TREASURER OF STATE

POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES

FOR CONDUIT DEBT

(April 2018)

STATE OF OHIO

The purpose of these Post-Issuance Compliance Policies and Procedures for Conduit Debt is to document practices and establish various procedures and systems to aid the Treasurer of State ("TOS" or the "Conduit Issuer") in ensuring that borrowers (referred to herein as the "Borrower") of conduit bonds issued by TOS (collectively referred to herein as the "Conduit Bonds") comply with applicable post-issuance federal tax and federal securities law requirements.

These policies and procedures are designed to ensure consistent compliance over the term of Conduit Bonds that are outstanding at the time these procedures are adopted and for Conduit Bonds issued in the future. These policies and procedures also intend to complement similar policies for obligations issued by the State and backed by State revenue.[1] These policies and procedures include pre-issuance considerations pertaining to the structuring and documentation of a Conduit Bond issuance. In the event of changes to applicable law, the procedures may be revised accordingly.

Currently, TOS serves as the Conduit Issuer for three programs: the Federal Title XXIII State Infrastructure Bank Program ("Federal SIB"), the State Transportation Infrastructure Bond Fund Program ("State SIB"), and the Ohio Enterprise Bond Fund Program ("OEBF").[2] Conduit Bonds are issued on a project-by project basis. The Federal SIB promotes the development of eligible Title XXIII projects, which include state and federal roadways, as well as transit projects. The State SIB furthers development of roadway, rail, aviation, water, intermodal, transit and other transportation facilities. The OEBF is an economic development financing program sponsored by the Ohio Development Services Agency. Each of these problems enables borrowers to benefit from the State's access to the national capital markets through the issuance of Conduit Bonds.

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1 See the "Post-Issuance Compliance Procedures for Tax-Exempt Bonds and Building America Bonds" and the "Office of Budget and Management Municipal Securities Disclosure Policy and Procedures".

2 TOS has also served as a Conduit Issuer for other bond programs not listed in this policy. These other bond programs include the State's Community College Intercept Program and Private Activity Bonds issued for the Portsmouth Bypass Project.

GENERAL MATTERS

(1) STAFFING

(a) Identify the employee or official responsible for each of the procedures listed below, advise the current holder of that office of the responsibilities under these procedures, and provide that person with a copy of these procedures. This section applies to both TOS and the Borrower; as each entity is responsible for various compliance items.

  i. Upon employee or official transitions, repeat section (1)(a) above.

  ii. If employee or official positions are restructured or eliminated, identify the employee of official responsible for the procedure(s) under the new structure and repeat (1)(a) above.

(2) TRAINING, CONTINUING EDUCATION, AND PERIODIC REVIEW

(a) TOS and the Borrower and any staff deemed appropriate by either entity shall periodically and as necessary obtain education and training on federal tax and securities laws requirements for post-issuance compliance as applicable to the Conduit Bonds.

(b) The Borrower is encouraged to adopt its own formal post-issuance compliance policies and procedures. Upon request, TOS can provide the Conduit borrowers with materials to aid in the drafting of post-issuance compliance policies and procedures.

(c) These policies and procedures will be reviewed and updated periodically as new requirements are identified or improvements are made. Copies of any revised policies and procedures will be distributed to Borrowers under the programs and posted to the TOS website.

PRE-ISSUANCE MATTERS

(3) STRUCTURING THE CONDUIT BOND ISSUE

(a) Setting the par amount of the Conduit Bonds

  i. The par amount of the Bonds is based on Borrower needs specific to the financed project. Accordingly, the Borrower should provide a project disbursement schedule, which details projected expenditures for the proposed project over a period of time sufficiently long to enable full expenditure of the Conduit Bond proceeds.

(b) Ensure that the Borrower has a reasonable expectation to meet the spending exception to rebate outlined in the Tax Compliance Certificate for the applicable Conduit issue ("Tax Certificate"), which sets forth the relevant federal tax law requirements for a particular issuance. As a general matter, the Tax Certificate outlines those responsibilities assigned to the Borrower, and the Borrower signs the Tax Certificate confirming their understanding of those responsibilities. In the event that the Borrower does not intend to meet a spending exception to rebate, the par amount will be set to ensure compliance with the applicable Temporary Period[3] requirements.

(c) Setting the sale date of the Conduit Bonds

i. The sale date will be set based on a reasonable expectation that at least 10% of the Conduit Bond proceeds will be spent within six months of the issuance date. (In certain situations, the sale date may not be set based on a reasonable expectation that at least 10% of the Conduit Bond proceeds will be spent within six months of the issuance date. In those cases, the sale date will be set to ensure compliance with the applicable rebate spending exception and/or Temporary Period Requirements).

(4) PRIMARY OFFERING DISCLOSURE

(a) For each Conduit Bond issue, SEC Rule 15c2-12 (the "Rule") requires that at the time of public offering, information about both the Borrower and the Conduit Bonds is disclosed to the original purchasers of the Conduit Bonds. The documents published include the preliminary official statement and the final official statement, which detail information about the Conduit Bonds, TOS, the Borrower and the security structure of the conduit bond program. Underwriter's counsel is responsible for compiling and distributing these materials, unless otherwise determined by the transaction team. At the closing of the sale, the final official statement is posted to the Municipal Securities Rulemaking Board ("MSRB")'s Electronic Municipal Market Access ("EMMA") by a designated member of the transaction team.

[3] The time period during which proceeds of an issue may be invested in higher yielding investments without causing the bonds in the issue to become Arbitrage Bonds (Treasury Reg. §1.148-2(e)(1)). There is generally a three-year Temporary Period for capital projects, contingent on the issuer's following reasonable expectations: Eighty-five percent of the net sale proceeds of the issue are allocated to expenditures on the capital projects by the end of the 3-year Temporary Period, the issuer incurs within 6 months of the issue date a substantial binding obligation to a third party to expend at least 5 percent of the net sale proceeds of the issue on capital projects, and completion of the capital projects and the allocation of the net sale proceeds of the issue to expenditures proceeds with due diligence (Treasury Reg. §1.148-2(e)(2)).

(b) In addition to the offering documents published to sell the Conduit Bonds, the underwriter must have reasonable belief that the Conduit Issuer is in compliance with the Rule. TOS will cooperate and furnish any requested information to the underwriter and underwriter's counsel, as necessary, such that the underwriter has the reasonable belief that TOS is in compliance with the Rule.

<u>BOND SALE MATTERS</u>

(5) FINAL CASH FLOWS, ISSUE PRICE/YIELD, PREMIUM/DISCOUNT, COSTS OF ISSUANCE, TRANSCRIPT

(a) Ensure that the final cash flows include calculations with respect to the Conduit Bond proceeds, issuance costs and original issue premium/discount of the Bonds.
   i. Confirm the final cash flows provided by the underwriter or private placement agent by checking them against a duplicate set of cash flows prepared by the financial advisor or TOS.

(b) For publicly-offered Conduit Bonds, receive pricing data from comparable transactions along with other market factors that are used to inform pricing negotiations.

(c) With respect to Conduit Bond proceeds deposited in the costs of issuance account, the Borrower will expend those Conduit Bond proceeds for issuance costs and close the account by the date specified in the Tax Certificate. Upon closing of the cost of issuance account, the Borrower shall direct the deposit of remaining funds, if any, in the applicable account in accordance with the respective indenture or supplemental trust agreement.

(d) Ensure that the Tax Certificate includes a statement that the Conduit Bonds comply with the requirement that TOS expects at least 85% of the Conduit Bond proceeds[4] to be allocated to capital expenditures within 3 years (unless a longer Temporary Period[5] is applicable).

(e) Ensure that IRS Form 8038 or 8038-G is completed and timely filed with respect to a Conduit Bond issuance and maintain a copy of the filed IRS Form 8038 or 8038-G.

(f) Confirm EIN to be used with bond counsel prior to submission.

(g) Monitor for receipt of acknowledgement of Form 8038 or 8038-G from the IRS and maintain it as part of the Transcript for the Conduit Bond issue.

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[4] The excess of the Conduit Bond proceeds divided by the issuance costs plus investment proceeds, less any amount deposited in a reasonably required reserve fund.

[5] As defined in the Tax Certificate.

(h) Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the "Transcript").

POST-ISSUANCE MATTERS

(6) USE OF PROCEEDS

(a) If applicable, the Conduit Bond proceeds will be allocated to the reimbursement of prior capital expenditures as set forth in any reimbursement declarations, in accordance with the Federal reimbursement regulations.
(b) The Borrower monitors spending via bank statements from the applicable bank accounts.
(c) The Borrower ensures that a final allocation of Conduit Bond proceeds (including any investment earnings) to qualifying expenditures is made by the Trustee if Conduit Bond proceeds are to be allocated to project expenditures on a basis other than direct tracing.[6] The Borrower should consult with bond counsel with respect to the timeframes and other requirements related to allocations other than direct tracing.

(7) CHANGES TO THE TERMS OF THE CONDUIT BONDS

(a) If any changes to the terms of the Conduit Bonds are contemplated (e.g., change in maturity, interest rate or redemption terms), the Borrower should consult with TOS and bond counsel.

(8) MONITORING PRIVATE BUSINESS OR NON-CONFORMING USE

(a) Following the issuance of the Conduit Bonds, the Borrower will consult, as needed, with bond counsel[7], TOS, and other legal counsel and advisors to ensure that all applicable post-issuance requirements are met. This includes, without limitation, consultation in connection with any potential changes in use of Conduit Bond-financed facilities, furnishings or equipment. The Borrower should monitor private use of Conduit Bond-financed facilities for, including but not limited to, events such as:

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[6] Treating the Conduit Bond proceeds as spent as shown in the accounting records for bond draws and project expenditures.

[7] In the post-issuance context, this policy refers generically to legal counsel specialized in public finance law as "bond counsel." In practice, this may be the firm engaged at the time the Conduit Bonds were issued or counsel engaged on a case-by-case basis.

i. Sale of the facilities;
ii. Lease or sub-lease of the facilities;
iii. Management contracts and research contracts involving the facilities; and
iv. Joint-ventures, limited liability companies or partnership arrangements involving the facilities.

(b) The Borrower will consult with TOS, bond counsel and other legal counsel and advisors in the review of any change in use, potential change in use, or transfer of the Conduit Bond-financed project or facility to ensure compliance with all covenants and restrictions set forth in the Tax Certificate.

i. If the Borrower discovers that any applicable tax restrictions regarding the use of Conduit Bond proceeds and/or a facility or project financed with Conduit Bond proceeds have been or may be violated, the Borrower shall promptly notify TOS and consult with bond counsel or other legal counsel and advisors to determine a course of action to remediate all nonqualified use of Conduit Bonds proceeds or take other remedial action, if such remedial action is deemed necessary.

(c) The Borrower will maintain records identifying the assets or portion of projects that are financed with Conduit Bond proceeds, including a final allocation of proceeds to expenditures.

(9) ARBITRAGE

(a) The Borrower is responsible for compliance with all Federal tax law requirements under the arbitrage rules set forth in the Tax Certificate.

(b) To the extent applicable, the proceeds of the Conduit Bond issue will not be invested in investments with a yield above the bond yield (as shown on the applicable IRS Form 8038 or 8038-G) following the end of the available Temporary Period unless yield reduction payments may be made (see Tax Certificate).

(c) As necessary, the Borrower will monitor and track expenditure of Conduit Bond proceeds, including investment earnings relative to expenditure expectations as of the issuance date for satisfaction of the applicable requirements for Temporary Period from yield restriction on investment of Conduit Bond proceeds and to avoid “Hedge Bond” status.

(d) The Borrower will consult with TOS and bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

(e) The Borrower should avoid the creation of funds reasonably expected to be used to pay debt service without determining in advance whether such funds must be invested at a restricted yield.

(f) As set forth in the Tax Certificate, the Borrower is responsible for coordinating with a contracted rebate consultant to perform rebate spending exception analysis and rebate calculations to ensure compliance and timely payments of rebate amounts; if applicable, such payments are generally due 60 days after the fifth anniversary of the issuance date of the Conduit Bond issue, then in succeeding installments every five years. The Borrower will timely provide TOS copies of any completed spending exception analyses and rebate calculations.

(g) In the event a rebate liability or a yield reduction payment is due, TOS, the Borrower and the Trustee, together, shall coordinate with the Borrower's contracted rebate consultant to make such payments and file IRS Form 8038-T in a timely manner. The Borrower is responsible for any rebate amount due to the U.S. Treasury, however, it is the responsibility of TOS, as the Conduit Issuer, to submit the IRS Form 8038-T and payment to the U.S. Treasury. TOS may engage special counsel to facilitate the filing of the IRS Form 8038-T and submission of rebate amounts, or work with the contracted rebate consultant to facilitate such submission. The costs associated with such special counsel may be charged to the Borrower.

(10) EXAMINATION OF CONDUIT ISSUES

(a) If TOS is contacted by the IRS regarding post-issuance tax compliance on the Conduit Bonds, the Borrower and the Trustee will cooperate with TOS and TOS legal counsel in all respects in responding to the IRS. The payment of expenses related to the potential examination or audit of Conduit Bonds will be determined on a case-by-case basis.

(11) TIMELY IDENTIFICATION OF VIOLATIONS OF FEDERAL TAX LAW REQUIREMENTS

(a) The Borrower will promptly notify TOS of any possible violations of Federal tax law. Upon notice from the Borrower, TOS will engage bond counsel or special counsel to examine legal options. If a violation occurs and it is determined that a Voluntary Closing Agreement is needed, TOS is responsible for execution of the Voluntary Closing Agreement. The Borrower will cooperate with TOS, or legal counsel engaged by TOS, to provide any information necessary to enter into a Voluntary Closing Agreement with the IRS. The payment of expenses related to a Voluntary Closing Agreement in connection with a Conduit Bond issue will be determined on a case-by-case basis.

CONTINUING DISCLOSURE

(12) TOS CONDUIT BONDS DISCLOSURE PROCESS

(a) The Continuing Disclosure Agreement (the "CDA") for each issuance of Conduit Bonds sets forth the provisions of the Rule, other SEC regulations and associated contractual undertakings related to disclosure. TOS complies with the Rule by utilizing EMMA.

(b) TOS may require information from the Borrower in order to fulfill its Continuing Disclosure obligations.

(c) TOS prepares and submits, not later than 90 days following the end of each State fiscal year (June 30), required annual disclosure for the Federal SIB, State SIB, and OEBF programs, including:

  i. The Annual Information, and

  ii. The most current audited financial statements available as of the submission deadline, including but not limited to:

    1. For State SIB, the Annual Federal Fiscal Year Financial Report for the Ohio Department of Transportation's State Infrastructure Bank;
    2. For OEBF, the Audited Financial Statements of the Office of Loan Administration of the Development Services Agency; and
    3. As applicable, the financial statements of significant obligors, as that term may be defined under the governing bond documents.

(d) The Continuing Disclosure Agreements also requires TOS to provide notice of Material Events, within the meaning of the Rule, within ten business days of occurrence of the Material Event.

(13) VOLUNTARY DISCLOSURE

(a) In addition to the required annual and event-based Continuing Disclosure, TOS may also elect to publish Voluntary Disclosures to EMMA. Voluntary Disclosures may include, but are not limited to, items such as monthly financial reports, annual budgets, economic forecasts, and investments reports. A Voluntary Disclosure goes beyond the requirements of the Rule and the CDA; however, TOS may determine that such information may be of interest to investors. Should TOS decide to publish a Voluntary Disclosure, TOS may consult with bond counsel on the matter.

RECORDS RETENTION

(14) RECORDS RETENTION PROCESS

(a) TOS, the Borrower and the Trustee will maintain sufficient records and documents described in these procedures in physical and/or electronic form while any of the Conduit Bonds of the issue are outstanding and during the three-year period[8] following the final maturity or redemption of the Conduit Bond issue; or, if any bonds were issued to refund (or re-refund) the original issuance of the Conduit Bonds, for the three year period following the final maturity or redemption date of the latest refunding Conduit Bond issue. The applicable transcript documents and any official records retention schedules may also apply additional record-keeping requirements.

(b) Records will be retained as follows:

   i. TOS, the Borrower and the Trustee, will retain a copy of the Conduit Bond transcript of proceedings and other relevant documentation in connection with the closing of the issue of Conduit Bonds.

   ii. The Borrower will retain a copy of all material documents relating to capital expenditures financed by Conduit Bond proceeds, including without limitation, construction contacts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Conduit Bond proceeds and records identifying the facilities or projects financed with Conduit Bond proceeds.

   iii. The Borrower will retain a copy of all contracts and written arrangements involving the use of Conduit Bond-financed facilities or projects.

   iv. The Trustee will retain all records of investments, investment agreements, credit enhancements transactions, arbitrage rebate and yield restriction reports, and have bank statements available to TOS and the Borrower.

[8] As recommended by the IRS. The three-year period is subject to change with guidance released by the IRS.