

ADMINISTRATIVE POLICY POST-ISSUANCE COMPLIANCE FOR TAX-EXEMPT AND TAX-ADVANTAGED OBLIGATIONS AND CONTINUING DISCLOSURE	Policy No.: 7.2.15
	Original Date: February 14, 2013
	Revised: March 15, 2019
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	Owner: Financial, Audit, & Risk Services

1. PURPOSE

This Policy sets forth specific policies and procedures of the Port of Portland ("Port") designed to monitor post-issuance compliance with:

(a) applicable provisions of the Internal Revenue Code ("IRS") of 1986, as amended ("Code"), and regulations promulgated thereunder ("Regulations") for various forms of debt including bonds, loans, and other obligations issued by the Port on a tax-exempt or tax advantaged basis ("Obligations");

(b) applicable requirements set forth in certificates and agreement(s) ("Continuing Disclosure Agreements") providing for ongoing disclosure in connection with the offering of Obligations to investors ("Offerings"), for Obligations (whether or not tax-exempt / tax-advantaged) subject to the continuing disclosure requirements of Rule 15c2-12(b)(5) ("Rule") promulgated by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934; and

(c) applicable covenants set forth in financing and financial services agreement(s).

2. PERSONS AFFECTED

Division Chief Executives and implementing staff, including Legal and Finance.

3. POLICY STATEMENT

The following policies relate to monitoring post-issuance compliance generally:

3.1 ROLES AND RESPONSIBILITIES

The Port's Chief Financial Officer shall be responsible for monitoring post-issuance compliance issues. The Chief Financial Officer will be assisted by the staff of the Financial and Administrative Services Division of the Port and by other Port staff when appropriate.

The Chief Financial Officer shall be responsible for assigning post-issuance compliance responsibilities to members of the Financial and Administrative Services Division and other staff of the Port, and for directing outreach to bond counsel, financial advisors, paying agents, and rebate analysts and such other professional service organizations as necessary to ensure compliance with the post-issuance compliance requirements of the Port.

The Port shall provide training and educational resources to Port staff that have been delegated the responsibility for ensuring compliance with any portion of the post-issuance compliance requirements of this Policy.

3.2 Chief Financial Officer

The Chief Financial Officer will coordinate procedures for retention and review of records relating to Obligations issued by the Port.

All documents and other records relating to Obligations issued by the Port shall be maintained by or at the direction of the Chief Financial Officer. In maintaining such documents and records, the Port will comply with applicable IRS requirements, such as those contained in Revenue Procedure 97-22.

The Chief Financial Officer shall be aware of options for voluntary corrections due to failure to comply with post issuance compliance requirements, such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax Exempt Bonds Voluntary Closing Agreement Program ("VCAP"), and shall take such corrective action when necessary and appropriate.

The Chief Financial Officer will review post-issuance compliance of each issue and established procedures on a periodic basis, but not less than annually.

3.3 Arbitrage Rebate and Yield Restriction Compliance

Because of the complexity of the Federal arbitrage rebate statutes and Regulations and the severity of potential penalties for non-compliance, the Port will retain arbitrage rebate services from financial advisors and/or rebate analysts in connection with its outstanding Obligations and may solicit related legal and tax advice from its Bond Counsel and the Port's General Counsel.

If Obligations have not qualified for a rebate exception as defined by the IRS, and the CFO reasonably expects interest earnings to be at a level that positive arbitrage could have potentially be earned, the Port shall cause the calculation of its arbitrage rebate liability before the third anniversary for those Obligations that had unspent proceeds during that three-year period. Thereafter, the Port shall calculate arbitrage on the fifth anniversary of the debt issuance in accordance with IRS recommended practices. In addition, the arbitrage rebate service provider shall be responsible for the following:

- (a) Periodic calculation of any accrued arbitrage rebate liability and of any rebate payments due under and in accordance with the federal tax code and the related rebate regulations;
- (b) Advice regarding strategies for minimizing arbitrage rebate liability;
- (c) Preparation and filing of periodic forms and information required to be submitted to the IRS;
- (d) Preparation and filing of requests for reimbursement of any prior overpayments; and
- (e) Preparation and annual update of a schedule which summarizes for each Obligation: the issue/series of the Obligation, the amount of any liability for rebate and yield restriction, the next IRS filing date, and the dates for the ending of any temporary periods.

3.4 Use of Proceeds and Use of Debt-Financed or Refinanced Assets

The Chief Financial Officer will assign responsibilities for:

- (a) Monitoring the use of proceeds (including investment earnings and including reimbursement of expenditures made before debt issuance) and the use of debt-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Obligations to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Obligations;
- (b) Maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue/series of Obligations, including a final allocation of proceeds as described below under "Record Keeping Requirements";
- (c) Consulting with bond counsel and other legal counsel and advisers in the review of any change in use, or potential change in use, of debt-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Obligations;

(d) Maintaining records for any contracts or arrangements involving the use of debt-financed or refinanced assets as described below under "Record Keeping Requirements";

(e) Conferring at least annually with personnel responsible for debt-financed or refinanced assets to identify and discuss any existing or planned use of debt-financed or refinanced assets and to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Obligations; and to the extent that the Borrower discovers that any applicable tax restrictions regarding use of proceeds and debt-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Obligations or take other remedial action, if such counsel advises that a remedial action is necessary.

3.5 Record-Keeping Requirement

As it relates to the Port's Obligations, the Port's record-keeping policy is to maintain the following documents for the term of each issue of Obligations (including refunding Obligations) plus at least three years:

(a) A copy of the closing transcript(s) ("Transcript") and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Obligations;

(b) A copy of all material documents relating to capital expenditures financed or refinanced by proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with proceeds and records identifying the assets or portion of assets that are financed or refinanced with proceeds, including a final allocation of proceeds;

(c) A copy of all contracts and arrangements involving the use of debt-financed or refinanced assets; and

(d) A copy of all records of investments, investment agreements, credit enhancement, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

3.6 Compliance with Continuing Disclosure Obligations

Under the provisions of SEC Rule 15c2-12, Participating Underwriters (as defined in the Rule) are required to determine that issuers (such as the Port) have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with Offerings subject to the Rule. Unless the Offering is exempt from compliance with the Rule due to the securities being offered qualifying for one of the limited exemptions under the Rule, the Port will enter into a Continuing Disclosure Agreement for each Offering and the transcript for each issue of securities subject to the Rule will include a Continuing Disclosure Agreement executed by the Port.

To monitor compliance by the Port with its Continuing Disclosure Agreements, the Chief Financial Officer will assign responsibilities for:

(a) Preparing the annual reports ("Annual Reports"), as it is defined in the related Continuing Disclosure Agreements and in the form required by the related Continuing Disclosure Agreements.

(b) Maintaining a calendar, with appropriate reminder notifications, listing the filing due dates relating to dissemination of Annual Reports, which annual due date is generally expressed as a date within a certain number of days (e.g., 180 days) following the

end of the Port's fiscal year ("Annual Report Due Date"), as provided in the related Continuing Disclosure Agreements.

(c) Ensuring timely dissemination of the Annual Report by the Annual Report Due Date, in the format and manner provided in the related Continuing Disclosure Agreements, which may include transmitting such filing to the Municipal Securities Rulemaking Board ("MSRB") through the Electronic Municipal Market Access ("EMMA") System at www.emma.msrb.org in the format prescribed by the MSRB.

(d) Monitoring the Port's business, financial, operating and other activities for the occurrence of any of the listed events for which reporting is required in accordance with the provisions of each of the Port's Continuing Disclosure Agreements and under the Rule, and ensuring timely filing of notice of the occurrence of any such event consistent with the requirements of the Rule and in the manner set out in the applicable Continuing Disclosure Agreement. Event notices must be filed in a timely manner not in excess of ten business days after the occurrence of the event. The listed events are established under subsection (b)(5)(i)(C) of the Rule and under the "Reporting of Significant Events" section of each Continuing Disclosure Agreement.

(i) When evaluating whether an event notice filing is required by the Port under subsection (b)(5)(i)(C)(15) of the Rule, any material Financial Obligation (as defined in the Rule) which may affect security holders that obligates the Port to expend less than \$500,000 per Port fiscal year is not considered "material" for purposes of making an event notice filing under the Rule. Incurrences of Financial Obligations that obligate the Port to expend \$500,000 or more per Port fiscal year will be evaluated for materiality on a case-by-case basis to determine whether to make an event notice filing.

(e) Ensuring timely dissemination of notice of any failure to perform obligations under each Continuing Disclosure Agreement, if and as required by the Continuing Disclosure Agreement and the Rule.

3.7 Compliance with Financial Covenants

In some instances, the Port's financial agreements will require the Port to file information periodically with other parties, e.g., trustees, remarketing agents, banks, rating agencies. The types of information required to be filed may include (1) budgets, (2) annual and semi-annual financial reports, and (3) certificates of the issuer regarding no default. The Port's Financial and Administrative Services Division will maintain a listing and calendar of those requirements and monitor timely compliance semi-annually.

3.8 Conduit Bond Financings

The Chief Financial Officer will assign responsibilities to monitor post-issuance compliance by conduit borrowers ("Borrowers"). As a condition of issuing future conduit Obligations, the Port will:

(a) Require the Borrowers to demonstrate that they have adopted written post-issuance compliance monitoring procedures;

(b) Review, at least annually, the Borrowers' statements regarding the investments and transactions involving debt proceeds;

(c) Review, at least annually, certification of compliance and summary of information collected by the Borrowers;

(d) Require the Borrowers to notify the Port of the completion of post-issuance compliance monitoring activities;

(e) Require the Borrowers to immediately notify the Port with respect to any SEC inquiry or IRS audit arising with respect to the Port's conduit debt;

(f) Timely resolve noncompliance issues (including taking remedial actions and making VCAP requests); and

(g) Provide training or technical support to the Borrowers on post-issuance compliance which training or technical support may be provided by the Port's bond counsel.

The Borrowers shall be responsible for any and all bond counsel or other attorneys' fees and other costs associated with or related to post-issuance compliance, including, but not limited to, all fees and costs incurred in responding to a SEC inquiry or responding to an IRS examination and/or in connection with the VCAP.

4. RELATED POLICIES, PROCEDURES, GUIDELINES, STANDARDS, ETC.

Commission Policy No. 6.1.10, *Private Activity Bonds*

Administrative Policy No. 7.2.21, *Debt Management*

Administrative Policy No. 7.2.15: Post-Issuance Compliance For Tax-Exempt and Tax-Advantaged Obligations and Continuing Disclosure	
Date	Description of Modification
02/14/2013	New Policy
10/18/2017	Specified that the arbitrage rebate liability will be calculated in accordance with IRS rules, and added new sections from policy template. Approved by the Executive Team on October 18, 2017.
03/15/2019	Added new continuing disclosure obligations in response to 2018 revisions to SEC Rule 15c2-12, which took effect on February 27, 2019.

Reviewed


Interim Chief Financial Officer

Reviewed


General Counsel

Approved


Executive Director