

RESOLUTION NO. 12-05

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING A POST-ISSUANCE TAX COMPLIANCE POLICY FOR CONDUIT BONDS (QUALIFIED 501(c)(3) BONDS, INDUSTRIAL DEVELOPMENT BONDS AND EXEMPT FACILITY BONDS) AND DELEGATING TO THE EXECUTIVE DIRECTOR AUTHORITY TO IMPLEMENT SUCH POLICY IN ORDER TO EFFECTIVELY CARRY OUT THE DUTIES OF THE I-BANK AS AN ISSUER OF CONDUIT BONDS

WHEREAS, the California Infrastructure and Economic Development Bank (the “I-Bank”) is established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 et seq.) (the “Act”), for the purpose of providing financial assistance to eligible projects in the State of California (the “State”) through a variety of financing mechanisms, which include, among other things, the issuance of certain qualified tax-exempt bonds including, qualified industrial development bonds, exempt facility bonds and 501(c)(3) bonds (collectively, “Conduit Bonds”);

WHEREAS, recently the Internal Revenue Service (the “IRS”) developed recommendations and guidelines that encourage conduit issuers to adopt written procedures that alert and remind Conduit Borrowers (as defined below) of their post-issuance tax compliance obligations;

WHEREAS, the I-Bank deems it prudent to establish a policy setting forth procedures to aid the I-Bank in ensuring that entities (each a “Conduit Borrower”) that borrow the proceeds of Conduit Bonds comply with applicable post-issuance requirements of federal income tax law necessary to preserve the tax-exempt status of interest on such Conduit Bonds;

WHEREAS, I-Bank staff, with the assistance of internal and external legal counsel, have compiled a policy based upon conduit issuer best practices to ensure that Conduit Borrowers undertake certain obligations in order to preserve the tax exempt status of interest on the Conduit Bonds (the “Policy”);

WHEREAS, the Act provides that “Subject to any conditions that the board may from time to time prescribe, the executive director may exercise any power, function, or duty conferred by law on the [I-Bank] in connection with the administration, management, and conduct of the business and affairs of the [I-Bank], the infrastructure bank fund and the guarantee fund”; and

WHEREAS, the Board of Directors of the I-Bank (the “Board”) has determined that, with respect to the effort of ensuring post-issuance compliance of tax requirements by Conduit Borrowers, it is appropriate for the executive director and the executive director’s assignees (the “Executive Director”) to undertake the implementation of the Policy on behalf of the I-Bank;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank, as follows:

Section 1. The Board hereby finds that the above recitals are true and correct.

Section 2. The Board hereby approves and adopts the Post-Issuance Tax Compliance Policy for Conduit Bonds (Qualified 501(c)(3) Bonds, Industrial Development Bonds and Exempt Facility Bonds) attached hereto as Attachment A.

Section 3. The Board hereby delegates to Executive Director the authority to implement the Policy and to consider and grant or deny requests for exceptions and waivers, where appropriate, in order to effectively carry out the duties of the I-Bank as an issuer of Conduit Bonds. In the event that such exceptions or waivers are granted, the Board directs the Executive Director to report such action to the Board as soon as practicable.

Section 4. The Board directs the Executive Director to periodically, as necessary or appropriate, request Board review of the Policy in order to provide the Board with the opportunity to reassess the merits of the Policy and, with the concurring advice of legal counsel, to make such changes as it deems necessary and proper in order to carry out the duties of the I-Bank as an issuer of Conduit Bonds.

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on June 26, 2012 by the following vote:

AYES: Jimenez, Reyes, Lujano, Armstrong

NOES:

ABSENT: Rice

ABSTAIN:

By 
Roma Cristia-Plant,
Assistant Executive Director

Attest:

By 
Diane Cummings,
Secretary of the Board of Directors

ATTACHMENT A

Proposed Post-Issuance Tax Compliance Policy for Conduit Bonds (Qualified 501(c)(3) Bonds, Industrial Development Bonds and Exempt Facility Bonds)

California Infrastructure and Economic Development Bank
Post-Issuance Tax Compliance Policy
For Conduit Bonds
(Qualified 501(c)(3) Bonds, Industrial Development Bonds
and Exempt Facility Bonds)

June 26, 2012

The purpose of the Post-Issuance Tax Compliance Policy (“Policy”) is to establish procedures to aid the California Infrastructure and Economic Development Bank (“I-Bank”) in ensuring that entities (each, a “Borrower”) that borrow the proceeds of qualified I-Bank bonds for 501(c)(3) organizations, industrial development bonds and exempt facility bonds (“Bonds”) comply with applicable post-issuance requirements of federal income tax law necessary to preserve the tax-exempt status of interest on the Bonds. The I-Bank reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The I-Bank also reserves the right to change these policies and procedures from time to time.

Post-Issuance Compliance Requirements

A. External Advisors / Documentation

For each issue of Bonds, the I-Bank and the Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that, upon issuance, the Bonds will qualify for tax-exempt status. Those requirements and procedures shall be documented in the tax certificate and agreement (“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 certain other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

Following issuance of the Bonds, the Borrower also shall consult with bond counsel and other legal counsel and advisors, as needed, to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

The I-Bank 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 or other financial institution, 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.

B. Arbitrage Rebate and Yield

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

- engaging the services of a Rebate Service Provider and, prior to each rebate calculation date, causing the trustee or other financial institution 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 consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each spending period following the issue date of the Bonds and in compliance with the requirements of the Internal Revenue Code (the "Code") and any related Internal Revenue Service Regulations ("IRS Regulations"); and
- retaining copies of all arbitrage reports, investment records and trustee statements as described below under "Record Keeping Requirements."

C. Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

It is the I-Bank's policy that the Borrower shall be solely responsible for:

- monitoring the timely expenditure and use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of the 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;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), 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 change in use or transfer of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- designating an individual by title (the "Tax Compliance Officer") in the space provided in

Exhibit A hereto to act as the person responsible for coordinating on the Borrower's post-issuance tax compliance obligations in connection with the Bonds;

- adopting procedures and conferring at least annually with the Tax Compliance Officer 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
- 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 preserve the tax-exempt status of the Bonds.

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

D. Record Keeping Requirement

It is the I-Bank's policy that the Borrower shall be solely 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; and
- a copy of all records of investments, investment agreements, credit enhancement transactions, financial derivatives, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

E. IRS Information Return Filings

The Borrower will assure the filing of information returns on IRS Form 8038 or any other applicable form, no later than the 15th day of the second calendar month in the following calendar quarter commencing after the date on which each series of Bonds is issued. As the issuer of the Bonds, the I-Bank signs the Form 8038.

F. Borrower Acknowledgement:

As a condition to closing, the I-Bank shall require each Borrower to acknowledge its receipt of this Policy as set forth in the attached Exhibit A.

Exhibit A
Borrower Acknowledgement

**Borrower Acknowledgment Regarding
I-Bank Post Issuance Tax Compliance Policy**

Borrower Name: _____ (the "Borrower")

Name of Bond Issue: _____

Expected date of closing: _____

In connection with the issuance of the above reference bonds (the "Bonds"), the undersigned authorized representative of the Borrower hereby acknowledges receipt of the I-Bank's Post-Issuance Tax Compliance Policy (the "Policy") and agrees to comply with all the requirements of the Policy that are applicable to it during the term of the Bonds.

In accordance with the requirements of the Policy, the individual identified below is hereby designated as the Tax Compliance Officer for the Bonds.

Title of individual designated as Tax Compliance Officer: _____

Signature: _____

Name: _____

Title: _____

Date: _____