

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING DEBT) RESOLUTION NO. 16-4689
MANAGEMENT POLICIES RELATED TO POST)
ISSUANCE TAX COMPLIANCE AND) Introduced by the Chief Operating Officer
CONTINUING DISCLOSURE) Martha Bennett in concurrence with Council
) President Tom Hughes

WHEREAS, Metro is authorized to borrow money and issue and sell bonds from time to time as may be deemed necessary to pay for public projects, finance other activities and to refinance previously issued debt; and

WHEREAS, such borrowings may qualify as tax-exempt qualified obligations under regulations promulgated by the Internal Revenue Service; and

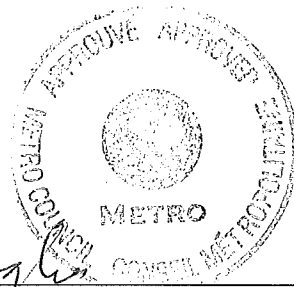
WHEREAS, such tax-exempt qualification places certain compliance requirements upon Metro for the duration of the time that the debt is outstanding and beyond; and

WHEREAS, by issuing bonds on the public securities market, Metro has post-issuance continuing disclosure obligations pursuant to rules promulgated by the Securities and Exchange Commission; now therefore,

BE IT RESOLVED

1. That the policies described as "Post-Issuance Compliance and Continuing Disclosure Policy for Tax-Exempt Qualified Obligations" attached as Exhibit A are hereby adopted.
2. That the policies attached as Exhibit A shall be incorporated by reference in the Metro Comprehensive Finance Policies reviewed and readopted annually during the budget development process.

ADOPTED by the Metro Council this 17th day of March, 2016.



Tom Hughes
Tom Hughes, Council President

Approved as to Form:

Alison R. Kean
Alison R. Kean, Metro Attorney

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Metro
Portland, Oregon
Post-Issuance Compliance and Continuing Disclosure
Policy for Tax-Exempt Qualified Obligations

Statement of Purpose

This Post Issuance Compliance Policy (the “Policy”) sets forth specific policies of Metro designed to (a) monitor post issuance compliance of tax exempt qualified obligations (the “Obligations”) issued by Metro with applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated there under (the “Treasury Regulations”) and (b) comply with continuing disclosure undertaking (the “Undertakings”) executed in connection with Securities and Exchange Commission Rules 15c2-12 (“Rule 15c2-12”).

The Policy documents existing practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations in order that the interest on such Obligations continue to be excludable from gross income for federal income tax purposes and contractual obligations reflected in the Undertakings and obtained pursuant to Rule 15c2-12 are complied with. Metro recognizes that compliance with applicable provisions of the Code, Treasury Regulations and Undertakings is an on-going process, necessary during the entire term of the Obligations, and is an integral component of Metro’s debt management. Accordingly, the analysis of those facts and implementation of the Policy will require ongoing monitoring and consultation with bond counsel.

Policy Components

The Director of Finance and Regulatory Services approves the terms and structure of Obligations executed by Metro. Such Obligations are issued in accordance with the provisions of Oregon Revised Statutes, the Metro charter, and if issued as tax-exempt, also issued in accordance with the Code. Specific post issuance compliance procedures address the relevant areas described below. The following list is not intended to be exhaustive and further areas may be identified from time to time by Finance staff in consultation with bond counsel.

I. Federal Tax Compliance for Tax-Exempt Obligations

General Policies and Procedures

The following policies relate to procedures and systems for monitoring post issuance compliance generally.

- A. The Director of Finance and Regulatory Services (the “Director”) shall identify an appropriate staff member or members to be responsible for monitoring post issuance compliance issues (the “Staff Designee”). The Director shall be responsible for ensuring an adequate succession plan for transferring post issuance compliance responsibility when changes in staff occur.
- B. The Staff Designee will coordinate procedures for record retention and review of such records.
- C. The Staff Designee will review post issuance compliance procedures and systems on a periodic basis, but not less than annually.
- D. Ongoing training shall be made available to the Staff Designee to support such individual’s

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understanding of the tax requirements applicable to the Obligations.

- E. Electronic media will be the preferred method for storage of all documents and other records maintained by Finance and Regulatory Services. In maintaining such electronic storage, the Staff Designee will comply with applicable Internal Revenue Service (the “IRS”) requirements, such as those contained in Revenue Procedure 9722.

Issuance of Obligations

The following policies relate to the issuance of each specific issue of Obligations.

The Staff Designee will:

- A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents.
- B. Confirm that bond counsel has filed the applicable information report (e.g., Form 8038G, Form 8038) for such issue with the IRS on a timely basis.
- C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations with other applicable Finance staff.

Arbitrage

The following policies relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Staff Designee will:

- A. Coordinate the tracking of expenditures, including the expenditure of any investment earnings, with other applicable Finance staff.
- B. Obtain a computation of the yield on each issue from Metro’s outside arbitrage rebate specialist and maintain a system for tracking investment earnings.
- C. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of reissuance expenditures.
- D. Coordinate with Finance staff to monitor compliance by departments with the applicable “temporary period” (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.
- E. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.
- F. Coordinate to avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.
- G. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions.
- H. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.

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- I. Monitor compliance with six-month, 18month or 2-year spending exceptions to the rebate requirement, as applicable.
- J. Arrange for timely computation of any rebate or yield reduction payment liability by Metro's outside arbitrage rebate specialist and, if rebate is due, file a Form 8038T and arrange for payment of such rebate liability.

Private Activity Concerns

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Staff Designee will:

- A. Coordinate with staff to maintain records determining and tracking facilities financed with specific Obligations and in what amounts.
- B. Coordinate with applicable staff to maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.
- C. Coordinate with applicable staff to maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.
- D. Coordinate with Finance staff to monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.
- E. Coordinate with applicable staff to monitor private use of financed facilities to ensure compliance with applicable percentage limitations on such use. Such monitoring should include the following:
 - 1. Procedures to review the amount of existing private use on a periodic basis, but not less than annually; and
 - 2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.
 - 3. Consultation with bond counsel as to any possible private use of financed facilities that could cause an issue to exceed the limitations on private use.
 - 4. Consultation with bond counsel to remedy any excess private use through an appropriate "remedial action" (described in section 1.141-12 of the Treasury Regulations) or the Voluntary Closing Agreement Program (VCAP) described in IRS Notice 2008-31 (or successor guidance).

Reissuance

The following policies relate to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes.

The Staff Designee will:

- A. Identify and consult with bond counsel regarding any post-issuance changes or modifications to any

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terms of an issue of Obligations to determine whether such changes could be treated as a reissuance for federal tax purposes.

- B. Confirm with bond counsel whether any “remedial action” taken in connection with a “change in use” (as such terms are defined in the Code and Treasury Regulations) would be treated as a reissuance for tax purposes and, if so, confirm the filing of any new Form 8038G.

Record Retention

The following polices relate to retention of records relating to the Obligations issued.

The Staff Designee will:

- A. Coordinate with staff regarding the records to be maintained by Metro to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.
- C. Coordinate with staff to generally maintain the following:
 - 1. Basic records relating to the transaction (e.g., any non-arbitrage certificate, net revenue estimates and the bond counsel opinion);
 - 2. Documentation evidencing expenditure of proceeds of the issue;
 - 3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation.
 - 4. Documentation evidencing use of financed property by public and private entities (e.g., copies of management contracts and research agreements);
 - 5. Documentation evidencing all sources of payment or security for the issue; and
 - 6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS. While this is typically accomplished through the maintenance of hard copies, records may be kept in electronic format so long as applicable requirements, such as Revenue Procedure 97-22, are satisfied.
- E. Keep all material records for so long as the issue is outstanding (including any refunding), plus five years.

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II. Continuing Disclosure Compliance

Issuance of Obligations

The following policies related to the issuance of each specific issue of Obligations.

The Staff Designee will:

- A. Review the Undertaking to determine if new or additional information is required to be filed.
- B. The final Undertaking is copied and kept in a 3 ring binder with documents from all other outstanding debt.
- C. The master spreadsheet of disclosure requirements is updated.

On-Going Obligations

- A. At least twice a year (at budget preparation and during audit), the requirements are reviewed to ensure they have been met. The first review is internal only. The second review is always with the Financial Auditors.
- B. The Financial Controls manager responsible for the CAFR will coordinate with the Budget Coordinator/Debt Manager to ensure the requirements are met, particularly if any changes are proposed for supplemental materials included in the CAFR
 1. During this time, the Financial Controls manager will review the information requirements under all Undertakings and begin collecting information that is not presented in the CAFR or budget.
- D. Once the CAFR is presented to and approved by the Metro Council, it is posted on EMMA, which in no case will be later than the filing deadlines under all Undertakings.
- E. The annual budget is adopted no later than June 30th each fiscal year
 1. The budget document is posted on EMMA soon after it is filed with the TSCC and counties by August 31st of each year and no later than the filing deadlines under all Undertakings.
- F. Supplementary information not presented in the CAFR or budget is posted on EMMA with the posting of the CAFR or budget, but in no case later than the filing deadlines under the applicable Undertakings.

Material Events

If a Material Event happens, the Staff Designee will work with bond counsel and/or financial advisor to submit the appropriate notices within 10 days of the event.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION 16-4689 FOR THE PURPOSE OF ADOPTING DEBT MANAGEMENT POLICIES RELATED TO POST TAX ISSUANCE COMPLIANCE AND CONTINUING DISCLOSURE

Date: March 17, 2016

Presented by: Kathy Rutkowski 503-797-1630

BACKGROUND

Continuing Disclosure Requirements

Any government issuing bonds has an obligation to meet specific continuing disclosure standards in compliance with Securities and Exchange Commission (SEC) Rule 15c2-12 (“Rule 15c2-12”). Rule 15c2-12, promulgated under the Securities Exchange Act of 1934, as amended, sets forth certain obligations of (i) underwriters to receive, review and disseminate official statements prepared by issuers of most primary offerings of municipal securities, (ii) underwriters to obtain continuing disclosure agreements from issuers, and other obligated persons, to provide material event disclosures and annual financial information on a continuing basis, and (iii) broker-dealers to have access to such continuing disclosure in order to make recommendations of municipal securities in the secondary market.

When Metro issues bonds we work with our Financial Advisors and Bond Counsel to prepare preliminary and final official statements and agree to continuing disclosure requirements for the benefit of the underwriter and owners of the debt to meet the SEC requirements described above. In the continuing disclosure document we promise to provide certain annual financial information and notices of specific events to the public. In accordance with changes made in 2009 to Rule 15c2-12, those filings must be made electronically at the Electronic Municipal Market Access (EMMA) portal.

Post Issuance Tax Compliance

Tax-advantaged bonds (i.e. tax-exempt) are bonds that receive preferential tax treatment. These bonds, issued by or on behalf of state and local governments, are subject to applicable federal tax requirements under the Internal Revenue Codes of 1986, as amended, both at the time of issuance and for so long as the bonds remain outstanding. An issuer or other party’s failure to comply with any applicable federal tax requirement with respect to tax-advantaged bonds jeopardizes the preferential tax status of those bonds.

Issuance related requirements include filing a Form 8038 series information return and the issuer having reasonable expectations of on-going post-issuance compliance.

Post-issuance federal tax requirements generally fall into two categories: (1) qualified use of proceeds and financed property; and (2) arbitrage yield restriction and rebate. Qualified use requirements require monitoring of the various direct and indirect uses of bond-financed property over the life of the bonds and calculations of the percentage of nonqualified uses. Arbitrage requirements also require monitoring over the life of the bonds to determine whether both the yield on investments acquired with bond proceeds are properly restricted and whether the issuer must file Form 8038-T to pay a yield reduction payment and/or rebate payment.

The on-going nature of post-issuance tax compliance requirements applicable to tax-advantaged bonds requires issuers to actively monitor compliance throughout the entire period their bonds remain outstanding. This due diligence will significantly improve the issuer's ability to identify noncompliance and prevent violations from occurring, or timely correct identified violations (when prevention is not possible), to ensure the continued tax-advantaged status of the bonds.

To facilitate post-bond issuance compliance with the legal requirements necessary to maintain the tax-exempt or tax-advantaged status on such bonds, the Internal Revenue Service developed certain recommendations for the issuers of such bonds. Although the IRS encourages issuers to follow its recommendations, the IRS recommendations are not binding on issuers and do not have the force of law. Nonetheless staff believes it is prudent for Metro to develop written policies and procedures to track and implement the IRS recommendations, where applicable. The IRS recommends procedures should contain key characteristics including:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official/employee;
- Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds);
- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

Summary - Metro's Proposed Policies and Procedures

In conjunction with Metro's Bond Counsel, staff has developed the attached set of policies and procedures related to Post Issuance Compliance and Continuing Disclosure. For the most part, these policies and procedures only serve to put in writing the actions and due diligence already exhibited by staff. Having the policies in writing will provide explicit direction to responsible staff and provide continuity in the event of staff turnover. Once adopted, these policies will be incorporated by reference into the Comprehensive Financial Policies adopted annually by the Council during the budget process.

ANALYSIS/INFORMATION

1. **Known Opposition:** None known.
2. **Legal Antecedents:** The Security Exchange Act of 1934, as amended. Securities and Exchange Commission (SEC) Rule 15c2-12. Internal Revenue Codes of 1986, as amended.
3. **Anticipated Effects:** The policies will provide explicit direction to responsible staff and provide continuity in the event of staff turnover.
4. **Budget Impacts:** No explicit budget impacts.

RECOMMENDED ACTION

The Chief Operating Office recommends adoption of this Resolution.