



## **Post-Issuance Tax Compliance Guidance For RIHEBC Borrowers**

The purpose of this Post-Issuance Tax Compliance Guidance is to provide guidance regarding policies and procedures in connection with tax-exempt bonds or other obligations (“Bonds”) issued by the Rhode Island Health and Educational Building Corporation (the “Corporation” or “RIHEBC”) so as to maximize the likelihood that certain applicable post-issuance requirements of federal income tax law needed to preserve the tax- exempt status of the Bonds are met.

### **General**

Inasmuch as the Corporation is a responsible conduit issuer authorizing the issuance of Bonds for governmental and 501(c)3 borrowers (“Borrowers”), the Corporation wishes to emphasize to its Borrowers that post-issuance tax compliance is an important matter for which Borrowers are responsible and we strongly encourage Borrowers to adopt their own policies and procedures to ensure their tax compliance obligations are fulfilled. You can find a generic example of such policies and procedures [here](#). We note this is a generic example and emphasize that a Borrower should consult its counsel to customize the document appropriately.

### **Post-Issuance Compliance Requirements**

#### External Advisors / Documentation

The Corporation and the Borrower shall consult with bond counsel and/or other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the tax certificate and agreement (the “Tax Certificate”) and/or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The Borrower also shall consult with bond counsel and/or other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that applicable post-issuance requirements in fact are met. This shall include consultation in connection with future contracts with respect to the use of Bond-financed or refinanced assets. This requirement shall be documented in the Tax Certificate and/or other documents finalized at or before issuance of the Bonds.

The Corporation shall require the Borrower to engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of Bonds.

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee, and the investment of Bond proceeds shall be managed by the

Borrower. The Borrower shall prepare (or cause the trustee to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the Corporation if it so requests.

#### Arbitrage Rebate and Yield

Unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of Bonds, it is the Corporation's policy that the Borrower shall be responsible for:

- engaging the services of a Rebate Service Provider and, prior to each rebate calculation date, causing the trustee to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;
- providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- monitoring efforts of the Rebate Service Provider;
- assuring payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;
- during the construction period of each capital project financed in whole or in part by Bonds, monitoring the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider 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
- retaining copies of all arbitrage reports and trustee statements as described below under "Record Keeping Requirements" and, upon request, providing such copies to the Corporation.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for the tasks listed above (unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of Bonds).

#### Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

It is the Corporation's policy that the Borrower shall be responsible for:

- monitoring the use of Bond proceeds and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- 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 as described below under "Record Keeping Requirements";
- 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;

- maintaining records for any contracts or arrangements involving the use of Bond-financed or refinanced assets as described below under “Record Keeping Requirements”;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing 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
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-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 bonds, if such counsel advises that a remedial action is necessary.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for the tasks listed above.

All relevant records and contracts shall be maintained as described below.

#### Record Keeping Requirement

It is the Corporation’s policy that the Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- 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;
- 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;
- a copy of all contracts and arrangements involving the use of Bond-financed or refinanced assets; and
- 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 designate an officer or employee responsible for retaining the records listed above.

### **Other Resources**

Below are a number of useful links to various resources on the topic of post-issuance compliance. Internal Revenue Service's site for the tax-exempt bond community.

<https://www.irs.gov/tax-exempt-bonds/about-tax-exempt-bonds>

After The Bonds Are Issued: Then What? – Here's an article provided on the IRS website discussing the post-issuance compliance responsibilities of borrowers.

[http://www.irs.gov/pub/irs-tege/bonds\\_act\\_0607.pdf](http://www.irs.gov/pub/irs-tege/bonds_act_0607.pdf)

Post-Issuance Compliance checklist provided by the Government Finance Officers Association ("GFOA") and the National Association of Bond Lawyers ("NABL").

<http://www.gfoa.org/downloads/PostIssuanceCompliance.pdf>