall also participate in continuing education on the topics described herein and shall be responsible for modifying the procedures document as necessary.

Designation of Responsibilities

By adopting this document, the Issuers are creating a PIC program management team (the “PIC Team”) that is responsible for monitoring compliance with post-issuance tax compliance and continuing disclosure requirements. The following responsibilities shall be added to the job descriptions of the positions identified below:

1. **Chief Compliance Officer** – The Director of SGF shall be designated as the Chief Compliance Officer and shall be responsible for the administration and supervision of the Issuers’ PIC management program. The Chief Compliance Officer shall also be responsible for overseeing the timely filing of information on the Municipal Securities Rulemaking Board (“MSRB”) Electronic Municipal Market Access (“EMMA”) System to comply with continuing disclosure requirements. The Chief Compliance Officer shall be responsible for the following:
 - a. Monitoring the Issuers’ Arbitrage Rebate and Yield Restriction Compliance program, including oversight of any third-party consultants engaged to perform arbitrage rebate and yield restriction compliance calculations.
 - b. Managing the Issuers’ record retention program related to debt issuance documents.
 - c. Reviewing the use of facilities and other assets financed by proceeds of tax-advantaged obligations.
 - d. Engaging with bond counsel to perform calculations, at least when a change in use occurs, with respect to the amount of private business use of each tax-advantaged financed asset and each tax-advantaged debt issue the proceeds of which were used to finance such assets.

- e. Identifying any changes in the use of a tax-advantaged financed asset that may require a Remedial Action to be taken.¹
 - f. Overseeing the timely filing of information on the MSRB's EMMA System to comply with continuing disclosure requirements.
2. Other members of the PIC Team shall include designated representatives from the Department of Finance and Administration ("F&A"), the Attorney General's Office, the State of Tennessee Real Estate Asset Management ("STREAM") division of the Department of General Services ("DGS"), the University of Tennessee ("UT"), the Tennessee Board of Regents ("TBR"), each of the six (6) Locally Governed Institutions ("LGIs"), and other staff members (including SGF staff) as assigned by the Chief Compliance Officer. As deemed appropriate, the Chief Compliance Officer shall delegate PIC duties to members of the PIC Team.

Training and Education

The Issuers shall undertake the following training and educational activities:

1. The PIC Team members shall participate in annual training on PIC. The Chief Compliance Officer shall be responsible for documenting participation by these individuals and any other staff that participate in PIC training.
2. In addition to the above training requirement, the PIC Team shall annually review the procedures set forth in this manual and shall review the role and responsibilities of each PIC Team member with respect to undertaking such procedures.

Post-Issuance Compliance Assessment

On an annual basis, the PIC Team shall complete the PIC assessment (Appendix E). The purpose of the assessment is to document compliance with PIC procedures and to identify any areas of concern. The Chief Compliance Officer shall file the completed assessment with the permanent bond records applicable to all issues.

Procedure Manual Review

The Chief Compliance Officer shall review this procedure document at least annually and is authorized to make non-material changes. Material changes to this document shall only be made after approval by the Issuers.

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¹ See the Private Business Use Section of this manual for additional information regarding circumstances that give rise to a remedial action.

Section III. Post-Issuance Tax Compliance

Post-Issuance Tax Compliance includes compliance with the arbitrage rebate and yield restriction requirements established under Section 148 of the Code and compliance with the private business use requirements established under Section 141 of the Code. This section establishes the procedures that the Issuers shall implement to monitor and manage the post-issuance tax compliance requirements of its tax-exempt obligations. Procedures categories include:

- A. Use of Tax-Advantaged Obligation Proceeds, Accounting for Tax-Advantaged Obligation Proceeds, Investment of Tax-Advantaged Obligation Proceeds
- B. Qualified Guarantees
- C. Qualified Hedges
- D. Arbitrage Rebate and Yield Restriction Compliance
- E. Private Business Use
- F. Record Retention
- G. Procedures related to the American Recovery and Reinvestment Act (“ARRA”)

Definitions for the terms that are identified in bold and underlined are provided in the Glossary in the Appendix.

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A. Use of Tax-Advantaged Obligation Proceeds, Accounting for Tax-Advantaged Obligation Proceeds, Investment of Tax-Advantaged Obligation Proceeds

This section establishes procedures to monitor the proper use of gross bond proceeds, including procedures to account for expenditures and investments allocable to gross bond proceeds and procedures related to the purchase and sale of investments.

Procedures Related to the Use of Tax-Advantaged Proceeds

The PIC Team shall monitor the proper use of tax-advantaged obligation proceeds as follows:

- Identify the projects approved to be financed by each outstanding tax-advantaged obligation proceeds.
- With the input of bond counsel, verify that tax-advantaged obligation proceeds are being allocated to authorized expenditures for the projects approved for such financing.
- Use the payment approval and processing system to concurrently verify that no proceeds of the tax-advantaged obligation proceeds are being allocated to **working capital expenditures**. (In addition to IRS restrictions, the Tennessee Constitution prohibits debt to be issued to finance an operating expense unless that debt is repaid within the fiscal year of issuance.) However, expenditures to pay for the following purposes may be allowed:²
 - Any **issuance costs** or any **qualified administrative costs** expected to be paid from the proceeds of the tax-advantaged obligation;
 - Fees for qualified guarantees of the tax-advantaged obligation or payments for a qualified hedge for the tax-advantaged obligation;
 - Interest on the tax-advantaged obligation (e.g., capitalized interest) for a period beginning on the issue date and ending on the date that is the later of three (3) years from the issue date or one (1) year after the date on which the project is **placed in service**;
 - Rebate payments, yield reduction payments, and penalty-in-lieu-of rebate payments for the tax-advantaged obligation;
 - Administrative or operating costs (see also Constitutional prohibition referred to above) that do not exceed 5% of the sale proceeds of the tax-advantaged obligation and that are directly related to the capital expenditures financed by the tax-advantaged obligation;
 - Principal or interest on a tax-advantaged obligation paid from unexpected sale or investment proceeds; and
 - Principal or interest on a tax-advantaged obligation paid from investment earnings on a reserve or replacement fund that are deposited in a bona fide debt service fund.
- If the Issuer intends to allocate tax-advantaged obligation proceeds to reimburse itself for project-related expenditures that were previously paid, the PIC Team shall verify

² See federal regulations Section 1.148-6(d)(3)(ii).

that the Issuer formally adopted a **reimbursement resolution** or “Declaration of Intent”. A reimbursement resolution must include the following as set forth in federal regulations Section 1.150-2:

- The reimbursement resolution must be adopted not later than 60 days after the payment of the original expenditure(s) (that is to be reimbursed).
 - The reimbursement resolution is in a form that represents an official intent (a declaration, typically in writing).
 - The reimbursement allocation (e.g., the allocation of tax-advantaged proceeds by the Issuer to reimburse for the original expenditures) must be made no later than 18 months after the later of:³
 - The date the original expenditure(s) is paid; or
 - The date the project is **placed in service** or abandoned, but in no event more than three (3) years after the original expenditure is paid⁴
 - The original expenditure(s) is a capital expenditure, a cost of issuance for a bond, an expenditure for an **extraordinary, non-recurring item** as described in federal regulations Section 1.148-6(d)(3)(ii)(B) or a grant as described in federal regulations Section 1.148-6(d)(4).
 - The official intent should identify the project(s) for which the original expenditure(s) is paid and state the maximum principal amount of obligations expected to be issued for the project(s).
- The Issuers are not required to adopt a reimbursement resolution or apply the rules described above if the reimbursement is for **preliminary expenditures**, and the total amount of reimbursed preliminary expenditures does not exceed 20% of the issue price of the tax-advantaged obligation issued to finance the project.⁵
 - The Issuers are not required to adopt a reimbursement resolution or apply the rules described above if the reimbursement is for costs of issuance of any bond or for an amount not in excess of the lesser of \$100,000 or 5% of the proceeds of the bond issue.⁶
 - If the Issuers intend to substitute a project, the PIC Team shall review the eligibility of the new project requested to be financed with the proceeds of the tax-advantaged obligation and confirm such eligibility with bond counsel.
 - The Issuers shall collect any available and additional documentation supporting the completion of the project, such as an occupancy certificate, a project completion

³ Pursuant to federal regulations Section 1.150-2(d)(2)(ii), 18 months is changed to three (3) years, and the 3-year limitation on the reimbursement allocation period is disregarded if the issue of tax-exempt obligations satisfies the small issue exception to arbitrage rebate.

⁴ Pursuant to federal regulations Section 1.150-2(d)(2)(iii), the 3-year maximum reimbursement period is changed to five (5) years if the issuer and a licensed architect or engineer certify that at least five (5) years is necessary to complete the construction of the project.

⁵ See federal regulations Section 1.150-2(f)(2).

⁶ See federal regulations Section 1.150-2(f)(1).

certificate, an internal memorandum that documents conversations on project completion or other similar document.

Procedures Related to Accounting for Proceeds

The State has formalized procedures for the review and approval of all pending expenditures, prior to disbursement. Those procedures, while instituted for other internal control purposes, assure that all payments are proper prior to disbursement. Depending on the type of expenditure (capital or other), procurement and expenditure approvals shall rest with F&A. For expenditures made by community colleges and LGIs under TBR, TBR exercises an independent review of the invoices and then submits them to SGF for payment to the vendor. For expenditures made by campuses under the UT system, UT exercises an independent review and payment and then submits a package of documentation with a request for reimbursement to SGF. A summary diagram of the flow of review/approval for the State, TSSBA and TLDA is included in Section V. A summary of form and report names (not intended to be a complete listing) and acronyms is included in Appendix D.

The Issuers shall institute the following procedures to account for the expenditure and investment earnings related to the proceeds of tax-advantaged obligations.

- While the Issuers commingle funds, SGF shall track earnings and expenditures in subaccounts that reflect separate funds for each series of tax-advantaged obligations. If monies are held by a trustee, separate funds shall be created. These funds or subaccounts include, but are not limited to, the following:
 - The Construction Fund or Project Fund
 - The Capitalized Interest Fund
 - The Sinking Fund
 - The Costs of Issuance Fund
 - The Debt Service Reserve Fund (if required)
 - The Rebate Fund (if required)
 - The Escrow Fund (for refunding bond issues)
- The Issuers shall apply a reasonable accounting method, as described in, and permitted by federal regulations Section 1.148-6(d)(1), to account for the allocation of proceeds to permitted expenditures. Permitted methods may include a specific tracing method, a gross proceeds spent first method, a first-in, first-out method, or a ratable allocation method.
- If the purpose of a tax-advantaged obligation is to finance **working capital expenditures** (the Tennessee Constitution prohibits debt to be issued to finance an operating expense unless that debt is repaid within the fiscal year of issuance), the Issuers shall allocate the proceeds of the obligation based on a proceeds-spent-last method. In particular, proceeds shall only be allocated to working capital expenditures to the extent such **working capital expenditures** exceed **available amounts**.⁷ The

⁷ See federal regulations Section 1.148-6(d)(3)(i).

payment approval and processing process assures that expenditures are capital in nature.

- In accordance with federal regulations Section 1.148-6(d)(1)(iii), the Issuers shall account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project financed by a tax-advantaged obligation is **placed in service**. This “Final Allocation” should clearly reflect the portions of the project which were financed with tax-advantaged bond proceeds and which were not. To the extent expenditure allocations do not occur within this time frame, expenditure allocations shall be made no later than five (5) years after the issue date of the tax-advantaged obligation.

- The Issuers shall allocate interest earnings on at least a monthly basis to each fund based on a reasonable ratable allocation method (currently the SGF uses the average daily balance). It is further noted that TSSBA allocates interest on a monthly basis, but the credit for income is provided on the semiannual debt service billing. Pursuant to federal regulations Section 1.148-6(e)(2)(ii), reasonable ratable allocation methods include:
 - The average daily balances of the amounts in each fund in relation to the total average daily balances in all funds or,
 - The average of the beginning and ending balances for each fund in relation to the beginning and ending balances for all funds.

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Procedures Related to the Investment of Proceeds

Each Issuer shall ensure that all investments are compliant with its investment policy and are permitted investments for the State, TSSBA, or TLDA, pursuant to applicable State of Tennessee statutes and investment policy. To the extent that an Issuer is responsible for the procurement or disposition of investments allocable to tax-advantaged obligation proceeds, it shall acquire and sell all investments at fair market value (e.g., a bona fide, arm's-length transaction) as follows:⁸

- For investments that are traded on an established secondary market (e.g., U.S. Treasury securities, federal agency securities, etc.), an Issuer shall solicit multiple offers for the purchase or sale of such investments. To the extent multiple offers are not available, an Issuer shall record prices of comparable securities at the time of the trade.
- For the acquisition of an investment on its issue date (such as a new issue federal agency security), an Issuer shall document the purchase price, trade date, and the issue date of the investment.
- For certificates of deposit that do not trade on a secondary market, an Issuer shall confirm that the yield on the certificate of deposit is reasonably comparable to the yield offered by a U.S. Treasury security with a similar maturity date, and the yield on the certificate of deposit is the same or higher than the yield available to the public for the same or a similar certificate of deposit.
- An Issuer shall procure **guaranteed investment contracts** and yield restricted defeasance escrows in accordance with the safe harbor bidding procedures described in federal regulations Section 1.148-5(d)(6)(iii), including:
 - An Issuer shall make a bona fide bid solicitation that includes bid specifications in writing;
 - The bid specifications shall include all material terms of the bid;
 - The bid specifications shall indicate that submission of a bid by a provider is a representation by the provider that it did not consult with other potential providers, that the bid was determined without regard to any other formal or informal arrangement with a potential provider, and that the bid is a bona fide bid (e.g., not a “courtesy” bid);
 - The terms of the bid are commercially reasonable;
 - For guaranteed investment contracts, the bid takes into account the expected draw schedule;
 - All potential bidders have an equal opportunity to bid and no “last look” is provided to any potential bidder;
 - At least three (3) reasonably competitive bidders are requested to bid;
 - The bids received include at least three(3) bids from bidders that did not have a material financial interest in the issue (e.g., the lead underwriter within 15 days of the issue date, or the financial advisor). If an Issuer is unable to obtain three (3) competitive bids, then the Issuer shall document why three (3) bids

⁸ See federal regulations Section 1.148-5(d)(6).

- could not be obtained (e.g., three (3) bidders did not meet minimum credit rating requirements);
 - At least one (1) of the bids received is from a reasonably competitive provider;
 - If an agent (a broker) is used to conduct the bidding process, the agent did not bid; and
 - For guaranteed investment contracts, the winning bid is the highest yielding bona fide bid (net of broker's fees).
- The Issuers shall undertake the following additional procedures to determine the winning bid for investments in a yield restricted defeasance escrow:
 - The winning bid is the lowest cost bona fide bid (net of broker's fees). The lowest bona fide bid shall be determined based on the lowest cost of the entire portfolio, or if bids are compared on an investment-by-investment basis, the aggregate of the lowest cost of each investment.
 - The winning bid is not greater than the cost of the most efficient portfolio comprised exclusively of **State and Local Government Series** (U.S. Treasury "SLGS") securities program as determined at the time the bids are required to be submitted.
- The Issuers shall request that bond counsel review the bid specifications associated with the procurement of a guaranteed investment contract or a yield restricted defeasance escrow and request that bond counsel confirm that such bid specifications and bid award conform to the requirements set forth in federal regulations Section 1.148-5(d)(6)(iii).
- If an Issuer engages an Agent to assist with the bidding process, the Issuer shall require the Agent to provide a certification upon conclusion of the bidding process that the process conformed to the requirements set forth in federal regulations Section 1.148-5(6)(iii), including the award of the bid. If no Agent is engaged to assist with this process, the Issuer shall request that bond counsel draft such certification and an authorized representative of the Issuer shall execute the certification document.
- If an Issuer engages an Agent to assist with the bidding process, the Issuer shall ask bond counsel to determine if the Agent's fee, or portion of the Agent's fee, may be treated as a qualified administrative cost pursuant to federal regulations Section 1.148-5(e)(2)(iii).
- The Issuers shall maintain records of all investment purchases and sales, bid specifications, related term sheets, bids, bidders, investment contracts, administrative costs paid, and any other material information related to the purchase and sale of investments allocable to tax-advantaged obligation proceeds.⁹

⁹ See federal regulations Section 1.148-5(d)(6)(iii)(E).

B. Qualified Guarantees

Procedures Related to Qualified Guarantees

The Issuers shall undertake the following procedures with respect to qualified guarantees:

- Prior to entering into the guarantee agreement, confirm with the lead underwriter and/or the lead financial advisor that the present value of the fees for the guarantee are reasonably expected to be less than the present value of the expected interest savings on the issue as a result of the guarantee.
- Confirm with the lead underwriter and/or the lead financial advisor that the guarantee arrangement creates a guarantee in substance as described in federal regulations Section 1.148-4(f)(3) and that not more than 10% of the proceeds of the tax-advantaged obligation are used to pay for the guarantee.
- Confirm with the lead underwriter and/or the lead financial advisor that the guarantee was acquired at fair market value.
- Confirm with bond counsel that all of the above requirements have been satisfied and that the Issuers may treat the guarantee as a qualified guarantee in the calculation of the arbitrage yield for the tax-advantaged obligation.
- Maintain copies of all qualified guarantees and all fees paid in connection with the procurement and the continuance of all qualified guarantee arrangements.

C. Qualified Hedging Arrangements

Procedures Related to Qualified Hedges

To the extent that an Issuer intends to treat a hedging arrangement as a qualified hedge, it shall undertake the following procedures:

- Confirm with the lead underwriter and/or the lead financial advisor and bond counsel that the hedge satisfies the requirements set forth in federal regulations Section 1.148-4(h) and therefore, may be treated as a qualified hedge.
- Execute an identification certificate, to be drafted by bond counsel, no later than 15 days after the date that the Issuer and the provider enter into the hedging arrangement (the trade date). The identification certificate must comply with federal regulations Section 1.148-(h)(2)(viii).
- Maintain copies of all qualified hedging arrangements, record of any modification to such hedging arrangements (including changes in the terms of the arrangement and corresponding termination payments or receipts), and all payments and receipts related to such qualified hedging arrangements (e.g., interest rate swap cash flows).

D. Arbitrage Rebate & Yield Restriction Compliance

The Issuers shall undertake the following procedures to comply with the requirements set forth in Section 148 of the Code and the related federal regulations:

General Arbitrage Rebate Compliance Procedures

- Identify and maintain a list of all outstanding tax-exempt obligations. Review the tax certificate, IRS Form 8038-G, verification reports, official statement, and other appropriate bond documents to determine bond-year anniversary dates, 5-year calculation dates, and final maturity dates.
- Review, not less than annually, the list of all outstanding tax-advantaged obligations to determine the obligations in need of arbitrage rebate and yield restriction liability calculations.
- Identify any exceptions to arbitrage rebate that may apply to each tax-advantaged obligation. The tax certificate delivered by bond counsel shall identify the available exceptions. SGF and/or a contracted arbitrage rebate consultant shall determine the exceptions that were met based on the actual facts.
- Either designate staff to prepare or engage an arbitrage rebate compliance consultant to prepare arbitrage rebate, yield restriction liability, penalty-in-lieu of rebate and exception compliance reports for the tax-advantaged obligations in need of such analysis.
- Inform the arbitrage rebate consultant that a tax-advantaged obligation has been refunded and discharged no later than 15 days after the final redemption date of the obligation and instruct the arbitrage rebate consultant to prepare a final calculation with respect to the refunded obligation.
- Provide the arbitrage rebate compliance consultant with information (e.g., bond documents and financial data) needed to perform arbitrage rebate and yield restriction liability calculations, penalty-in-lieu of rebate and exception compliance analysis.
- If a tax-advantaged obligation has accrued an arbitrage rebate or yield restriction liability and an exception does not apply, fund the Rebate Fund with respect to the tax-exempt obligation in the amount of the liability.
- Monitor debt service payment accounts to ensure that the balances of such accounts are depleted at least annually to an amount that is less than one-twelfth (1/12th) of the previous year's debt service payments with respect to the applicable tax-exempt obligations.

Procedures Related to Spending Exceptions to Rebate

The Issuers shall undertake the following procedures with respect to monitoring compliance of each tax-advantaged obligation with a spending exception to arbitrage rebate.

- Monitor the compliance of each “new money” tax-advantaged obligation with the requirements of the spending exceptions to arbitrage rebate by comparing the cumulative approved expenditures allocated to the proceeds of the obligation to the spending exception requirements.
 - Not less than on an annual basis, prepare an analysis for each tax-advantaged obligation that indicates compliance with the 6-month spending exception, the 18-month spending exception, or the 2-year spending exception.
- If an Issuer intends to use facts to determine compliance with the 2-year spending exception for a tax-advantaged obligation, it shall instruct bond counsel to include such election in the tax certificate for that tax-advantaged obligation.
- If an Issuer intends to bifurcate the new money proceeds of a tax-advantaged obligation for purposes of complying with the spending exceptions, it shall instruct bond counsel to include such election in the tax certificate for that tax-advantaged obligation.
- If an Issuer intends to treat unspent proceeds as of the end of the final spending period as reasonable retainage, it shall confirm with bond counsel that such unspent proceeds may be treated in this manner.
- Prior to the issue date of a tax-advantaged obligation with a reasonably required reserve or replacement fund and with proceeds that are eligible for the 2-year spending exception, an Issuer shall determine whether or not to elect to treat the earnings from such fund as “available construction proceeds”.

Procedures Related to Yield Restriction Compliance

- The Issuers shall consult with bond counsel to determine if yield restricted proceeds are eligible for yield reduction payments.
- If yield reduction payments are permitted, an Issuer shall fund the Rebate Fund in the amount of the yield restriction liability until a yield reduction payment is due.
- If yield reduction payments are not permitted, an Issuer shall monitor the yield of the investments allocable to the applicable yield restricted proceeds to comply with the yield restriction requirements. For yield restricted advance refunding escrows (including escrows funded with cash), an Issuer shall:
 - Engage a Verification Agent to verify that the blended yield of the investments allocable to the escrow is expected to be below the applicable restricted yield.
 - If the escrow portfolio includes the reinvestment of proceeds in SLGS, require the Escrow Agent to timely reinvest such amounts in SLGS. If the “SLGS window” (i.e., SLGS are not available) is closed, an Issuer shall require the

Escrow Agent to follow the alternative procedures set forth in Revenue Procedure 95-47 (or any superseding Revenue Procedure or other authoritative pronouncement) to achieve this objective.

Procedures Related to Making Payments

- If an arbitrage rebate and/or yield reduction payment is due, an Issuer shall file a completed and fully executed IRS Form 8038-T no later than 60 days after the applicable computation date.
- If a penalty-in-lieu of rebate payment is due with respect to a tax-advantaged obligation, an Issuer shall file a completed and fully executed IRS Form 8038-T no later than 90 days after the applicable computation date.
- If an arbitrage rebate payment, yield reduction payment, or penalty-in-lieu of rebate payment is not filed timely, an Issuer shall follow the procedures set forth in federal regulations Section 1.148-3(h) and Revenue Procedure 2005-40 with respect to making late payments. Such procedures include submitting an explanation with the payment that describes the nature of the late filing, paying any accrued interest on the liability, and paying any additional penalty amounts related to the late filing.

Procedures Related to Refund Requests

- An Issuer shall confirm with its arbitrage rebate consultant that a tax-advantaged obligation is eligible for a refund of a prior arbitrage rebate, yield reduction, or penalty-in-lieu of rebate payment.
- An Issuer shall follow the procedures set forth in federal regulations Section 1.148-3(i) and Revenue Procedure 2008-37 to request a refund with respect to a prior arbitrage rebate, yield reduction, or penalty-in-lieu of rebate payment. Such procedures include submitting an IRS Form 8038-R, a copy of the previously submitted IRS Form 8038-T, and a copy of any calculations that support the refund request and that relate to the prior payment.

Procedures Related to Tax-Advantaged Commercial Paper and Revolving Lines of Credit

Pursuant to federal regulations Section 1.150-1(c)(4)(ii), an Issuer may treat each tax-exempt “new money” commercial paper issue and any “roll” and subsequent roll of the amount equal to or less than the original tax-exempt new money issue as a single issue for federal tax law purposes. The applicable regulations afford issuers the option of treating all new draws made during the 18 month period commencing on the date of the first draw as a single issue. Issuers may treat draws made during a shorter period as a single issue. The State currently reports its new money General Obligation (“GO”) Commercial Paper (“CP”) issuances every calendar quarter to the IRS, with each draw or issuance reported as a single issue for tax purposes.

- If an Issuer utilizes an outside arbitrage rebate consultant, the Issuer shall provide the arbitrage rebate consultant with data on all new money commercial paper issues and revolving line of credit draws, the roll or carryforward of such issues, and the interest rates of such issues.

E. Private Business Use

Procedures to Monitor Compliance with Private Business Use

The Issuers shall undertake the following procedures to monitor compliance with the private business use requirements:

- As required by Tennessee statutes, UT, TBR (including the six (6) LGIs), and DGS (the “Project Managers”), shall immediately report any changes in use, including new or revised agreements or disposals, of a tax-advantaged financed asset to SGF. Annually, as of the end of each fiscal year, each Issuer shall obtain a copy of Physical Facility Inventory (PFI) and a certification, executed by the Project Managers, that documents any change in use to projects financed with tax-advantaged obligations for all bond programs. The Issuer shall consult with bond counsel to determine if any changes in use should be factored into the **Good Use/Bad Use (“GUBU”) Report** for each issue.
- Before entering into any lease arrangements, management or service agreements, research agreements, or any other legal arrangements with respect to the use of a tax-advantaged financed asset, an Issuer shall request a review by bond counsel of such agreement to determine how the agreement shall impact the private business use compliance of the debt issue that financed the applicable tax-advantaged financed asset.
- Before entering into any agreement to dispose of a tax-advantaged financed asset, an Issuer shall request a review by bond counsel of such agreement to determine how the agreement shall impact the private business use compliance of the debt issue that financed the applicable tax-advantaged financed asset and if a remedial action would be required if the sale occurs.
- On an annual basis, each Issuer shall estimate the amount of private business use for each debt issue, both for the 5% test and the 10% test. On an ongoing basis, the **Good Use/Bad Use Report** for each issue is updated for any changes. Each report shall be summarized annually, and if the estimated amount of private business use exceeds the limits for a debt issue, the Issuers shall work with bond counsel to determine if the obligations are not in compliance with the private business use limitations and if any remedial action is required.
- If an Issuer intends to sell, destroy, or demolish a tax-advantaged financed asset, the Issuer shall work with bond counsel to determine if a remedial action shall be required. If a remedial action is required, the Issuer shall work with bond counsel, and other appropriate professionals to undertake the remedial action within the required time frames set forth in the federal income tax regulations.
- If bond counsel determines that a remedial action shall not result in compliance with the private business use requirements, each Issuer shall work with bond counsel to pursue a voluntary closing agreement with the IRS to correct the infraction.

F. Records Retention

Procedures Related to Records Retention

When project records are created, the appropriate Record Disposition Authorization (“RDA”) is identified. The RDAs for like records are assigned specific retention periods and destruction methods. SGF retains hard copies of bond transcripts in the office and electronic copies of all related records for the life of the debt, plus the life of any subsequent refunding issue, plus three (3) years, and then forwards original transcripts to the State Library and Archives for historical value and consideration. For instance, historically SGF retains bond issue documents within its control for 36 years. F&A retains its records for 31 years. The applicable RDA (RDA number 11114) at the time this document was adopted included the following provisions:

- Retained in the form of both paper and electronic documents
- Bond transcripts
- Accounting records with supporting documentation
- Any other records related to the issuance of State debt and debt of other state programs.

For tax purposes, retention should include all material records for the life of the applicable tax-advantaged obligation plus three (3) additional years after such tax-exempt obligation matures. If a tax-advantaged obligation is refunded, the Issuers shall maintain all material records for the later of the life of the original issue or the refunding issue, plus three (3) additional years after the final maturity date. When the Issuers refund an issue, the debt may not be extended beyond the maturity of the original issuance. However, if a new money issue is included with the refunding, the maximum life of the new obligations may exceed the refunded bonds. Most State debt has a maximum maturity of 20 years, while TLDA and TSSBA can have a maximum maturity of 30 years. The RDAs have a long set date in order to attempt to capture the maximum required retention period.

The Issuers shall undertake the following procedures to comply with the records retention requirements set forth in the federal tax law.

- To the extent possible and practicable, maintain all records in electronic format. All paper records subject to these requirements shall be segregated from other Issuers records and shall be clearly marked to ensure compliance with the required retention period.

G. Procedures Related to the ARRA

The ARRA of 2009 authorized the issuance of Build America Bonds (“BABs”) and certain other qualified tax credit bonds including Qualified Zone Academy Bonds (“QZABs”) and Qualified School Construction Bonds (“QSCBs”) (collectively referred to as “TCBs”) to

finance governmental projects. The Issuers shall undertake the following PIC procedures with respect to BABs (which the State did not issue) and TCBs:

- File all IRS Form 8038-CPs within the time limits required to receive the federal subsidy payment with respect to the TCBs.
- Follow the procedures established herein to comply with the arbitrage rebate and yield restriction requirements set forth in Section 148 of the Code and the related federal regulations.
- Confirm that 100% of TCBs proceeds are allocated to capital expenditures for the governmental purpose of the Bonds.
- Follow the procedures established herein to comply with the private business use requirements.
- Follow all other applicable procedures herein to achieve compliance with applicable federal tax laws and disclosure requirements. This would include the proper funding of the sinking fund that is established in connection with QSCBs.

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Section IV. Continuing Disclosure

Procedures Related to Continuing Disclosure

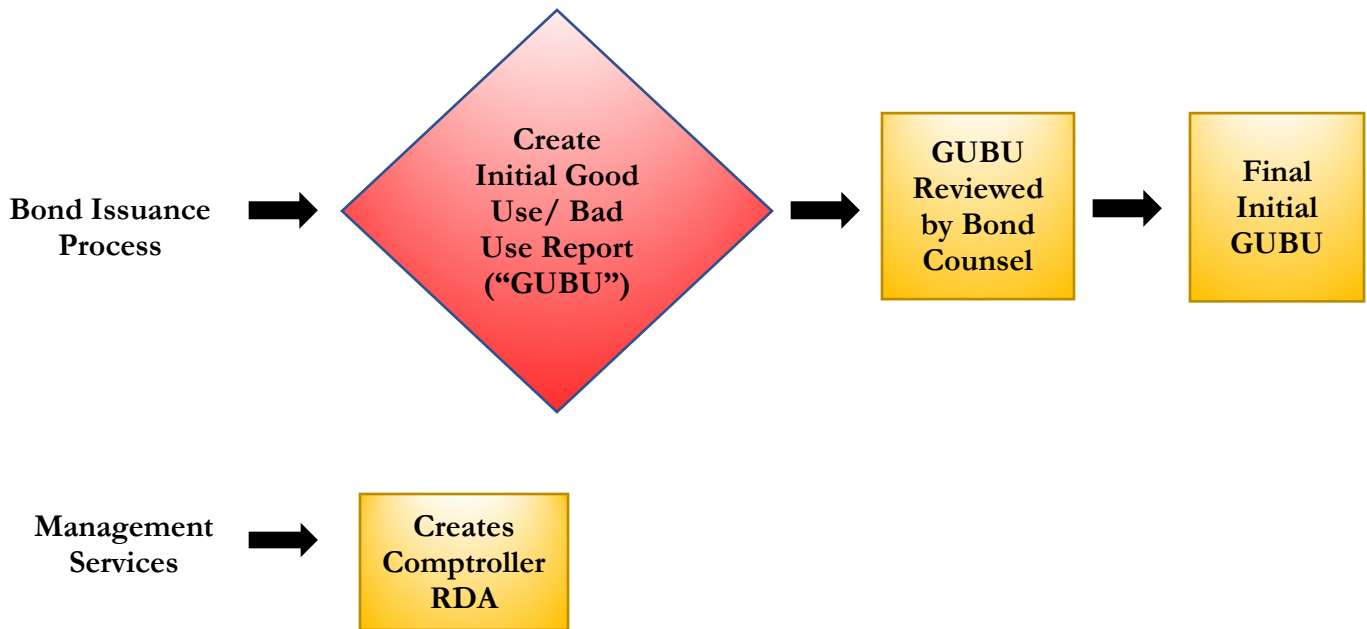
- Issuers shall maintain a tickler of issues subject to continuing disclosure and required filing dates for routine disclosures.
- When a new obligation is issued that has a continuing disclosure agreement, on or before closing confirm that the disclosures are consistent with the prior reporting, or if different that the common continuing disclosure report is expanded to meet the disclosure requirements of all covered issues.
- For new obligations, review that all CUSIPS are captured on EMMA.
- File all required financial-based disclosures on EMMA no later than the filing date set forth in the official statement and, if applicable, disclosure agreement with respect to the obligation. Required financial-based disclosures include audited financial statements and any additional information that was included in each obligation's offering document.
- File any additional financial-based disclosures identified in official statements and disclosure agreements by the filing due dates.
- File any mandatory event-based disclosures on EMMA no later than 10 business days after the occurrence of the event. Prior to filing, the Issuers shall consult with bond or disclosure counsel to determine if the event is considered a material event under Rule 15c2-12.
- File any non-mandatory financial-based disclosures and non-mandatory event-based disclosures on EMMA within a reasonable time period on the advice of bond or disclosure counsel and at the Issuers' discretion.
- If any required filings shall be late, on or before the due date shall post a disclosure on the failure to file timely.
- Issuers shall no later than the filing due date on EMMA, check the EMMA site for any outstanding issues and confirm all required filings posted. Issuers shall also confirm that there are no postings made in error by other organizations on their sites.

Document retention: all final versions of the annual disclosure and any EMMA filings shall be retained for a period not less than 10 years from the later of the filing due date or actual filing date.

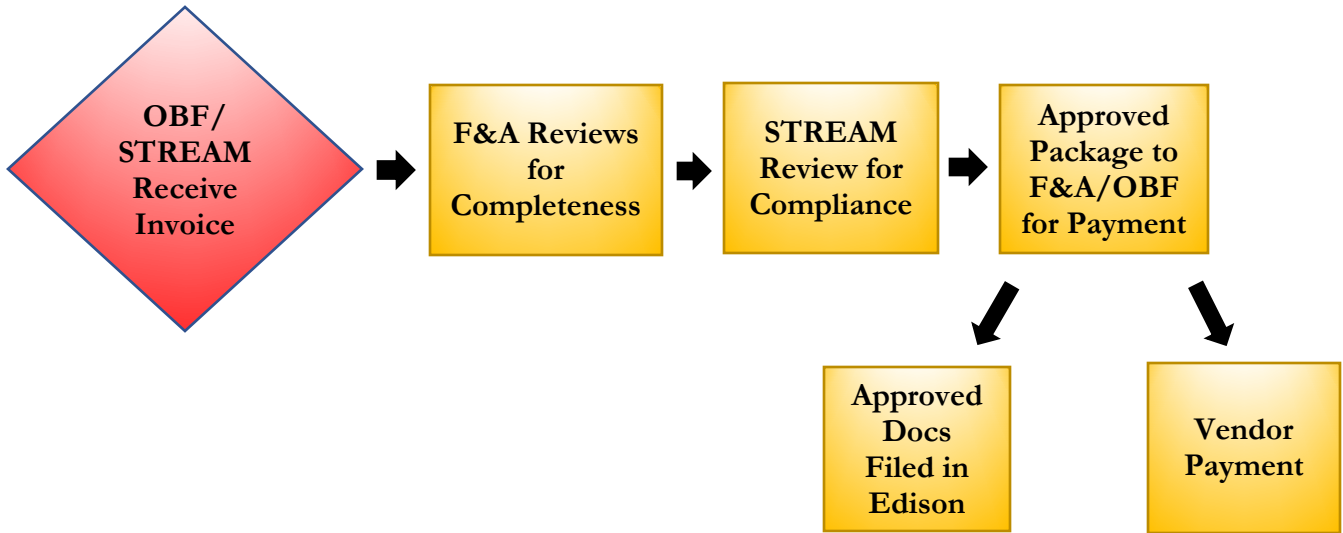
Section V. Summary of Processes that also Serve Post-Issuance Compliance

Many of the policies, procedures and internal controls employed by the State and its agencies to safeguard state funds and facilities also serve a purpose for post-issuance tax compliance. Expenditures must be appropriate, capitalizable, related to the project, and verified as to proper payment amounts before payment is made. Supporting materials are filed electronically within Edison. Additional controls that focus on the use of state property also are relevant for the change in use process. For this purpose, the following pages summarize, at a high level, the process flow that is integrated with the needed post-issuance controls.

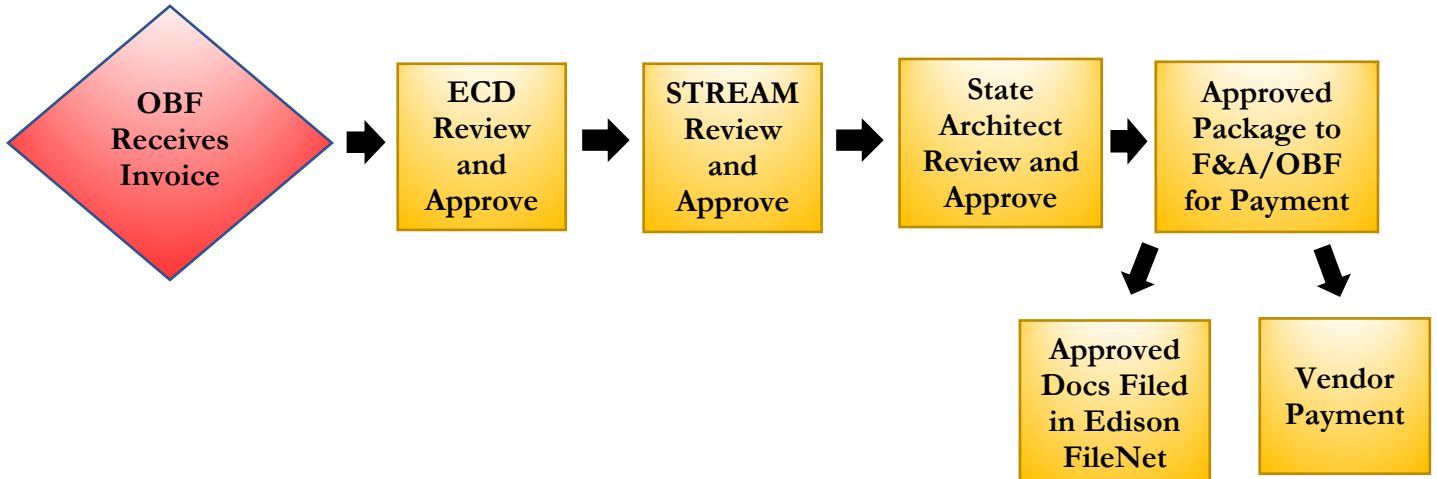
Post-Issuance Compliance Starts in the Issuance Process



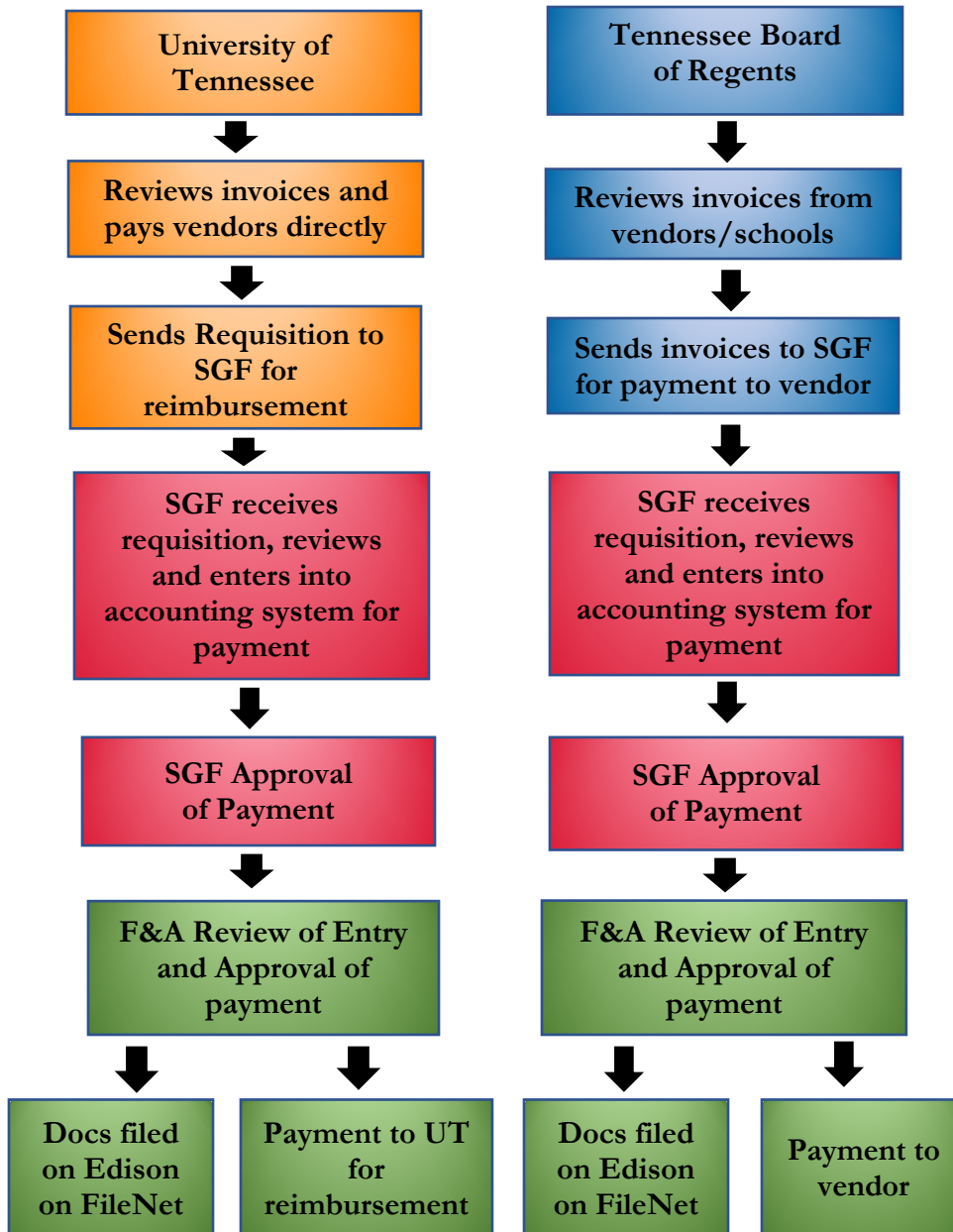
Payments for Project Expenditures: State (GO) Capital Projects



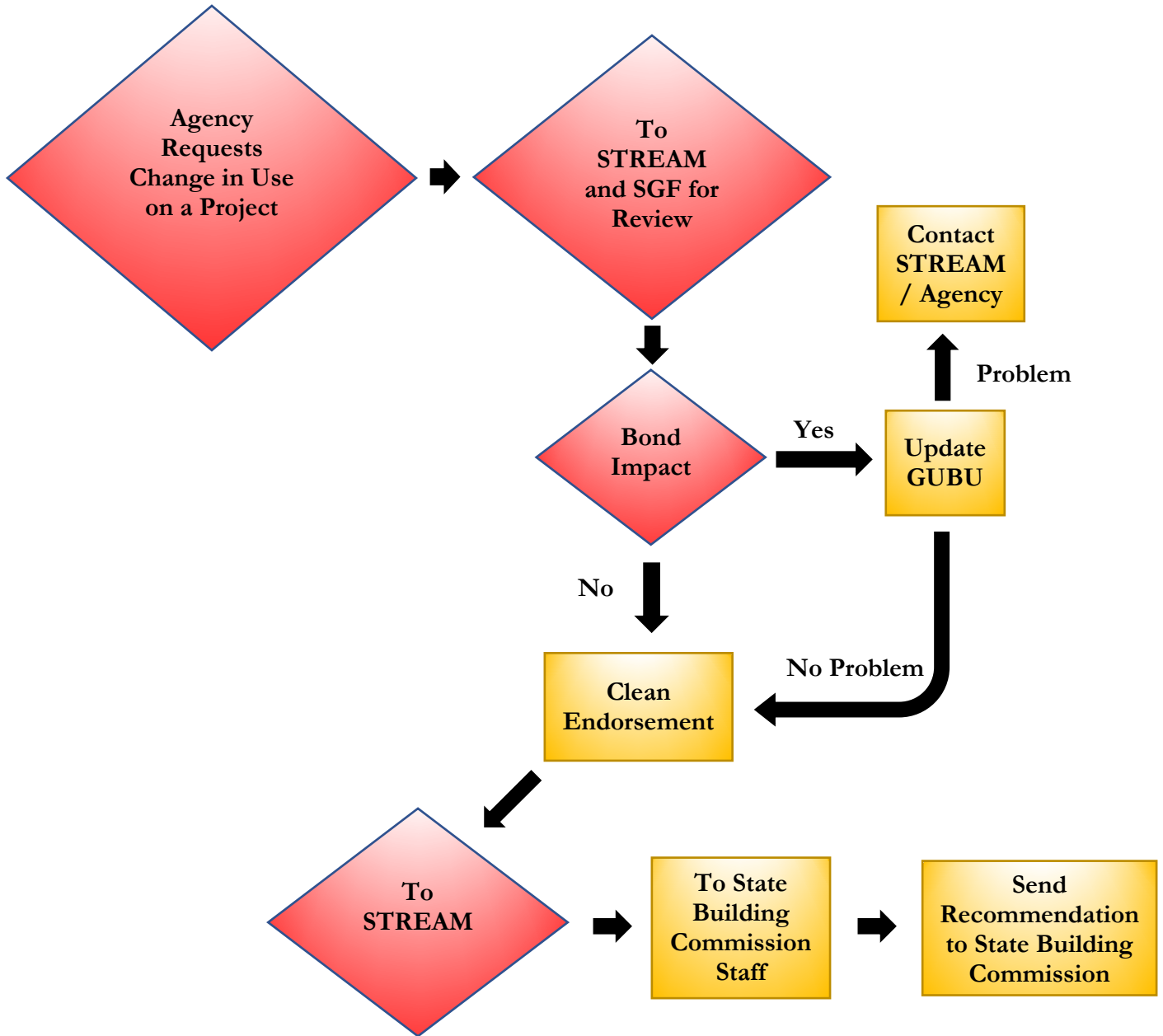
Payments for Capital Grants: State (GO) Capital Projects



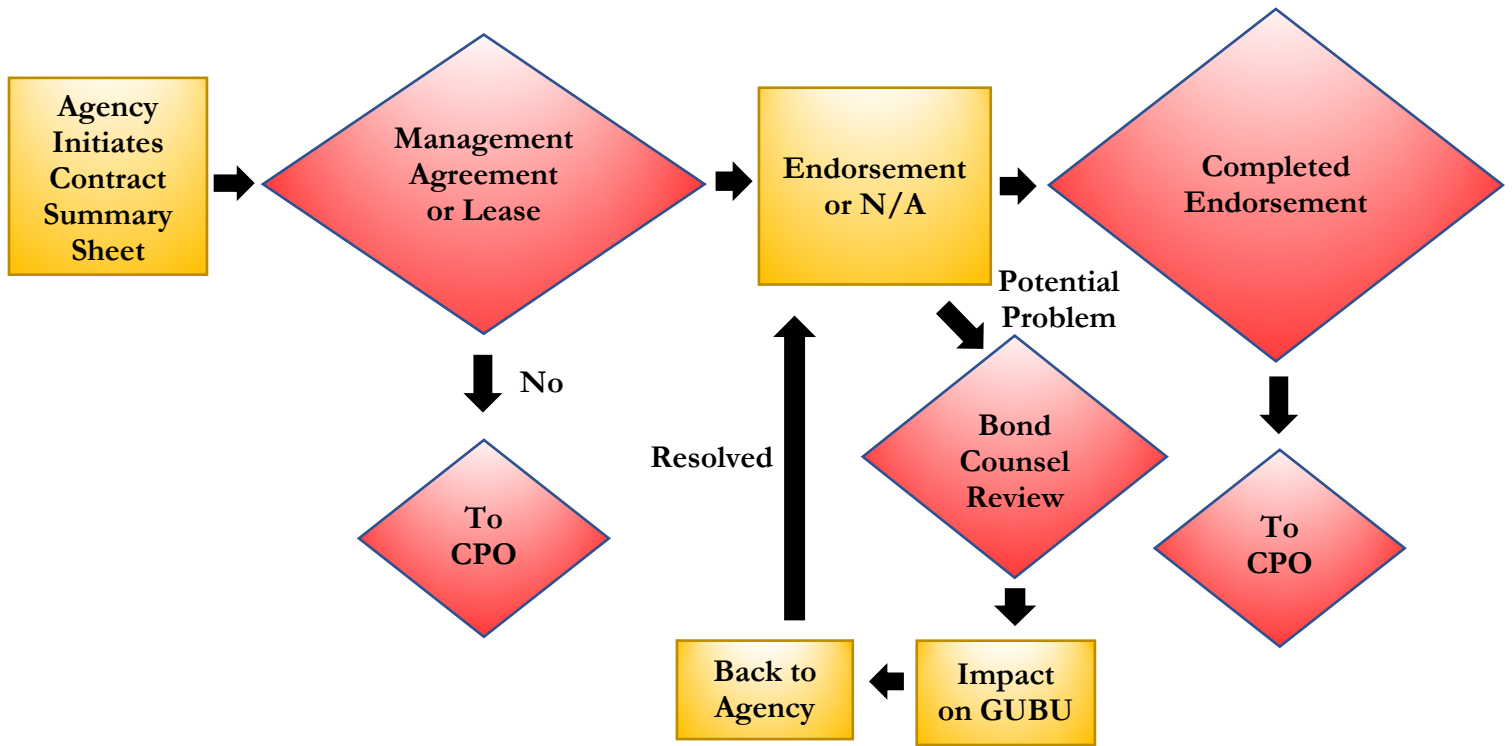
Payments for Project Expenditures: TSSBA



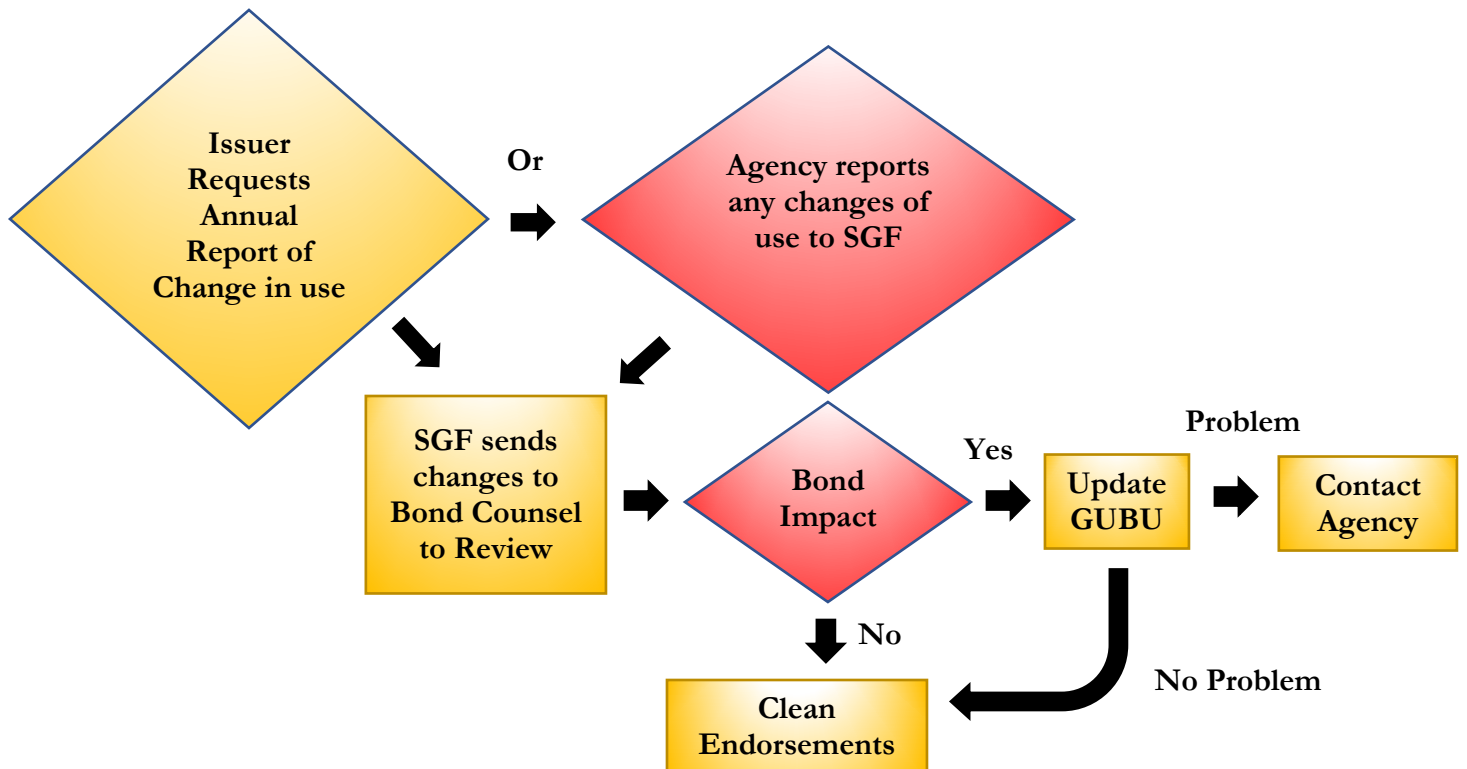
Changes in Use to a Facility Financed with Tax-Advantaged Bonds



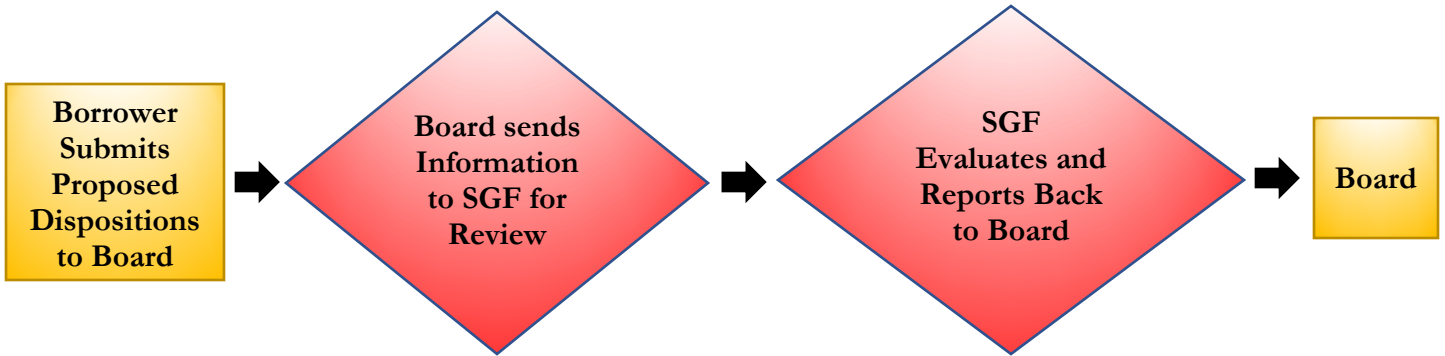
Contracts and Management Agreements



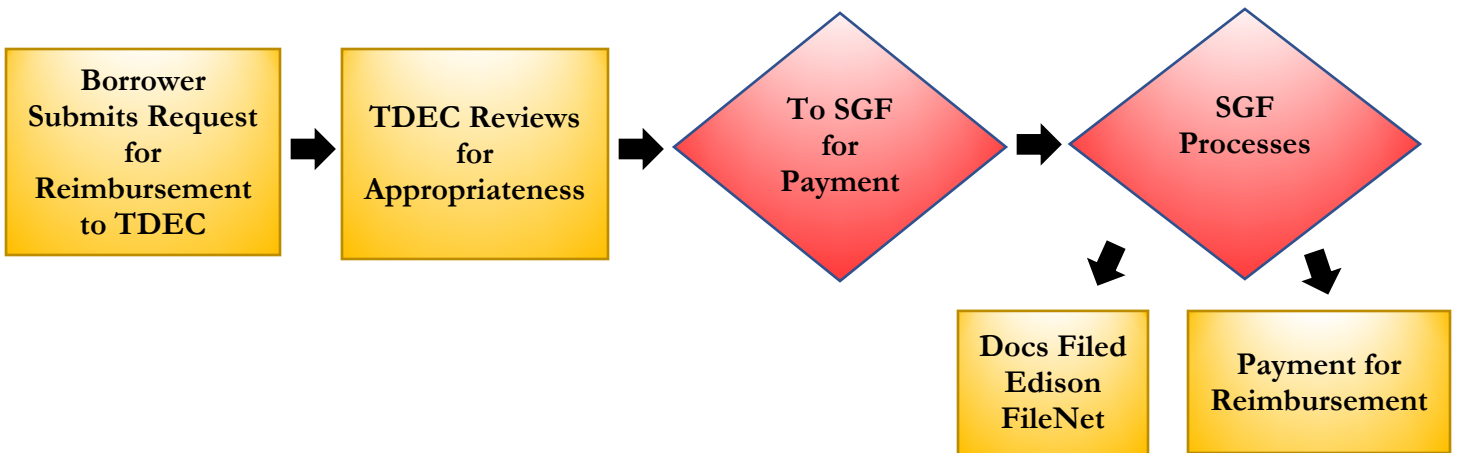
Evaluation of Changes in Use to a Facility Financed with Tax-Advantaged Bonds



TLDA



Payments: TLDA



Appendices

Appendix A: Background Information

Background - Use of Proceeds, Accounting for Proceeds, Investment of Proceeds

Gross Proceeds – Gross proceeds of a bond issue include proceeds and replacement proceeds.

Table 1: Components of Gross Proceeds	
Proceeds	Include sale proceeds, investment proceeds, and transferred proceeds
Sale proceeds	Amounts the issuer receives from the sale of the bond issue, including amounts used to pay underwriters’ discount and certain accrued interest on the bonds.
Investment proceeds	Amounts received from investing proceeds of an issue. For example, if the issuer invests sale proceeds and earns interest, that interest is considered investment proceeds.
Transferred proceeds	May result when an issuer issues tax-exempt bonds (the refunding bonds) to refund an outstanding issue of tax-exempt bonds (the refunded bonds). Unspent proceeds of the refunded bonds may transfer to and become proceeds of the refunding bonds and are no longer considered proceeds of the refunded bonds.
Replacement proceeds	Monies that would have been used to finance the project if the bonds had not been issued. Replacement proceeds may also include amounts expected to pay debt service on the bonds, including sinking funds (such as a debt service fund, redemption fund, reserve fund or a replacement fund) and pledged funds (generally meaning any amount pledged to pay principal of or interest on the bonds).

Expenditure of Gross Proceeds – Within the limitations and permitted uses established by the Code and the related federal regulations, the gross proceeds of a tax-exempt obligation may be used to finance **capital expenditures, working capital expenditures**, or to refinance existing tax-exempt debt (i.e., refund debt). Gross proceeds are allocable to a tax-exempt obligation until such gross proceeds are allocated to **expenditures** for their intended purpose. Gross proceeds are typically invested until they are allocated to expenditures. The investments allocable to gross proceeds are referred to as non-purpose investments because the investment(s) is not the purpose of the financing. The receipts from such investments (e.g., investment earnings and return of principal) are referred to as non-purpose receipts.

Table 2: Expenditures of Gross Proceeds	
Expenditure	A current outlay of cash that is reasonably expected to occur not later than 5 banking days after the date of the expenditure allocation.
Capital Expenditure	Expenditures for costs incurred to acquire, construct, or improve land, buildings, and equipment.
Construction Expenditure	Capital expenditures allocable to costs incurred for construction or improvement (renovation) type projects, but not acquisition of land or other real property (such as equipment).

Preliminary Expenditure	Expenditures incurred prior to commencement of the project, including architectural, engineering, surveying, soil testing, and similar costs.
Working Capital Expenditure	Expenditures for operating or administrative expenses, such as non-capital accounts payable and payroll. Working capital expenditures include payments for debt service (excluding capitalized interest).

Background - Qualified Guarantees

Qualified guarantees are agreements between an issuer and/or a borrower and a provider under which the provider agrees to provide credit support or liquidity support in exchange for a fee. Examples of qualified guarantees include bond insurance, surety policies (which are often used to fund debt service reserve fund requirements), stand-by bond purchase agreements (also referred to as “liquidity facilities”), and letters of credit. The fees paid in connection with qualified guarantees typically may be included in the calculation of the arbitrage yield of a tax-exempt obligation.

Background - Qualified Hedges

A hedging arrangement is intended to enable an issuer to mitigate the interest rate risk that is associated with a current or future tax-exempt financing. Examples of hedging arrangements include interest rate swaps, forward rate locks, and interest rate caps. A qualified hedge is a hedging arrangement that is taken into account when calculating the arbitrage yield with respect to the tax-exempt obligation.

Background - Arbitrage Rebate & Yield Restriction Compliance

Section 148 of the Code and the related federal regulations require issuers of tax-exempt bonds to comply with the arbitrage rebate and yield restriction requirements. Primary objectives of the Code include:

- Limiting the use of tax-exempt bonds to authorized purposes,
- Limiting the duration of the financing to a term that is generally not longer than the expected life of the asset(s) or purpose(s) of the financing, and
- Preventing the issuance of tax-exempt bonds exclusively for the purpose of reinvesting the bond proceeds in higher yield investments (i.e., arbitraging).

Non-compliance may cause the bonds to be treated as “arbitrage bonds” and consequently, to lose their tax-exempt status.

In addition, the Code and the regulations create financial disincentives to prevent abuses; specifically arbitrage rebate and yield restriction. Arbitrage rebate and yield restriction are similar in their objective; they are both designed to limit the return an issuer may keep from the investment of tax-exempt bond proceeds. However, these dual, overlapping requirements are also different in several ways. A brief description of the arbitrage rebate and yield restriction requirements, as well as exceptions to arbitrage rebate and yield restriction, are provided below.

Arbitrage Rebate – The gross proceeds of a tax-exempt bond issue that are invested in taxable non-purpose investments (i.e., U.S. Treasury securities, money market mutual funds, corporate bonds, GICs, and certain tax-exempt AMT bonds, etc.) are subject to arbitrage rebate unless an exception to arbitrage rebate applies.

- Arbitrage rebate is the difference between the actual investment earnings and the earnings that the issuer would have received if the gross proceeds of the bonds were invested at the arbitrage yield.

(Arbitrage Rebate Liability equals Actual Investment Earnings less the Investment Earnings at the arbitrage yield)

Payment of Arbitrage Rebate – An issuer is required to determine no less than five (5) years after the issue date, every five (5) years thereafter, and as of the final maturity date (including the call date if the bonds are refunded and discharged) if an arbitrage rebate liability has accrued. If a liability has accrued, the issuer is required to pay at least 90% of the liability within 60 days of the computation date (100% if the computation date is the final maturity date). **If no liability has accrued, then no payment is due, and the issuer is not required to file any documentation with the Internal Revenue Service.**

Yield Restriction – Federal tax law generally does not allow an issuer to invest the gross proceeds of a bond issue at an average investment rate that is “materially higher”¹⁰ than the arbitrage yield. However, gross proceeds are permitted to be invested above a materially higher yield during a temporary period.

- A temporary period is an exemption from the yield restriction requirements, but it is **not an exception to the arbitrage rebate requirements.**¹¹

Temporary Periods and Yield Restriction – Temporary periods vary depending on the intended use of the proceeds (See Table 3 below). For example, the typical temporary period for new money proceeds is three (3) years, starting on the issue date. An issuer is permitted to invest the new money proceeds at an unrestricted rate during the first three (3) years after the issue date, without violating the yield restriction requirements.

Bond Proceeds Fund	Temporary Period / Unrestricted Investment Period
Project Fund	3 years beginning on the issue date. 5 years beginning on the issue date with certification from architect or engineer
Interest and Sinking Fund	13 months if treated as a bona fide debt service fund. 30 days if not treated as a bona fide debt service fund
Costs of Issuance Fund	3 years for new money bonds. 13 months for refunding bonds.
Debt Service Reserve Fund	Reasonably required debt service reserve funds are unrestricted. If overfunded, the excess debt service reserve fund portion is subject to yield restriction
Escrow Fund	Advance refunding escrow – 30 days; current refunding escrow – 90 days

At the expiration of the temporary period, any unspent bond proceeds become subject to the yield restriction requirements. To comply with this requirement, an issuer is required to either restrict the investment yield so that it is no higher than a materially higher yield or make “yield reduction payments” as permitted. Yield reduction payments are essentially arbitrage rebate payments, only they are made to comply with yield restriction. These payments are made at the same time and in the same manner as arbitrage rebate payments.

Yield Restriction Requirement of Certain Gross Proceeds – In certain circumstances, the investments allocable to Gross Proceeds of a tax-exempt obligation are required to be yield

¹⁰ A “materially higher” yield is the yield to which the gross proceeds of a bond issue are subject to yield restriction. The definition of materially higher differs depending on the purpose and use of the proceeds. For example, for construction funds that qualify for a 3-year or 5-year temporary period, materially higher means the arbitrage yield + 0.125%. For refunding escrows and “replacement proceeds,” materially higher means the arbitrage yield + 0.001%.

¹¹ The one (1) exception is for tax credit bonds identified under the Code Section 54A, which include qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds. Section 54A(d)(4)(B) provides an exception to arbitrage rebate for “available project proceeds” during the first (3) years after the issue date of the bonds.

restricted. For example, the blended or weighted average investment yield of the investments allocable to proceeds used to advance refund prior obligations are required to be restricted (i.e., cannot be any higher than) to a yield that is not higher than a materially higher yield (the arbitrage yield plus 0.001%).

Refunding Escrows with SLGS Reinvestments – In the case of an advance refunding escrow, an issuer may include **State and Local Government Series** Treasury Securities (“SLGS”) in the escrow portfolio to achieve a blended investment yield that is below the applicable restricted yield. If the issuer allocates advance refunding proceeds to SLGS, the issuer shall need to ensure that the escrow agent reinvests such proceeds in SLGS in accordance with expectations, or if the SLGS Window is closed, the escrow agent follows permitted alternative procedures to achieve this same objective. For additional information, see the procedures related to the investment of bond proceeds.

Spending Exceptions to Arbitrage Rebate – The Code and the regulations establish spending exceptions to arbitrage rebate. If a spending exception to arbitrage rebate is met, the issuer may apply the exception to the applicable proceeds and treat such proceeds as exempt from the arbitrage rebate requirements. Application of the spending exceptions is optional. The spending exception does not need to be applied to the applicable proceeds if the issuer determines that doing so is not economically advantageous.

There are three (3) spending exceptions to arbitrage rebate, the 6-month spending exception, the 18-month spending exception, and the 2-year spending exception. The proceeds of a tax-exempt obligation may qualify for one (1) or all three (3) exceptions, depending on the intended use of the proceeds. The requirements of the spending exceptions are as follows:¹²

- **6-month spending exception** – The 6-month spending exception is met if 100% of the Gross Proceeds of the tax-exempt obligation are allocated to expenditures for the governmental purposes of the issue within the 6-month period beginning on the issue date. The 6-month period is extended for an additional 6 months if the unspent gross proceeds as of the end of the initial 6-month period do not exceed 5% of the proceeds of the issue.¹³
- **18-month spending exception** – The 18-month spending exception is met if the Gross Proceeds of the tax-exempt obligation are allocated to expenditures for the governmental purposes of the issue as follows: 15% within 6 months of the issue date, 60% within 12 months of the issue date, and 100% within 18 months of the issue date.
- **Gross Proceeds** - For purposes of determining compliance with the 6-month and 18-month spending exceptions, “Gross Proceeds” include the sale proceeds used to finance the project, pay costs of issuance, fund capitalized interest, and include investment earnings on such sale proceeds. However, for this purpose, gross proceeds do not include amounts in a bona fide debt service fund or in a reasonably required reserve or replacement fund.

¹² See federal regulations Section 1.148-7.

¹³ See Section 148(f)(4)(B)(ii)(I) of the Code.

- 2-year spending exception – The 2-year spending exception is met if the available Construction Proceeds of the tax-exempt obligation are allocated to expenditures for the governmental purposes of the issue as follows: 10% within 6 months of the issue date, 45% within 12 months of the issue date, 75% with 18 months of the issue date, and 100% within two (2) years of the issue date.
- **Available Construction Proceeds** - For purposes of determining compliance with the 2-year spending exception, available construction proceeds include sale proceeds used to finance the project and fund capitalized interest, earnings on such proceeds, earnings on proceeds used to pay costs of issuance (but not sale proceeds), and earnings on a reasonably required reserve or replacement fund until the earlier of the date construction is **substantially complete** or two (2) years from the issue date. However, an issuer may elect to exclude earnings on a reasonably required reserve or replacement fund from available construction proceeds.

Treatment of Investment Earnings – As noted above, Gross Proceeds and Available Construction Proceeds include the investment earnings on the proceeds included in the spending exceptions.¹⁴ For purposes of the 18-month or 2-year spending exception, issuers are required to estimate total investment earnings over the spending period. Estimated earnings should be determined as of the issue date and should be based on the issuer’s expected disbursement and expected investment earnings rate. Estimated investment earnings are used as a substitute for actual investment earnings to determine compliance with the interim 6-month spending period requirements. Actual investment earnings are used to determine compliance with the final 6-month spending period requirement. The table below describes the periods that include estimated investment earnings and actual investment earnings:

Spending Period	18-Month Exception	2-Year Exception
First 6-Month Period	Estimated Earnings	Estimated Earnings
Second 6-Month Period	Estimated Earnings	Estimated Earnings
Third 6-Month Period	Actual Earnings	Estimated Earnings
Fourth 6-Month Period	N/A	Actual Earnings

Election to use Actual Facts – For purposes of measuring compliance with the 2-year spending exception, issuers have the option of determining compliance based on actual investment earnings during the entire spending period.¹⁵ This election must be made on or before the issue date and should be documented in the tax certificate.

¹⁴ See federal regulations Section 1.148-7(d)(3)(ii) and 1.148-7(i)(3).

¹⁵ See federal regulations Section 1.148-7(f)(2).

Bifurcation of Purposes / Use of Proceeds – In certain circumstances, a “new money” tax-exempt obligation may not be eligible for the 2-year spending exception because more than 25% of the new money proceeds are not expected to be used for qualified construction expenditures. In this scenario, an issuer may separate, or bifurcate, the proceeds for purposes of determining compliance with spending exceptions. The proceeds to be used to finance construction expenditures are treated as a separate issue and are eligible for the 2-year spending exception. The proceeds to be used to finance non-construction expenditures are only eligible for the 6-month spending exception (not the 18-month spending exception). To bifurcate an issue, the issuer is required to make an election on or before the issue date. The election should be documented in the tax certificate.¹⁶

Small Balance Exceptions at the end of the Spending Period – The federal tax regulations create two (2) “small balance” exceptions for the 18-month and 2-year spending exceptions. The two (2) small balance exceptions are intended to permit an issuer to still meet the 18-month or 2-year spending exceptions if unspent proceeds remain as of the end of the spending period.

- **Reasonable Retainage** – This small balance exception is for unspent proceeds that may be treated as “reasonable retainage.” Under the 18-month and 2-year spending exceptions, the final spending requirement is met if the remaining proceeds constitute reasonable retainage and the remaining proceeds do not exceed 5% of the total proceeds required to be spent during the entire spending period. Examples of reasonable retainage include retention of proceeds to ensure completion of a contract or if there is a contract dispute.¹⁷ If the remaining proceeds are treated as reasonable retainage, the issuer is required to spend the remaining proceeds not later than 12 months after end of the spending period to meet the 18-month (by month 30) or 2-year spending exception (by month 36).
- **De Minimis Exception** – This small balance exception is for remaining proceeds that are considered to be “de minimis” or relatively insignificant in amount. Under the 18-month and 2-year spending exceptions, the final spending requirement is met if the issuer exercises due diligence to complete the project financed and the amount of unspent proceeds does not exceed the lesser of 3% of the issue price of the tax-exempt obligation or \$250,000 (the De Minimis Exception).¹⁸

¹⁶ See federal regulations Section 1.148-7(j).

¹⁷ See federal regulations Section 1.148-7(h).

¹⁸ See federal regulations Section 1.148-7(b)(4).

Exception	Expenditure Benchmark 1	Expenditure Benchmark 2	Expenditure Benchmark 3	Expenditure Benchmark 4	End of Period Exceptions
6-Month	100%				5% – must be spent by 12-month anniversary
18-Month	15%	60%	100%		Retainage – must be spent in 12 months, De Minimis balance – must be spent with “due diligence”
2-Year	10%	45%	75%	100%	

Small Issuer Exception to Rebate – The Code and Section 1.148-8 of the federal regulations establish an exception to arbitrage rebate for certain small issues. A bond issue may qualify for the small issuer exception to rebate if:

- During the calendar year, not more than \$5 million of tax-exempt obligations are issued by the issuer and any related entities. This \$5 million limit is increased to \$15 million for tax-exempt obligations issued to finance the construction and renovation of public school facilities,
- The issuer has general taxing powers,
- The tax-exempt obligations are governmental bonds (i.e., not private activity bonds), and
- At least 95% of the proceeds of the tax-exempt obligations are to be used for local governmental activities of the issuer.

In certain circumstances, refunding bonds may qualify for the small issuer exception. In addition, in certain circumstances, obligations related to pooled financings may qualify for the small issuer exception.

Exception to Rebate: Penalty-In-Lieu of Rebate – If the available construction proceeds of a tax-exempt obligation are eligible for the 2-year spending exception, an issuer may elect to pay a penalty-in-lieu of paying rebate on such proceeds. This election must occur on or prior to the issue date. The penalty amount is calculated for each semi-annual period, beginning on the issue date, until 100% of the available construction proceeds are allocated to expenditures.

During the first four (4) semiannual periods, the penalty amount is equal to 1.5% multiplied by the difference between the amount required to be spent to meet the 2-year spending exception and the amount that is actually spent (if it is less than the amount needed to be spent). After the fourth semiannual period, the penalty amount is equal to 1.5% multiplied by the amount of unspent available construction proceeds.

Penalty payments are required to be submitted to the IRS not later than 90 days after the end of the applicable spending period.

Bona Fide Debt Service Fund Exception – A debt service fund is exempt from arbitrage rebate and yield restriction if the gross proceeds allocable to the debt service fund are depleted at least once each **bond year** to a balance that is not greater than a “reasonable carryover amount.” Pursuant to Section 1.148-1(b) of the federal regulations, a reasonable carryover amount is an amount that is not in excess of the greater of:

- The earnings of the debt service fund for the preceding bond year, or
- One-twelfth (1/12th) of the principal and interest payments on the issue for the immediately preceding bond year.

If the bonds are variable rate bonds, private activity bonds, or if the bonds have an average maturity of less than five (5) years, then the debt service fund is subject to arbitrage rebate unless the earnings of debt service fund is less than \$100,000 during the bond year. However, the \$100,000 annual earnings limit does not apply if the average annual debt service of the bonds is not in excess of \$2,500,000.¹⁹

Exceptions to Yield Restriction

Minor Portion – The gross proceeds of a tax-exempt obligation are not subject to yield restriction during a temporary period that applies to such proceeds. In addition, the issuer may treat up to the **lesser of 5%** of the sale proceeds of a tax-exempt obligation or \$100,000 as a “minor portion.” A minor portion is exempt from yield restriction (but not arbitrage rebate).

Reasonably Required Reserve or Replacement Fund – Also, the gross proceeds of a tax-exempt obligation allocable to a “reasonably required reserve or replacement fund” are not subject to yield restriction. The reasonably required reserve or replacement fund exception to yield restriction applies to the gross proceeds of a tax-exempt obligation allocated to a debt service reserve fund that does not exceed the **least of:**

- 10% of the stated principal amount of the issue,
- The maximum annual debt service of the issue, or
- 125% of the average annual debt service of the issue.

No more than 10% of the stated principal amount of a tax-exempt obligation may be used to finance any reserve or replacement fund.²⁰

Gross proceeds allocable to a reasonably required reserve or replacement fund are subject to arbitrage rebate unless a rebate exception applies. Gross proceeds in excess of the reasonably required reserve or replacement fund exception are also subject to yield restriction.

¹⁹ See federal regulations Section 1.148-3(k).

²⁰ See federal regulations Section 1.148-2(f)(1).

Background – Private Business Use

Federal tax law strictly limits the extent to which tax-exempt bond proceeds and tax-exempt financed assets may be used for non-governmental purposes. Use in excess of these limits may cause the bonds to be treated as “private activity” bonds, and consequently, no longer be treated as federally tax-exempt. Bonds are considered private activity bonds if the bonds meet the **private business use test** and the **private security or payment test**, or if the bonds meet the **private loan financing test**.

Private Business Use – Private business use means the direct or indirect use of tax-exempt financed property in a trade or business by any person other than a governmental unit or the general public.²¹ This includes tax-exempt non-profit organizations and the Federal government. For purposes of applying the private business use test to qualified 501(c)(3) bonds, governmental units include the activities of 501(c)(3) organizations that are not treated as unrelated trade or business.²²

Activities that may result in private business use include:

- Leases of tax-exempt financed space for a bookstore, gift shop, coffee shop, restaurant, etc., or to a for-profit organization or for any other unrelated business purpose
- Certain management and service contracts related to the operation of the tax-exempt financed space, such as food service, maid service, or laundry service arrangements
- Use of space for sports and entertainment events and performances
- Licensing agreements
- Research agreements with corporations to test and support that corporation’s products
- Sharing of parking facilities with a for-profit organization
- Naming rights
- Sale of financed property
- Vending operations
- Any other arrangement that creates a special entitlement to use the space in an unrelated business use

²¹ See Code Section 141(b)(6).

²² See federal regulations Section 1.145-2(b).

Private Business Use Test – The private business use test is met if more than 10% of the proceeds of the issue are to be used for any private business use. If the private business use is unrelated or is disproportionate to the governmental use of the proceeds, then the 10% limitation is reduced to 5%. The 5% limitation also applies to qualified 501(c)(3) bonds (e.g., bonds issued to finance the facilities of institutions of higher education and non-profit hospitals).

Private Security or Payment Test –The private security or payment test is met if the payment of debt service on more than 10% of the proceeds of the issue is directly or indirectly: (1) secured by property used or to be used for a private business use, or payments in respect of such property, or (2) to be derived from payments in respect of property, or borrowed money, used or to be used for a private business use.²³

Output Facility Impact – In addition, bonds may be treated as meeting the private business use test and the private security or payment test if 5% or more of the proceeds of the tax-exempt bonds are to be used to finance projects related to an **output facility** and if certain expenditure thresholds with respect to output facilities are exceeded (generally \$15 million).²⁴

Private Loan Financing Test – The private loan financing test is met if the lesser of 5% of the proceeds of the bonds or \$5,000,000 are used to make loans to non-governmental units or persons. For this purpose, loans do not include proceeds used to enable the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function, to acquire non-purpose investments, or for a qualified natural gas supply contract.²⁵

Exceptions to Private Business Use – Several exceptions to private business use are established in the federal regulations. In addition, the following IRS Revenue Procedures establish safe harbor exceptions from private business use:

- **Revenue Procedure 2017-13** establishes safe harbors under which management and certain other service agreements do not result in private business use; and
- **Revenue Procedure 2007-47** establishes safe harbors under which research agreements do not result in private business use.

Bond counsel should be consulted to determine if any exceptions to private business use apply. Bond counsel should also review all management and service contracts and research agreements to determine if they result in private business use.

Measuring Private Business Use – Measuring private business use is complicated and may require the involvement of bond counsel. As an initial step, an issuer needs to identify all property financed (or refinanced) with the proceeds of each tax-exempt bond issue and determine the use of that property during each fiscal year. If the issuer has entered into any

²³ See Code Section 141(b).

²⁴ See Code Section 141(b)(4) and 141(b)(5) for additional information regarding private business use limitations with respect to output facilities.

²⁵ See Code Section 141(c).

arrangements with non-governmental units with respect to the use of a tax-exempt financed facility, then that use should be considered private business use unless an exception (as described above) applies.

Measurement Period – Once the issuer has completed its review of the use of tax-exempt financed property, the next step is to measure private business use. Private business use is measured on an issue by issue basis. The measurement period for each tax-exempt financed asset begins on the later of the issue date or the date the asset is placed in service and it ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue financing the property.²⁶ If the bonds are refunded, then the end of the measurement period includes the latest maturity date of the refunding bonds.²⁷

As an example, assume a tax-exempt obligation financed the construction of a building as follows:

Table 5: Measurement Period Example	
Issue Date of Bonds	January 1, 2011
Reasonably Expected Economic Life of the Financed Building	40 Years
Placed in Service Date	January 1, 2013
Maturity Date of Bonds finance the Building	January 1, 2031
Measurement Period	28 Years – from 1/1/2013 – 1/1/2031

Under the scenario above, the measurement period with respect to the Bonds would begin on January 1, 2013 and end on January 1, 2031.

Private business use is measured over 1-year periods. To determine the private business use over the life of a bond issue, compute the average of the annual private business use for all years of all assets financed by the bonds. If multiple assets were financed, then private business use should be calculated on a weighted average basis with assets weighted by the amount of proceeds of the bonds used to finance each asset.

Treatment of Idle Time – If a facility is financed with tax-exempt bond proceeds, allocations of good use and bad use are generally determined based on the actual amount of time it was used by different users. In determining the amount of actual use, periods during which the facility is not in use (i.e., idle time) are disregarded.²⁸

Simultaneous Government Use and Private Business Use – In addition, if a facility is simultaneously used for both government use and private business use, then the entire facility is treated as being used for private business use. However, the regulations permit allocations

²⁶ See federal regulations Section 1.141-3(g)(2)(i).

²⁷ See federal regulations Section 1.141-13(b)(2)(iii).

²⁸ See federal regulations Section 1.141-3(g)(4)(ii).

between government and private use if the simultaneous use is on the same basis (e.g., a parking garage).²⁹

Allocation of Discrete Uses – The regulations also permit issuers to treat a discrete portion of a facility as a separate facility if bond proceeds were specifically allocated to finance that portion of the facility.³⁰

Private Business Use if Fair Market Value is Disproportionate – If the fair market value of the private business use is significantly higher than the governmental use, the regulations require private business use to be determined based on relative fair market values instead of usage based on time.³¹

Allocation of Neutral Costs – The regulations also require a reasonably ratable allocation of common areas within a financed facility, and “neutral costs.”³² Neutral costs include proceeds used to pay costs of issuance, amounts allocated to a reasonably required reserve or replacement fund, or amounts paid as fees for a qualified guarantee or a qualified hedge. However, with respect to qualified 501(c)(3) bonds, proceeds used to pay costs of issuance are treated as allocated to a private business use.³³

²⁹ See federal regulations Section 1.141-3(g)(4)(iii).

³⁰ See federal regulations Section 1.141-3(g)(4)(iv).

³¹ See federal regulations Section 1.141-3(g)(4)(v).

³² See federal regulations Section 1.141-3(g)(5) and 1.141-3(g)(6).

³³ See federal regulation Section 1.145-2(c)(2).

Remedial Action – If a bond issue meets the private business use test or the private loan financing test and no other options (such as a different allocation of proceeds to expenditures) are available to achieve compliance, the bonds become non-qualified, and the issuer may be required to undertake a remedial action. An example of a circumstance that requires a remedial action is the sale of a tax-exempt financed asset, lease of a tax-exempt financed asset, or a change in the use of tax-exempt financed asset (such as a change in the use of a facility).

Examples of a remedial action include, but are not limited to, the following:

- The redemption of the non-qualified bonds within 90 days of the *circumstances giving rise to the remedial action* (the “deliberate action”), or
- The establishment of a yield-restricted defeasance escrow within 90 days of the deliberate action to defease the non-qualified bonds.

An issuer should consult with bond counsel regarding circumstances that may require a remedial action and the appropriate action to comply with the federal tax law requirements. In certain circumstances, if the deliberate action is the sale of a tax-exempt financed asset, the issuer may be permitted to allocate the disposition proceeds (the proceeds received from the sale of the asset) to qualified expenditures, such as to obtain a replacement asset, in lieu of defeasing bonds or establishing an irrevocable defeasance escrow to defease bonds.³⁴

³⁴ See federal regulations Section 1.141-12(e) and 1.142-2(c)(4).

Background – Records Retention

Federal tax law requires issuers and conduit borrowers to maintain material records that support the basis upon which an obligation is treated as exempt from federal income tax. Federal tax law requires issuers and conduit borrowers to maintain such material records for the life of the bonds (i.e., to the final maturity date) plus three (3) additional years. If a tax-exempt obligation is refunded, then the issuer and conduit borrower are required to maintain such material records for the later of the life of the original bonds or the refunding bonds, plus three (3) additional years.

Examples of material records to be retained include:

- The Bond Transcript (e.g., the closing documents)
- Board minutes and/or resolutions that authorize the issuance of tax-exempt debt
- Appraisals related to projects financed with tax-exempt debt
- Newspaper advertisements and public notices related to tax-exempt debt
- Records that indicate the non-purpose investments that were allocated to the proceeds of the bonds (e.g., bank statements) and the investment cash flows associated with such investments
- Records related to the acquisition or sale of an investment agreement, hedging instrument (e.g., interest rate swap), qualified guarantee (e.g., letter of credit agreement), or a defeasance escrow
- Records that indicate the allocation of tax-exempt proceeds to authorized expenditures (e.g., journal entries)
- Any IRS Forms that were filed, such as IRS Forms 8038-T, 8038-R, or 8038-CP
- Arbitrage rebate, yield restriction, penalty-in-lieu of rebate, and exception compliance calculations and reports
- Records related to the use of tax-exempt financed facilities and other tax-exempt financed assets
- Copies of all management and service contracts, lease arrangements, and research agreements entered into and related to property financed with tax-exempt proceeds

Background – Continuing Disclosure

SEC Rule 15c2-12 requires the disclosure of financial information (“financial-based disclosures”) deemed to be material with respect to the issuer’s ability to repay the principal and interest of a publicly offered obligation. Financial-based disclosures include:³⁵

- Audited financial statements
- Budget information
- Changes in fiscal years/timing of disclosures
- Interim/additional financial information and operating data
- Investment, debt, and other financial policies
- Information provided to rating agencies, credit support providers, or other third parties
- Consultant reports
- Any other applicable financial data

Required financial-based disclosures include annual financial information concerning the obligor(s) of the debt, including the information included in the official statement or other public offering document. In addition, audited financial statements concerning the obligor(s) of the debt is typically required to be disclosed annually as is any notice of failure to provide such financial information by the disclosure due date.

SEC Rule 15c2-12 also requires issuers to file notices of events (“event-based disclosures”) that are deemed to be material with respect to the issuer’s ability to repay the principal and interest of a publicly offered obligation. **For any tax-exempt obligation issued prior to December 1, 2010** issuers are required to provide notice to the Municipal Securities Rulemaking Board (“MSRB”) of the following events, if material:

- Principal and interest payment delinquencies;
- Non-payment related defaults, if material;
- Unscheduled draws on debt service reserve funds reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity provider, or their failure to perform;
- Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the security, or other material events affecting the tax status of the security;
- Modification to the rights of security holders, if material;
- Bond calls, if material, and tender offers;
- Defeasances;
- Release, substitution, or sale of property securing repayment of the security, if material;
- Rating changes;

³⁵ Source: MSRB

For any tax-exempt obligations issued on or after December 1, 2010, event-based disclosures are required to be filed with the MSRB not later than 10 business days after the occurrence of the event. Mandatory event-based disclosures include:³⁶

- Principal and interest payment delinquencies;
- Non-payment related defaults, if material;
- Unscheduled draws on debt service reserve funds reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity provider, or their failure to perform;
- Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the security, or other material events affecting the tax status of the security;
- Modification to the rights of security holders, if material;
- Bond calls, if material, and tender offers;
- Defeasances;
- Release, substitution, or sale of property securing repayment of the security, if material;
- Rating changes;
- Bankruptcy, insolvency, receivership or similar event of the obligor;
- The consummation of a merger, consolidation or acquisition involving the obligor or the sale of all or substantially all of the assets of the obligor, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement, if material;
- Appointment of a successor or additional trustee, if material;
- Incurrence of a **Financial Obligation** of the Authority or of any Institution, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a **Financial Obligation** of the Authority or of such Institution, as the case may be, any of which affect holders of Offered Bonds, if material; and
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a **Financial Obligation** of the Authority or of any Institution any of which reflect financial difficulties.

Issuers are encouraged by the MSRB to submit non-mandatory event-based disclosures. Examples of such voluntary event-based disclosures include:³⁷

- Amendment to continuing disclosure agreement
- Change in the obligor
- Notice to investor pursuant to bond documents
- Communication from the IRS
- Bid for auction rate or other securities
- Capital or other financing plan
- Litigation/enforcement action

³⁶ Source: MSRB

³⁷ Source: MSRB

- Change of tender agent, remarketing agent, or other on-going party
- Use of derivative or other similar transaction
- Any other event-based disclosure

Disclosures are required to be filed through use of the MSRB's Electronic Municipal Market Access ("EMMA") system. EMMA can be accessed on the MSRB's website at www.msrb.org.

Generally, publicly offered obligations are not exempt from the requirements of Rule 15c2-12. However, in certain circumstances, disclosure may not be required for an obligation. An issuer should seek guidance from bond or disclosure counsel regarding the disclosure requirements for each of its obligations. Additional information is available on the MSRB's website.

Appendix B: Glossary – General Use Terms

Available Amounts – Any amount that is available to an issuer for working capital expenditure purposes of the type financed by a tax-exempt obligation. Available amounts include cash, investments, and other amounts held in accounts or otherwise by the issuer or a related party if those amounts may be used for working capital expenditures of the type being financed by the tax-exempt obligation without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed. However, available amounts do not include a reasonable working capital reserve (not more than 5% of the actual working capital expenditures of the issuer in the previous fiscal year) or qualified endowment funds.³⁸

Bond Year – With respect to a tax-exempt obligation, a bond year is each 1-year period that ends on the day selected by the issuer. The first and last bond years may be short periods (i.e., the issuer may select a first bond year anniversary date that is earlier than the first anniversary date of the issue). If no day is selected by the issuer before the earlier of the final maturity date of the issue or the date that is five (5) years after the issue date, bond years end on each anniversary of the issue date and on the final maturity date.³⁹

Capital Expenditure – Any cost of a type that is properly chargeable to a capital account (or would be so chargeable with a proper election with the application of the definition of placed in service under federal regulation Section 1.150-2(c)) under general Federal income tax principles. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures. Whether an expenditure is a capital expenditure is determined at the time the expenditure is paid with respect to the property. Future changes in law do not affect whether an expenditure is a capital expenditure.⁴⁰

Constructed Personal Property – **Tangible Personal Property** or specially developed software that meets the following requirements:⁴¹

- A substantial portion of the property or properties is completed more than 6 months after the earlier of the date construction or rehabilitation commenced and the date the issuer entered into an acquisition contract;
- Based on the reasonable expectations of the issuer, if any, or representations of the person constructing the property, with the exercise of due diligence, completion of construction or rehabilitation (and delivery to the issuer) could not have occurred within that 6-month period; and
- If the issuer itself builds or rehabilitates the property, not more than 75% of the capitalizable cost is attributable to property acquired by the issuer (e.g., components, raw materials, and other supplies).

Construction Expenditure – Capital expenditures that are allocable to the cost of **Real Property** or constructed personal property. Except as permitted by federal tax law, construction expenditures do not include expenditures for acquisitions of interest in land or

³⁸ See federal regulations Section 1.148-6(d)(3)(iii).

³⁹ See federal regulations Section 1.148-1(b).

⁴⁰ See federal regulations Section 1.150-1.

⁴¹ See federal regulations Section 1.148-7(g)(3).

other real existing property.⁴² For example, expenditures for the acquisition of equipment are generally not considered construction expenditures. However, construction expenditures include expenditures for components, raw materials, supplies, and labor related to construction or renovation.

Expenditure – A current outlay of cash for a governmental purpose of the tax-exempt obligation. Pursuant to federal regulations Section 1.148-6(d)(ii), a current outlay of cash means an outlay reasonably expected to occur not later than five (5) banking days after the date of which the allocation of gross proceeds to the expenditure is made.

Extraordinary, Non-Recurring Item – Expenditures that are considered extraordinary, non-recurring items are payments that are not customarily payable from current revenues. Examples include casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage. However, if an issuer has set aside reserves for such payments, the set-aside reserves must be applied toward the payment before the issuer can allocate gross proceeds of a bond issue to the payment.⁴³

Financial Obligation – A debt obligation, derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or guarantee of a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation. The term financial obligation excludes municipal securities for which a final official statement has been provided to the MSRB consistent with SEC Rule 15c2-12.

Good Use/Bad Use Report – A report prepared during a tax-exempt bond sale that lists all the projects being funded in the bond sale along with the amount of private use each project has, as determined by bond counsel.

Guaranteed Investment Contract – Any investment contract that includes any non-purpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate. A guaranteed investment contract includes any agreement to supply investments on two (2) or more future dates. Examples include forward supply contracts, forward delivery agreements, certain repurchase agreements, and other investment agreements with negotiated terms as described herein.⁴⁴

Issuance Costs – Costs incurred in connection with, and allocable to, the issuance of an obligation. Examples of issuance costs include underwriters' spread, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees, bond registrar, certification, and authentication fees, accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, guarantee fees (other than for qualified guarantees), and other similar costs.⁴⁵

⁴² See federal regulations Section 1.148-7(g)(1).

⁴³ See federal regulations Section 1.148-6(d)(3)(ii)(B).

⁴⁴ See federal regulations Section 1.148-1(b).

⁴⁵ See federal regulations Section 1.150-1.

Output Facility – Means electric and gas generation, transmission, distribution, and related facilities, and water collection, storage, and distribution facilities.⁴⁶

Placed in Service – (i) The date on which a facility has reached a degree of completion, which would permit its operation at substantially its design level; and (ii) the facility is in operation at such level.⁴⁷

Preliminary Expenditures – Expenditures for architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to the commencement of acquisition, construction, or rehabilitation of a project. This does not include preliminary expenditures related to land acquisition, site preparation, and similar costs incident to commencement of construction.⁴⁸

Qualified Administrative Costs – Reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. Examples include reasonable brokerage fees related to the purchase and sale of securities, qualifying expenses related to the operation of regulated investment companies (e.g., registered mutual funds) and certain commingled investment pools, and qualifying expenses related to the procurement of guaranteed investment contracts and yield restricted defeasance escrows.⁴⁹

Real Property – Land and improvements to land, such as buildings or other inherently permanent structures, including interests in real property. For example, real property includes wiring in a building, plumbing systems, central heating or air-conditioning systems, pipes or ducts, elevators, escalators installed in a building, paved parking areas, roads, wharves and docks, bridges, and sewage lines.⁵⁰

Reimbursement Resolution – A document declaring an issuer’s official intent to reimburse an original expenditure with proceeds of an obligation.

State and Local Government Series – SLGS securities are offered for sale to issuers of state and local government tax-exempt debt to assist with compliance of yield restriction or arbitrage rebate provisions of the Internal Revenue Code.

Substantially Completed – Construction may be treated as substantially completed when the issuer abandons construction or when at least 90% of the total costs of the construction reasonably expected, as of that date, to be financed with available construction proceeds have been allocated to expenditures.⁵¹

Tangible Personal Property – Any tangible property other than real property, including interest in tangible personal property. For example, tangible personal property includes

⁴⁶ See federal regulations Section 1.141(b).

⁴⁷ See federal regulations Section 1.150-2(c).

⁴⁸ See federal regulations Section 1.150-2(f)(2).

⁴⁹ See federal regulations Section 1.148-5(e).

⁵⁰ See federal regulations Section 1.148-7(e)(3)(i).

⁵¹ See federal regulations Section 1.148-7(e)(3)(iii).

machinery that is not a structural component of a building, subway cars, fire trucks, automobiles, office equipment, testing equipment, and furnishings.⁵²

Working Capital Expenditure – A current outlay of cash for non-capital expenditures. Examples of working capital expenditures include operating or administrative expenses, such as payroll, non-capital accounts payable, and debt service payments (excluding capitalized interest).

⁵² See federal regulations Section 1.148-7(e)(3)(ii).

Appendix C: Other Resources

Description	Location
IRS Compliance Check Questionnaire – Governmental Bonds (Form 14002)	http://www.irs.gov/pub/irs-tege/f14002.pdf
IRS Compliance Check Questionnaire – Advance Refunding Bonds (Form 14246)	http://www.irs.gov/pub/irs-tege/f14246.pdf
Frequently Asked Questions Regarding Record Retention	https://www.irs.gov/tax-exempt-bonds/tax-exempt-bond-faqs-regarding-record-retention-requirements
IRS Notice 2008-31 Regarding the Voluntary Closing Agreement Program (“VCAP”)	http://www.irs.gov/pub/irs-drop/n-08-31.pdf
IRS Revenue Procedure 1995-47: Alternative procedure when the sales of IRS SLGS are suspended	http://www.irs.gov/pub/irs-tege/rp95_47.pdf
IRS Revenue Procedure 2005-40: Procedures related to late payments	http://www.irs.gov/pub/irs-tege/rp-05-40.pdf
IRS Revenue Procedure 2008-37: Procedures related to overpayments (refunds)	http://www.irs.gov/pub/irs-drop/rp-08-37.pdf
IRS Revenue Procedure 1997-13: Safe harbor related to certain management and service agreements	http://www.irs.gov/pub/irs-irbs/irb97-05.pdf
IRS Form 8038G and instructions	http://www.irs.gov/pub/irs-pdf/f8038g.pdf http://www.irs.gov/pub/irs-pdf/i8038g.pdf
IRS Form 8038T and instructions	http://www.irs.gov/pub/irs-pdf/f8038t.pdf http://www.irs.gov/pub/irs-pdf/i8038t.pdf
Tax-Exempt Governmental Bonds Compliance Guide (Publication 4079)	http://www.irs.gov/pub/irs-pdf/p4079.pdf
ACT Report – After the Bonds are Issued: Then What?	http://www.irs.gov/pub/irs-tege/bonds_act_0607.pdf

Appendix D: State of Tennessee Forms, Reports and Acronyms

Forms and Reports

Contract Summary Sheet – Form created and used by Agency and sent to CPO for contracts and management agreements

PFI – Physical Facility Inventory. Annual report by Tennessee Board of Regents or University of Tennessee which reconciles how space is used

RDA – Record Disposition Authorization

Common Acronyms

CP – Commercial Paper

CPO – Central Procurement Office

DGS – Tennessee Department of General Services

ECD – Tennessee Department of Economic & Community Development

Edison – State's general accounting system

EMMA – Electronic Municipal Market Access, a system of the MSRB

F&A – Tennessee Department of Finance & Administration

GUBU – Good Use/Bad Use Report

LGI – Locally Governed Institution, administratively a part of the TBR system

MSRB – Municipal Securities Rulemaking Board

OBF – Office of Business and Finance

SBC – State Building Commission, administratively a part of the Office of the State Architect

SEC – U.S. Securities and Exchange Commission

SFB – State Funding Board

SGF – Division of State Government Finance

SLGS – State and Local Government Series securities, issued by the United States Department of the Treasury.

STREAM – State of Tennessee Real Estate Asset Management

TBR – Tennessee Board of Regents system (Higher Education institution)

TCA – Tennessee Code Annotated

TCB – Tax Credit Bonds

TDEC – Tennessee Department of Environment & Conservation

TLDA – Tennessee Local Development Authority

TSSBA – Tennessee State School Bond Authority

UT – The University of Tennessee system (Higher Education institution)

Appendix E: Post-Issuance Compliance Assessment Form

**State of Tennessee
Post-Issuance Compliance Assessment**

This Assessment is to be completed annually by the State of Tennessee Post-Issuance Compliance Team (the “PIC Team”) and submitted to the Chief Compliance Officer no later than 90 days after the fiscal year end date.

Check all boxes that apply. Disregard procedures that did not apply during the reporting period and mark as “N/A.” In the Notes section, identify and describe the circumstances regarding applicable procedures that were not implemented during the reporting period. There is no need to address procedures that did not apply during the reporting period in the Notes section.

Part I. Training and Education

- The PIC Team participated in at least 1 hour of training on PIC.
- Additional staff members participated in training on PIC. The additional staff members that participated in training on PIC were (list names and titles of participating staff):

- The PIC Team reviewed the Issuer’s PIC Procedures and each PIC Team member’s role and responsibilities with respect to undertaking the procedures set forth therein.

Part II. Post-Issuance Tax Compliance

Use of Proceeds

- Reviewed financing agreements, loan agreements with borrowers, Commercial Paper vender activity reports from F&A, status reports, and disbursement records (i.e. Edison voucher and attachments FileNet support) in accordance with its Use of Proceeds procedures.
- Verified that a reimbursement resolution was adopted prior to the disbursement of proceeds for a reimbursement or verified that the disbursement does not require a reimbursement resolution.

- Prepared and reviewed with bond counsel a project substitution certificate or memorandum for any change in the list of approved projects to be financed with the proceeds of the applicable tax-exempt obligation.
- Prepared a project completion certificate or memorandum upon completion of the financed project.
- Followed all other Use of Proceeds procedures.

Accounting for Proceeds

- Applied a reasonable accounting method to account for the allocation of proceeds to permitted expenditures.
- Certified the final allocation of bond proceeds to expenditures in accordance with procedures.
- Allocated interest earnings in accordance with accounting procedures.
- Followed all other Accounting for Proceeds procedures.

Investment of Proceeds

- If any investments are held outside of the State Pool, reviewed all external investments and certified that all investments held were in compliance with the State's investment policy and bond document restrictions.
- Acquired and/or sold investments in accordance with procedures.
- Acquired any guaranteed investment contracts in accordance with procedures.
- Acquired investments for a yield restricted defeasance escrow in accordance with procedures.
- Followed all other Investment of Proceeds procedures.

Qualified Guarantees

- Obtained a qualified guarantee(s) for tax-advantaged obligations issued during the reporting period and followed all other Qualified Guarantee procedures.

Arbitrage Rebate & Yield Restriction Compliance

- Either internally prepared or directed the arbitrage rebate consultant to prepare arbitrage rebate, yield restriction, and spending exception compliance calculations for all tax-exempt obligations subject to the arbitrage rebate and yield restriction requirements.

- Timely provided the arbitrage rebate consultant with the bond documents and financial data needed to prepare arbitrage rebate, yield restriction, and spending exception compliance calculations.
- Informed the arbitrage rebate consultant of all final calculation dates no later than 15 days after the final discharge date of the tax-exempt obligation.
- Followed all other General Arbitrage Rebate Compliance procedures.
- Monitored, or directed the arbitrage rebate consultant to monitor, the spending exception compliance of applicable new money tax-exempt obligations.
- Followed all other Spending Exception Compliance procedures.
- Followed all Yield Restriction Compliance procedures.
- Timely filed all arbitrage rebate and yield reduction payments.

Private Business Use

- Before entering into any lease arrangements, management or service agreements, research agreements, or any other legal arrangements with respect to the use of a tax-exempt financed asset, the entity notified the Issuer who then notified bond counsel of intent to enter into such arrangement.
- Obtained any lease arrangements, management or service agreements, research agreements, or any other legal arrangements with respect to the use of a tax-exempt financed asset and bond counsel has reviewed such arrangements.
- Before entering into any agreement to dispose of a tax-exempt financed asset, notified the Issuer who then notified bond counsel of intent to enter into a sales agreement.
- Declared intent to sell, destroy, or demolish a tax-exempt financed asset. Obtained a draft of the sales agreement and bond counsel has reviewed such agreement.
- Reviewed the use of tax-exempt financed assets.
- Worked with bond counsel to determine if a remedial action is required with respect to non-qualified bonds and implemented such remedial action.
- Followed all other procedures related to private business use compliance.

Record Retention

- Maintained material records in accordance with record retention procedures.

Miscellaneous Procedures

- Received confirmation that all IRS Form 8038s have been submitted to the IRS.
- Collected all arbitrage rebate and yield restriction calculations prepared internally or by the arbitrage rebate consultant.

Part III. Continuing Disclosure Procedures

- Timely filed all required financial-based disclosures on EMMA.
- Timely filed any mandatory event-based disclosures on EMMA.
- Checked EMMA listing for all outstanding issues and confirmed timely postings of all required disclosures.

Notes:

Submitted by the Chief Compliance Officer:

Signature

Date