# Post Issuance Compliance Undertaking

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North Carolina Department of State Treasurer
*State and Local Government Finance*

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## Post Issuance Compliance Generally

- What is Post-Issuance Compliance?

  Governmental issuers of tax-exempt bonds are responsible for ensuring that their financing satisfies all applicable federal tax requirements. The governmental issuer covenants at the time of issuance that they will satisfy all applicable federal tax requirements **at the time of issuance** and will continue to satisfy all applicable federal tax requirements for **as long as the bonds are outstanding.**

- Managing agencies provide this certification at time of issuance.

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## Post Issuance Compliance Undertaking

- State is transitioning from debt "issuance" to debt "management"
- State operates its debt financing on a "programmatic basis"
  - e.g. Hooker bonds, Limited Obligation bonds
- Objectives of Undertaking
  - Ensure ongoing compliance with applicable State and federal statutes and regulations governing tax-exempt financings for debt-financed facilities
  - Provide comprehensive information and recordkeeping
  - Develop and/or expand existing policies and procedures to collect/monitor information
    - By bond/debt issue
    - By facility



## Post Issuance Compliance Undertaking

- Good News:
  - Treasurer's office takes lead
- But:
  - Will need cooperation from all agencies involved in construction, management, utilization, and/or disposition of debt-financed assets
- Implementation steps:
  - Scope
  - Determine preferred vehicle for collecting/monitoring information
  - Roll out annual information surveys/certifications from agencies
  - Formalize written procedures
  - Provide training and education

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- Additional Benefits
  - A good compliance program is likely to spot a potential problem (e.g. lease to a private party) before it happens and this will enable the State to avoid harsh measures that may be necessary (such as partial redemption of the bonds, etc.)
  - A good compliance program will make any future IRS audit of the State's debt issues vastly easier to defend



## Post Issuance Compliance

- Types of Information necessary from Agencies:
  - Key contact information by agency (person should have reasonable knowledge of how the debt-financed facility is used)
  - Expenditure of bond proceeds and record keeping information
  - Documentation of private uses of debt-financed facilities
    - Private Use (Bond Counsel review encouraged)
      - Leases
      - Management Contracts
      - Research Agreements
      - Naming Rights
      - Other arrangements that convey special legal entitlements for the private business use of debt-financed facilities
  - Documentation of private payments (if any) that may be used to pay debt service
  - Change in Use (including sale and/or disposition of assets or change in a management contract)

## Post Issuance Compliance Undertaking

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## Records Retention

IRS Guidance – IRC Section 6001 – general rule for proper retention of records for federal tax purposes (keep for bond issue + 3 years, but…):

- Basic Records (transcript)
- Documentation of expenditures
- Documentation on use of bond financed property
- Documentation on all sources of payment or security for the bonds
- Documentation on investment of bond proceeds

*In addition, examples of good records to retain:*

*feasibility studies, appraisals, correspondence, investment records (bank statements, trade confirms, etc.), expenditure histories (invoices, other documents showing and supporting disbursements), records of business activities.*

**Thank You!**

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