

Maine Health & Higher Educational Facilities Authority

Debt Issuance Compliance: Policy and Procedures

Adopted: March 18, 2022

The Maine Health & Higher Educational Facilities Authority (the “Authority”) is authorized by statute to issue tax-exempt obligations (bonds) to finance projects owned by qualified nonprofit organizations in healthcare and higher education (“Conduit Borrowers”). The Authority provides pooled financing in its Moral Obligation Reserve Fund program as well as individual conduit financing outside of the Moral Obligation program. To ensure that all bonds issued by the Authority satisfy the requirements of the Internal Revenue Code of 1986, as amended (the “Code”) as of the date of issuance of such obligations and as a continuing matter post-issuance, the Authority has established the policies and procedures described in this document.

SUMMARY OF KEY POLICIES:

- The Authority engages nationally recognized bond counsel (Hawkins Delafield & Wood LLP), to conduct due diligence review on all borrowers, including the use of bond proceeds, to establish the eligibility of interest on the bonds for tax exemption as of the date of issuance. To ensure consistency the Authority uses the same bond counsel for all bond issues in the Moral Obligation program and the individual conduit program.
- The Authority engages nationally recognized Arbitrage Compliance Specialists to perform rebate analysis on an annual basis (Moral Obligation) and as needed (Conduit Program).
- It is the borrower’s responsibility to manage arbitrage rebate calculations and filings in the Conduit Program. However, it is the policy of the Authority to review the method and system employed by the borrower and in cases where the tracking is deemed inadequate the Authority will engage its own consultant to perform the calculations and invoice the borrower accordingly.
- Record retention: The Authority will maintain all material records and information necessary to validate compliance. Such records shall be maintained in electronic format for the life of the bond issue, including any refunding bonds, plus 6 years.
- With respect to tax-exempt bonds, the Authority monitors and the receipt, investment, expenditure, and use of all bond proceeds.

PROCEDURES:

1. The Authority will engage nationally recognized bond counsel to conduct a due diligence investigation to review materials provided by the Borrower concerning the eligibility for tax exemption of interest on the bonds as of the date of issuance.
2. The Authority will require the Borrower and the corporate trustee or depository bank for the transaction (the "Depository Bank/Bond Trustee") to execute and deliver a regulatory agreement ("Tax Agreement"), which establishes requirements and procedures necessary or appropriate to be followed to preserve the tax-exempt status of on the Bonds after the date of issuance.
3. The Authority, through its Financial Advisor, will review secondary market trading activity for tax-exempt or taxable bonds for the period between the sale date and the delivery date (date of issue) to determine if any of the bonds traded at a price greater than the issue price.
4. The Authority, in conjunction with its Financial Advisor, will work to ensure SLGS (Treasury Securities State and Local Government Series) for a refunding escrow account meets the yield restriction requirement or open market securities should SLGS not be available.
5. The Authority (Moral Obligation Program Only) shall have responsibility for engaging on a timely basis, a rebate specialist ("Rebate Consultant") for bond issue. It is the policy of the Authority to conduct an annual arbitrage rebate compliance report for each bond issue and the CFO/Compliance Officer will file any required 8038Ts.
6. The Authority will review the expenditure of bond proceeds no less than annually, to ensure (a) proceeds are spent for the purpose stated in the bond documents and as described in the accompanying tax documents and (b) proceeds, together with investment earnings on such proceeds, are spent within the timeframes described in the tax documents.
7. The Depository Bank/Bond Trustee shall have responsibility for maintaining records concerning investments made with the proceeds of the Bonds. The Depository Bank/Bond Trustee shall also have responsibility for maintaining records of disbursements of proceeds of the Bonds.
8. The Borrower (Conduit Loan Program Only) shall have responsibility for engaging on a timely basis, a rebate specialist ("Rebate Consultant") for each Bond transaction (unless the Tax Certificate establishes that arbitrage rebate will not be applicable to an issue of Bonds). Any 8038-T forms are filed by the Authority. The responsibilities of the Borrower include:
 - a. prior to each rebate calculation date, delivering periodic statements concerning the investment of Bond proceeds to the Rebate Consultant;
 - b. providing to the Rebate Consultant additional documents and information reasonably requested by the Rebate Consultant;
 - c. reporting to the Authority if any rebate report and/or payment is not timely made;

- d. during the construction period of each capital project financed in whole or in part with proceeds of an issue of tax-exempt bonds, monitoring the investment and expenditure of bond proceeds and consulting with the Rebate Consultant to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds; and
 - e. retaining copies of all arbitrage reports and trustee statements and, upon request, providing such copies to the Authority.
 - f. The Borrower, and not the Authority, shall have responsibility for monitoring the Depository Bank/Bond Trustee to ensure compliance with the responsibilities set forth in items a through f above.
9. The Borrower shall have ultimate responsibility for ensuring post-issuance compliance with requirements relating to use of bond financed or refinanced assets and shall be required to adopt procedures, which it deems appropriate to ensure the following:
- a. identifying one or more management-level employee(s) within the Borrower's organization with primary responsibility for post-issuance compliance, and stating that such employee(s) and applicable staff should be provided with education and training, at least annually, with regard to monitoring federal tax requirements;
 - b. monitoring the use of bond proceeds and the use of bond financed or refinanced assets throughout the term of the bonds to ensure compliance with covenants and restrictions set forth in the tax certificate relating to the bonds;
 - c. maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds, including a final allocation of bond proceeds;
 - d. consulting with bond counsel and other legal counsel and advisers in the review of any contracts or arrangements involving use of bond financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the tax certificate relating to the bonds;
 - e. maintaining records for any contracts or arrangements involving the use of bond financed or refinanced assets;
 - f. conferring at least annually with personnel responsible for bond financed or refinanced assets to identify and discuss any existing or planned use of bond financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the tax certificate relating to the bonds; and
 - g. to the extent that the Borrower discovers that any applicable tax restrictions regarding use of bond proceeds and bond financed, or refinanced assets have been 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 bonds, if such counsel advises that a remedial action is necessary. In addition, the Borrower will, upon discovery of any violation or potential violation, promptly notify the Authority's Executive Director. The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the bonds, shall agree to undertake the tasks listed above. All relevant records and contracts shall be maintained as described below.

10. The Authority shall be responsible for maintaining the following documents for the term of each issue of bonds (including refunding bonds) plus at least three years. Moral Obligation borrowers will keep similar records as described in items a through c below. Conduit Borrowers will keep all records described below.
 - a. a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of bonds;
 - b. a copy of all material documents relating to capital expenditures financed or refinanced by bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds;
 - c. a copy of all contracts and arrangements involving the use of bond financed or refinanced assets, whether or not the contracts are still in force; and
 - d. a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any. The Borrower, in the tax certificate relating to the bonds and/or other documents finalized at or before the issuance of the bonds, shall agree to retain the records listed above.
11. Due Diligence & Remedial Actions: In all activities related to bonds issued by or the Authority, appropriate staff members will exercise due diligence to comply with the IRS Code governing tax-exempt bonds. The Authority is aware of (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the Internal Revenue Service which allows issuers to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the remedial actions available under Section 1.141-12 and Section 1.145-2 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the bonds were issued.

12. With respect to Moral Obligation bonds, the Authority will comply with all continuing disclosure requirements under SEC Rule 15c2-12 and will make all required filings to the Municipal Securities Rule Making Board Electronic Municipal Market Access website (EMMA). With respect to Conduit Program bonds, the Authority is generally not obligated under SEC Rule 15c2-12. The Authority and/or the Authority's Bond Trustee will make notification in a timely manner of any of the following events with respect to bonds:
- a. Principal and interest payment delinquencies.
 - b. Non-payment related defaults, if material.
 - c. Unscheduled draws on debt service reserves reflecting financial difficulties
 - d. Unscheduled draws on credit enhancements reflecting financial difficulties.
 - e. Substitution of credit or liquidity providers or their failure to perform.
 - f. 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 of determinations with respect to the tax status of the bonds, or other material events affecting the tax-exempt status of the bonds.
 - g. Modifications to rights of the bondholders, if material.
 - h. Bond calls, if material, and tender offers.
 - i. Defeasances.
 - j. Release, substitution or sale of property securing the repayment of the bonds, if material.
 - k. Ratings changes.
 - l. Bankruptcy, insolvency, receivership or similar event of the Authority or any other Material Obligated Person.

Note to clause (l): For the purposes of the event identified in clause (l) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an Authority or any other Material Obligated Person (as identified for each Authority) in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Authority or any other Materially Obligated Person (as identified by the Authority), or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business the Authority or any other Material Obligated Person (as identified by the Authority);

- m. The consummation of a merger, consolidation, or acquisition involving the Authority or any other Material Obligated Person, or the sale of all or substantially all the assets of the Authority or another Material Obligated Person, 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 relating to any such actions, other than pursuant to its terms, if material.
- n. Appointment of a successor or additional trustee or the change of name of a trustee, if material.
- o. Incurrence of a Financial Obligation (as defined below) of the Authority or any other Material Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Authority or any other Material Obligated Person, any of which affect bondholders, if material.
- p. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Authority or any other Material Obligated Person, any of which reflects financial difficulties. "Financial Obligation" shall mean a:
 - (i) debt obligation.
 - (ii) derivative instrument entered into in connection with, or pledged as security or as source of payment for, an existing or planned debt obligation; or
 - (iii) guarantee of clause (i) or clause (ii) above.Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

OVERVIEW OF ROLES and RESPONSIBILITIES

Executive Director	<ul style="list-style-type: none"> • Ensures all positions are adequately staffed to perform compliance functions • Provides final oversight and sign off of all bond proceeds
CFO/Compliance Officer	<ul style="list-style-type: none"> • Reviews all reports from the Arbitrage Rebate Specialists • Files 8038-T
Compliance Administrator	<ul style="list-style-type: none"> • Tracks all post issuance documentation submissions from borrowers • Makes required EMMA postings
Program Officer	<ul style="list-style-type: none"> • Reviews all project applications for compliance with the Code • Coordinates communication between borrowers and bond counsel • Monitors borrower ongoing activity for material events and change in use
Program Assistant	<ul style="list-style-type: none"> • Reviews all requisitions for funds and requests for Executive Director sign off • Monitors construction account balances to ensure timely expenditure of proceeds • Updates and maintains the bond issue database (HEFA Explorer) and electronic file system
External Partners	
Bond Counsel	<ul style="list-style-type: none"> • Tax due diligence review • Files 8038-G • Provides complete bond documents and borrower loan agreements • Tax Regulatory Agreement
Financial Advisor	<ul style="list-style-type: none"> • Monitors any secondary market trading • Manage compliance with yield restrictions on advance refunding escrows
Trustee\Paying Agent	<ul style="list-style-type: none"> • Monitors all post issuance compliance submissions • Disburse all bond proceeds and ensures Authority sign off on construction funds