

# Tax-Exempt Bonds

## Post Issuance Compliance

### Overview

Upon the issuance of bonds, the issuer and borrower have a significant number of post-issuance obligations with regard to monitoring a bond issue for compliance with federal tax rules in order to maintain the tax-exempt status on the bonds. In 2011, the Internal Revenue Service revised their Information Return for Tax-Exempt Private Activity Bond Issues, requesting that issuers certify [a] the establishment of written procedures to monitor post-issuance compliance requirements; and [b] the establishment of procedures with respect to remediation for nonqualified bond issues. In Oct. 2011, the South Carolina Jobs-Economic Development Authority instituted written procedures to make borrowers, whose projects were financed using issue tax-exempt bonds, aware of post-issuance obligations required under the federal tax rules.

Strategic examples of post-issuance compliance obligations are:

- Tracking proceeds of a tax-exempt bond issue to ensure use for qualified purposes
- Keeping detailed records of all expenditures and investments related to bond funds
- Ensuring financed project is used in a manner consistent with legal requirements
- Providing annually required disclosure information regarding financial and operating status

### IRS Recommended Actions

It is essential that borrowers develop and maintain a robust post-issuance compliance program to track their compliance with all applicable requirements. The Internal Revenue Service recommends that material tax records be retained three years beyond the life of a bond issue. Borrowers with effective post-issuance tax compliance programs are likely to be more successful in responding to any potential IRS inquiry and better positioned to effectively judge the possible benefits of future refunding opportunities.

The most critical step in a comprehensive compliance program is consultation with members of the finance team, including bond counsel at the time of issuance to determine the borrower's obligations.

JEDA sends annual self-certifications regarding post issuance compliance, which include any relevant changes in post-issuance compliance requirements to its borrowers.

## Other Resources

Additional resources on the topic of post-issuance compliance

- Internal Revenue Service's site for the tax-exempt bond community.  
<http://www.irs.gov/taxexemptbond/index.html>
- After The Bonds Are Issued: Then What? – Here's an article provided on the IRS website discussing the post-issuance compliance responsibilities of borrowers.  
[http://www.irs.gov/pub/irs-tege/bonds\\_act\\_0607.pdf](http://www.irs.gov/pub/irs-tege/bonds_act_0607.pdf)
- Post-Issuance Compliance checklist provided by the Government Finance Officers Association ("GFOA") and the National Association of Bond Lawyers ("NABL").  
<http://www.gfoa.org/downloads/PostIssuanceCompliance.pdf>