

**Administrative Procedures for Post Issuance Compliance Policies
Relating To Tax-Exempt Obligations**
Attachment for Policy No. 625

Purpose

The Board of Education of the Issuer recognizes that it has issued and from time to time in the future may issue Tax-Exempt Obligations, the interest on which is intended to be excluded from gross income for Federal income tax purposes under the Code and the Treasury Regulations. For the interest on such debt instruments to qualify for tax-exempt status, certain provisions set forth in the Code and the Treasury Regulations must be satisfied, not only at the time of issuance, but throughout the term of the Tax-Exempt Obligations. The Issuer's failure to comply with the requirements set forth in the Code and Treasury Regulations after the Tax-Exempt Obligations are issued could cause the interest on the Tax-Exempt Obligations to be included in gross income for bondholders retroactive to the date of issuance of the applicable Tax-Exempt Obligations.

Definitions

Code: Internal Revenue Code of 1986, as amended

Database: database for each issue of Tax-Exempt Obligations, in the form attached hereto as Exhibit A.

Issuer: The School District of Philadelphia

Tax Compliance Officer: The School District's Chief Financial Officer, or their designee

Tax-Exempt Obligations: debt instruments, the interest on which is intended to be excluded from gross income for Federal income purposes under the Internal Revenue Code of 1986, as amended

Treasury Regulations: regulations promulgated under the Internal Revenue Code of 1986, as amended

Authority

Adoption and implementation of these Post-Issuance Compliance Procedures Relating to Tax-Exempt Obligations, (herein, the "Compliance Procedures") provide a process and procedure for the Issuer to monitor the post-issuance compliance of the Tax-Exempt Obligations with the applicable provisions of the Code and Treasury Regulations.

Delegation of Responsibility

The Board delegates and directs the Treasurer of the Issuer to direct and delegate to the Tax Compliance Officer to lead the post-issuance compliance monitoring. The Tax Compliance Officer shall delegate specific compliance tasks to specific Issuer employees. The Tax Compliance Officer shall maintain a list of these compliance tasks and the employees to whom the tasks are assigned. The employees shall be identified by position rather than by name to ensure continuity in the event of position changes and turnover. The Tax Compliance Officer shall provide these responsible employees with sufficient training and background resources to perform their tasks.

The Tax Compliance Officer shall establish the Database for each issue of Tax-Exempt Obligations, in the form attached hereto as Exhibit A. The Database tracks the use of proceeds of the Tax-Exempt Obligation and should be updated annually.

Mandatory Procedures

A. Schedule of Reviews.

The Issuer will establish routines for monitoring on-going compliance that are consistent with discovering any noncompliance in a timely manner so that it may be corrected. While specific review processes are described in detail below, timing for such reviews will be as follows:

1. Private Use. All contracts, leases or other arrangements providing special legal entitlement to the use of bond-financed facilities will be reviewed by the General Counsel's Officer prior to execution to ensure that they will not cause the bonds to be considered (a) private activity bonds (in the case of tax-exempt governmental bonds) or exceed the private use limits as defined in Treasury Regulation §§ 1.141-2 and 1.141-3.
2. Arbitrage Compliance. With respect to each bond issue, the Issuer will ensure that it understands at the time of bond closing, which funds and accounts containing bond proceeds may become subject to yield-restriction investment rules and will keep a record of the dates upon which such rules will begin to apply.
3. Rebate Compliance. While rebate calculations may be performed more often, the Issuer will ensure upon the fifth anniversary date of the issuance date of the bonds, every five years thereafter, and upon final retirement of the bonds, that either no rebate is owed or provision has been made for the payment of any rebate owed within 60 days.
4. Change in Use/Ownership. Prior to executing any contract, lease or other document which would materially change the use of the bond-financed property or selling,

transferring or otherwise disposing of any interest in bond-financed property, the Issuer will (i) confirm with bond counsel that such change or disposition will not require a remedial action to be taken with respect to any bond issue as set forth in Treasury Regulation § 1.141-12, (ii) take a remedial action, if necessary, or (iii) discuss with bond counsel whether a voluntary closing agreement with the Internal Revenue Service is appropriate.

- B. Issue Price of Tax-Exempt Obligations. The issue price of Tax-Exempt Obligations is used to compute the arbitrage yield on the issue of Tax-Exempt Obligations.

In connection with the issuance of Tax-Exempt Obligations in the public securities market, any Underwriter will be required to:

- (1) Offer all of the Tax-Exempt Obligations in a bona fide public offering, to disclose whether any Tax-Exempt Obligations in the initial offering to the public were sold to an affiliate or affiliated accounts of the Underwriter, and
- (2) Certify the issue price.

Such certificate will be retained in the records of the Issuer for each issue of Tax-Exempt Obligations.

- C. Timely Expenditure of Tax-Exempt Obligations Proceeds. Prior to the issuance of Tax-Exempt Obligations, the Tax Compliance Officer will determine that all the statements in the Tax Compliance Certificate (the “Certificate”) prepared by the Issuer’s Bond Counsel are true and correct, and all the Issuer’s promises set forth in the Certificate are reasonably expected to be fulfilled.

- (1) Prior to the issuance of any Tax-Exempt Obligations, the Tax Compliance Officer will confirm that:
 - (a) Other than proceeds of Tax-Exempt Obligations, the School District has no funds on hand that (i) could legally and practically be used for the governmental purposes for which the Tax-Exempt Obligations are being issued that are not pledged, budgeted, earmarked or otherwise necessary to be used for other purposes, or (ii) would be used for the governmental purposes of the Tax-Exempt Obligations if the proceeds of the Tax-Exempt Obligations were not used or to be used for such purposes.¹

¹ Treas. Reg. § 1.141-1(c).

- (b) the Tax-Exempt Obligations are not being issued earlier than necessary for the projects the Tax-Exempt Obligations are expected to finance and will not remain outstanding longer than necessary,² and
 - (c) the amount of the Tax-Exempt Obligations do not exceed the amount necessary to accomplish its governmental purpose.³
- (2) Prior to the issuance of Tax-Exempt Obligations for the purpose of funding capital projects, the Tax Compliance Officer will confirm that:
 - (a) the Issuer will be able to expend, or enter into a binding contract to expend, an amount in excess of five percent (5%) of the net sale proceeds of the Tax-Exempt Obligations on capital projects that constitute a governmental purpose of the Tax-Exempt Obligations within six (6) months of the date of issuance of the Tax-Exempt Obligations,⁴
 - (b) completion of the capital projects and allocation of net sale proceeds of the Tax-Exempt Obligations to expenditures will proceed with due diligence,⁵ and
 - (c) at least eighty five percent (85%) of the net sale proceeds of the Tax-Exempt Obligations are reasonably expected to be expended on capital projects within three years after the date of issuance of the Tax-Exempt Obligations.⁶
- (3) The Tax Compliance Officer is responsible for making sure that, for each project financed with proceeds of a Tax-Exempt Obligation, such proceeds are allocated to expenditures for the applicable project within the period ending on the earliest of the following (the “Permitted Allocation Period”)⁷:
 - (a) 18 months after the placed in service date of the project (or the payment of the expenditure, if later), or

² Treas. Reg. § 1.148-10(a).

³ Treas. Reg. § 1.148-10(a).

⁴ Treas. Reg. § 1.141-2(e)(2)(B).

⁵ Treas. Reg. § 1.141-2(e)(2)(C).

⁶ Treas. Reg. § 1.141-2(e)(2)(A).

⁷ Treas. Reg. § 1.148-6(d)(iii).

- (b) 5 years (plus 60 days) after the issue date of the Tax-Exempt Obligations, or
- (c) 60 days after the retirement of the Tax-Exempt Obligations.

Prior to the end of the Permitted Allocation Period for a project, the Executive Director of Capital Programs should make sure the Issuer actually spends proceeds of the Tax-Exempt Obligations (and equity or taxable debt proceeds, if applicable) on project expenses in a manner that can be documented (e.g., through requisitions, invoices and cancelled checks).

D. Arbitrage Yield Restriction and Rebate. On or before the issuance of any Tax-Exempt Obligations, the Tax Compliance Officer working with Bond Counsel and the School District's Financial Advisor shall review the Certificate which sets forth the applicable arbitrage yield restrictions and rebate compliance procedures with respect to the particular series of Tax-Exempt Obligations.

- (1) Arbitrage Compliance. With respect to Tax-Exempt Obligations, the Issuer shall covenant in the borrowing documents that it will not make any use of the proceeds of the Tax-Exempt Obligations which may cause the Tax-Exempt Obligations to become "arbitrage bonds"⁸ subject to the yield-restriction investment rules.
- (2) Nonpurpose Investments. For the purposes of calculating the yield on any Nonpurpose Investment, the purchase price of the Nonpurpose Investment must be the fair market value of the obligation in an established market. The Issuer will not pay or cause to be paid a premium to adjust the yield, accept a lower interest rate than is usually paid or otherwise enter into a transaction that reduces the amount of earnings on Nonpurpose Investments by producing a smaller profit or larger loss than would have resulted if the transaction had been at arm's length and artificially reducing the yield on the Nonpurpose Investments had not been relevant to the Issuer. The Certificate shall set forth procedures for the Issuer to follow to insure that the purchase price for each Nonpurpose Investment will be the fair market value of the obligation in an established market.

As used herein the term "Nonpurpose Investment" shall mean any investment in which gross proceeds of the Tax-Exempt Obligations are

⁸ IRC § 148.

invested and which is not acquired to carry out the governmental purpose of the Tax-Exempt Obligations.⁹

- (3) Rebate Spending Exceptions. Earnings on the gross proceeds of the Tax-Exempt Obligations will be subject to rebate unless otherwise exempted as permitted in the Code.¹⁰ The Certificate executed with respect to the Tax-Exempt Obligations shall set forth the rebate exceptions, if any, that may be applicable for the Tax-Exempt Obligations. The Tax Compliance Officer is responsible for monitoring the spending of the gross proceeds of the Tax-Exempt Obligations and taking appropriate steps to qualify for any applicable “spending exception” to rebate, to the extent practicable.
- (4) Rebate Computation Report. The Tax Compliance Officer, in consultation with Bond Counsel, will determine whether it is necessary or useful to engage the services of an arbitrage rebate calculation firm to assist the Issuer in complying with the requirements of the arbitrage yield restrictions and rebate rules for each series of Tax-Exempt Obligations, and if necessary or useful, will engage such a firm. The Tax Compliance Officer and outside auditors will review all rebate reports prepared by any arbitrage consultant and, if necessary, will timely remit any required rebate to the federal government.

E. Post-Issuance Corrective Actions. The Tax Compliance Officer will monitor all procedures set forth herein and will consult with Bond Counsel in the event the Issuer fails to adhere to any of its enumerated policies or the Certificate delivered at settlement for the Tax-Exempt Obligations.

Section 103(a) of the Code provides that gross income does not include interest on any obligation of a state or any political subdivision thereof. Section 103(b) provides an exception to the general rule that gross income does not include such interest if such obligation is a “private activity bond” which is not a qualified bond (within the meaning of Section 141 of the Code).

A “private activity bond” is defined in Section 141 of the Code as any bond issued as part of an issue which meets either (i) the “private business use” test of §141(b)(1), and the “private security” or “payment test” of §141(b)(2), or (2) the

⁹ Treas. Reg. § 1.148-5(d)(3)

¹⁰ Treas. Reg. § 1.148-7.

“private loan financing” test of §141(c). See Appendix A for a description of the aforementioned tests.

(1) Private Business Use – Existing Agreements.

Existing agreements with private business users or non-profit organizations for lease or management or services contracts or other private business use involving bond-financed property will be tracked and aggregated with other private business uses for compliance with the 10% (or 5%) or \$15,000,000 limits, as set forth in the Tax Certificate for the applicable series of bonds. The Issuer will consult the Tax Certificate to ensure ongoing compliance regarding the proper use of the proceeds test.

No interest in any item of bond-financed property will be sold, transferred or otherwise disposed of without advance arrangement of a “remedial action” under the applicable Treasury Regulations (see Treasury Regulations §§ 1.141-2, 1.141-12, and 1.142-2).

In the event that private business use (and private security or payments) is more than de minimis activity under the Code and applicable Treasury Regulations, the Tax Compliance Officer will discuss the remediation options available under the Code and the Treasury Regulations with Bond Counsel as outlined in Exhibit C hereto.

(2) Private Business Use – Future Agreement.

Before the Issuer enters into an arrangement that may give rise to private business use, the arrangement should be reviewed to ensure that entering into the arrangement will not cause a violation of the private business use rules. In order to ensure that future arrangements do not result in private business use, proposed arrangements including leases, management and service contracts and output contracts should be reviewed for private business use before they are entered into by the Issuer. Responsibility for screening these proposed arrangements will be the responsibility of the Tax Compliance Officer. The Tax Compliance Officer shall complete the Private-Use Questionnaire set forth in Exhibit B hereto and review with B Bond Counsel before entering into any arrangements that may give rise to private business use.

If the Tax Compliance Officer and Bond Counsel determines that private business use would arise under the arrangement as then proposed, he or

she will recommend appropriate steps to promote the best interests of the Issuer. Such steps may include: requiring that the arrangement be modified to eliminate the private business use (for example, by fitting the arrangement within IRS “safe harbor” guidance); taking “remedial action” as permitted under the Treasury Regulations to cure any private business use resulting from the arrangement; re-allocating the sources of funding of the facility at issue to the extent permitted by the Treasury Regulations; or determining that the amount of private business use generated by the arrangement is immaterial and will not cause the applicable limitation on private business use to be exceeded. In no event may the Tax Compliance Officer approve, or the Issuer enter into, a proposed arrangement that would cause the limitation on private business use for a given Tax-Exempt Obligation to be exceeded.

The Tax Compliance Officer will discuss the remediation options available under the Code and the Treasury Regulations with counsel, as outlined in Exhibit C hereto.

- F. Record Retention. All material records relating to the Tax-Exempt Obligations shall be retained by the Issuer for the life of the Tax-Exempt Obligations, plus six (6) years after the final redemption date of the Tax-Exempt Obligations. For purposes of determining the life of the Tax-Exempt Obligations, any tax-exempt obligation issued to refund the Tax-Exempt Obligations shall be considered to be an extension of the original Tax-Exempt Obligations and all material records relating to the Tax-Exempt Obligations shall be maintained until six (6) years after the final redemption of both tax-exempt issues.

- (1) Material records relating to the Tax-Exempt Obligations shall include, but is not limited to, the following:
 - (a) Basic records relating to the Tax-Exempt Obligation transaction (including the trust indenture and bond counsel opinion);
 - (b) Documentation evidencing expenditure of bond proceeds;
 - (c) Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);
 - (d) Documentation evidencing all sources of payment or security for the Tax-Exempt Obligations; and

- (e) Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- (2) Records of the Issuer shall be kept in either paper form, electronic media or a combination of both. In the event records are kept using an electronic storage system, the Issuer shall comply with the requirements of Rev. Proc. 97-22, 1997-1 C.B. 652, or such successor guidance, which provides the general requirements for an electronic storage system of records. A summary of these requirements is as follows:
- (a) The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information.
 - (b) The system must include reasonable controls and quality assurance programs that (i) ensure the integrity, accuracy, and reliability of the system; (ii) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records; (iii) institute regular inspections and evaluations; and (iv) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.
 - (c) The information maintained in the system must be cross-referenced with the Issuer's books and records in a manner that provides an audit trail to the source document(s).
 - (d) The Issuer must maintain, and provide to the Internal Revenue Service upon request, a complete description of the electronic storage system including all procedures relating to its use and the indexing system.
 - (e) During an examination, the Issuer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Internal Revenue Service and provide the Internal Revenue

Service with the resources necessary to locate, retrieve, read and reproduce any electronically stored books and records.

- (f) The system must not be subject, in whole or in part, to any agreement that would limit the Service's access to and use of the system.
- (g) The Issuer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.

G. Training

The Issuer will use its best efforts to ensure that any officers and employees responsible for carrying out these Compliance Procedures are properly trained for that responsibility. Such training may include:

1. Ensuring access to the necessary records.
2. Ensuring that such persons have reviewed a copy of these Compliance Procedures and the Tax Certificates and applicable Form 8038 related to the relevant bond issues.
3. Permitting attendance on free educational conference calls or webinars sponsored by the Internal Revenue Service, bond-related professional associations or law firms.
4. Permitting access to free educational websites, such as:
<https://www.irs.gov/taxexempt-bonds/section-103-interest-on-state-and-local-bonds-political-subdivision>.
5. Cost-permitting, such training may also include attendance at Issuer-approved educational conferences and maintenance of tax-exempt bond-related reference materials.

In addition, any officers or employees responsible for carrying out these Compliance Procedures shall attend a tax compliance training session conducted by School District Bond Counsel, with the assistance of the CFO. New employees shall attend such a session within one year of hire or one year of accepting a position responsible for carrying out these Compliance Procedures. Such training sessions may be conducted in person, virtually, over the phone, by videotape or by any other medium as determined by the CFO. Each person who is required to participate in training shall do so at least once every two (2) years. The CFO, with the advice of Bond Counsel, will determine which officers and employees will be required to participate in such tax compliance training and will maintain a record of such officers and employees who have completed tax compliance training and when their training will expire.

Legal References:

1. Internal Revenue Code of 1986, as amended [*Title 26 of the United States Code (26 USC)*].
2. Treasury Regulations [*Title 26 of the Code of Federal Regulations (26 CFR)*].

Related Information:

These Compliance Procedures are not intended to be exhaustive. Further procedures may be identified from time to time by the Issuer in consultation with Bond Counsel and Issuer's General Counsel, in which case the Issuer may amend these Compliance Procedures accordingly.

APPENDIX A

PRIVATE ACTIVITY BOND TESTS

Interest on State and local government bonds is taxable if the bonds are private activity bonds, unless the bonds are qualified private activity bonds.¹¹ A bond issue is an issue of private activity bonds if the issue meets either: (i) the private business tests (private business use test AND private security or payment test)¹² OR (ii) the private loan financing test.¹³

Private Use Test

The private business use test relates to the use of the proceeds of a bond issue. If more than 10 percent of the proceeds of an issue are to be used in a trade or business of a nongovernmental person, the issue meets the private business use test. For this purpose, the use of financed property is treated as direct use of proceeds. Any activity carried on by a person other than a natural person is treated as a trade or business.

In determining whether an issue meets the private business use test, it is necessary to look at both the indirect and direct uses of proceeds. For example, a facility is treated as being used for a private business use if it is leased to a nongovernmental person and subleased to a governmental person or if it is leased to a governmental person and then subleased to a nongovernmental person, provided in each case the nongovernmental person's use is in a trade or business. Other examples of private business use include actual or beneficial use of property pursuant to a lease, management or incentive payment contract, or certain other arrangements such as a take or pay or other output-type contracts. The private business use test is generally met if a nongovernmental person has special legal entitlements to use the financed property.

Private Security or Payment Test

The private security or payment test relates to the nature of the security for, and the source of, the payment of debt service on an issue. An issue meets the private security or payment test if the payment of the principal of, or the interest thereon, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly – (A) secured by any interest in (i) property used or to be used for a private business use, or (ii) payments in respect of such property, or (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for private business use.

Private Loan Financing Test

Bonds of an issue are private activity bonds if more than the lesser of 5 percent or \$5 million of the proceeds of an issue is to be used (directly or indirectly) to make or finance loans

¹¹ §103; §149(c).

¹² §141(b)(1)-(2).

¹³ §141(c).

to persons other than governmental persons. In determining whether the proceeds of an issue are used to make or finance loans, indirect, as well as direct, use of the proceeds is taken into account. Any transaction that is generally characterized as a loan for federal income tax purposes is a loan for purposes of the private loan financing test. A loan may arise from the direct lending of proceeds or from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed. Thus, the determination of whether a loan is made depends on the substance of the transaction rather than its form.

For example, a lease or other contractual arrangement (for example, a management contract or an output contract) may in substance constitute a loan if the arrangement transfers tax ownership of the facility to the nongovernmental person. An output contract or management contract with respect to a financed facility generally is not treated as a loan of proceeds unless the agreement in substance shifts significant burden of ownership to the nongovernmental purchaser or manager of the facility.

EXHIBIT A

TAX-EXEMPT OBLIGATION DATABASE

1. Has a defeasance escrow been established subsequent to the issuance of the Tax-Exempt Obligations to defease any Tax-Exempt Obligations (Y/N):
2. Amount of Tax-Exempt Obligations retired:
3. Amount of Tax-Exempt Obligations legally defeased:
4. Amount of unspent proceeds:
5. Dates on which the portions of projects funded by the Tax-Exempt Obligations were substantially completed:
6. Has the final allocation of the proceeds been made (Y/N)? If yes, the dates thereof:
7. Commencement date for project fund yield restriction:

EXHIBIT B

PRIVATE BUSINESS USE

Date _____

1. Name of Tax-Exempt Obligations/note issues used to finance facility? Date of Issuance?
2. How much of the proceeds of the Tax-Exempt Obligations allocated to the specific property project have been spent to date?
3. Describe direct use of bond proceeds, including investment earnings, represented by each asset financed. Provide a description of the use of space in the facilities.
4. Describe any indirect use of tax-exempt proceeds (ex. Is a portion of the property that was financed with tax-exempt proceeds being leased or subleased to someone else?)
5. Has the financed asset been placed in service? If so when?
6. Is there any private business use by persons other than the Issuer? If yes, how much of the property is being used for such private business use?
7. Has there been a change in ownership of the property? Has there been a change in use of the property?
8. Is any portion of the financed property subject to a lease, license or similar arrangement? If yes, please explain.
9. Are there any output contracts in place? If so what are the terms?

10. Has the Issuer entered into management or service contracts with respect to all or a portion of the financed property? If so does the service provided qualify as an "incidental service"? What is the length of the contract? A review of the IRS Revenue Procedure 2017-13 is required.
11. Has the Issuer entered into any arrangements that convey special rights over the tax-exempt financed facilities? Any special economic benefit being conveyed (in the case of property not available to the general public)?
12. Have the assets that were financed with Tax-Exempt Obligations been encumbered in any way?

EXHIBIT C**REMEDIAL ACTION OPTIONS**

In the event that certain of the Tax-Exempt Obligations become “nonqualified bonds” under the Code and/or the Treasury Regulations, the Tax Compliance Officer, in consultation with counsel, will follow the following procedures in accordance with Treasury Regulation 1.141-12. A copy of Treasury Regulation 1.141-12 is attached hereto.

If an action causes an issue to meet the “private business tests” or the “private loan financing test” the action *may or may not* be treated as a “deliberate action” based on the nature of the event that caused the Obligations to become nonqualified.

1. In consultation with counsel, the Tax Compliance Officer must *first* determine if certain conditions discussed in Treasury Regulation 1.141-12 paragraphs (a)(1) through (5) are satisfied. The effect of a remedial action is to cure use of proceeds that causes the “private business use test” or the “private loan financing test” to be met.

2. Treasury Regulation 1.141-12 discusses a number of options regarding remediation.

a. Disposition proceeds. Disposition proceeds are any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue. In general, if the requirements of paragraphs (a)(1) through (5) of Treasury Regulation 1.141-12 are satisfied, after the date of the disposition, the proceeds of the Tax-Exempt Obligations allocable to the transferred property are treated as financing the disposition proceeds rather than the transferred property. If an issue does not meet the requirements for remedial action in paragraph (a) of Treasury Regulation 1.141-12 or the issuer does not take an appropriate remedial action, the proceeds of the issue are allocable to either the transferred property or the disposition proceeds, whichever allocation produces the greater amount of private business use and private security or payments.

b. Redemption or defeasance of nonqualified bonds. Proceeds of Tax-Exempt Obligations must not be used for redemption, unless the Tax-Exempt Obligations are qualified bonds, taking into account the purchaser's use of the facility. If the Tax-Exempt Obligations are not redeemed within 90 days of the date of the deliberate action, a defeasance escrow must be established for those Tax-Exempt Obligations within 90 days of the deliberate action. If the consideration for the disposition of financed property is exclusively cash, the disposition proceeds may be used to redeem a *pro rata* portion of the nonqualified bonds at the earliest call date after the deliberate action. If the Tax-Exempt Obligations are not redeemed within 90 days of the date of the deliberate action, the disposition proceeds must be used to establish a defeasance escrow for those bonds within 90 days of the deliberate action. The issuer must provide written notice to the IRS Commissioner of the establishment of the defeasance escrow within 90 days of

the date the defeasance escrow is established. A defeasance is not a permitted remedial action if the period between the issue date and the first call date of the Tax-Exempt Obligations is more than 10 ½ years.¹⁴

c. Alternative use of disposition proceeds. If the deliberate action is a disposition of the tax-exempt financed property for which the consideration is exclusively cash, and certain other requirements in Treasury Regulation 1.141-12 are met, the issuer may use the cash for an alternative qualifying use. The Tax Compliance Officer will discuss this option with counsel.

d. Alternative use of facility. In certain cases, the facility with respect to which the deliberate action occurs may be used in an alternative qualifying manner (for example, the facility may be used for a qualifying purpose by a nongovernmental person or used by a 501(c)(3) organization rather than a governmental person). The Tax Compliance Officer will discuss this option with counsel.

With respect to (c) and (d) above, the remedial action may cause a deemed reissuance of the nonqualified bonds (that is, a deemed issuance of new bonds to refund the nonqualified bonds) for certain purposes of the Code.

In the event that the remedial action procedures under Section 1.141-12 are not available to the issuer the Internal Revenue Service (the "**Service**") has developed a voluntary closing agreement program for tax-exempt obligations ("**TEB VCAP**"). The Service expects to update the Internal Revenue Manual section relating to TEB VCAP with additional resolution standards for certain violations of requirements specific to Direct Pay Bonds. Under TEB VCAP, an issuer may request a closing agreement with respect to its Tax-exempt obligations to resolve violations of sections 103, 54, 1397E, 1400N and related provisions of the Code. TEB VCAP is not available when: (a) absent extraordinary circumstances, the violation can be remediated under existing remedial action provisions or Tax-Exempt Obligation closing agreement programs contained in regulations or other published guidance; (b) the bond issue is under examination; (c) the tax-exempt status of the bonds or qualified status of tax credit bonds is at issue in any court proceeding or is being considered by the IRS Office of Appeals; or (d) the Service determines that the violation was due to willful neglect.

In the event that the remedial action procedures under Section 1.141-12 are not available to the issuer, the Tax Compliance Officer, in consultation with counsel, will explore the options presented under TEB VCAP.

¹⁴ **Defeasance escrow defined.** A defeasance escrow is an irrevocable escrow established to redeem bonds on their earliest call date in an amount that, together with investment earnings, is sufficient to pay all the principal of, and interest and call premium on, bonds from the date the escrow is established to the earliest call date. The escrow may not be invested in higher yielding investments.