California Health Facilities Financing Authority ("CHFFA")

Agenda Item 9 – Resolution No. 2011-16

Staff Report: Amended Post-Issuance Tax Compliance Procedures

Executive Summary

The Authority approved post-issuance tax compliance procedures at its June 30, 2011 meeting. At the meeting, staff informed the board members that from time to time further changes to the procedures would be recommended.

Since the June 30, 2011 board meeting, State Treasurer's Office counsel reviewed other conduit issuer's post-issuance tax compliance policies and procedures and, based on that review and input from bond counsels, now recommends various changes to CHFFA's procedures. These changes are also consistent with the procedures that other Authorities have recently adopted (such as CSFA and CPCFA).

The most significant change is adding a model for Borrower's procedures[1]. This model will be particularly helpful for smaller health care facilities that may not have procedures in place. Some of the other changes are to add clarity and expressly specify some of the Borrower's responsibilities. For example, the Borrower is expressly required to designate an officer or employee responsible for undertaking the tasks such as:

- Monitoring, record keeping, and taking remedial action as necessary.
- Determining the likelihood of satisfying the exception to the arbitrage rebate requirements.
- Establishing procedures to ensure that investments acquired with bond proceeds are acquired at their fair market value.

These procedures may need to be amended from time to time due to any changes in IRS guidelines[2].

Recommendation:

Staff recommends the Authority approve Resolution No. 2011-16 authorizing the adoption of the amended written procedures for post bond issuance tax compliance.

Attachment:

- CHFFA's amended written procedures in track changes

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[1] Please see Attachment A of the resolution entitled: "Model Procedures"

[2] For a complete version of the recommended Amended Post-Issuance Procedures, please see the attached track changes version.

~~Appendix A~~

California Health Facilities Financing Authority
Post-Issuance Tax Compliance Procedures
For Tax-Exempt Bonds

~~June 30~~December 1, 2011

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds or other obligations ~~(the "~~("Bonds") issued by the California Health Facilities Financing Authority ~~(the "~~("Authority") 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. ~~-~~The Authority reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. ~~-~~The Authority also reserves the right to change these policies and procedures from time to time.

General

Inasmuch as the Authority is a responsible conduit issuer authorizing the issuance of Bonds for non-profit borrowers, the Authority now identifies post-issuance tax compliance procedures for all Bonds issued by the Authority on behalf of non-profit borrowers, as well as the Authority's expectations of and requirements for all ~~Bond~~such borrowers (each a "Borrower") concerning these procedures.

Post-Issuance Compliance Requirements

~~———~~External Advisors / Documentation

The Authority 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 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 pertaining to the Bonds that are finalized ~~at or before~~ in connection with the issuance of the Bonds.~~-~~ Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and ~~all~~ 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 other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with ~~future contracts with respect to~~any potential changes in the use of Bond-financed or refinanced assets. This requirement shall be documented in the Tax Certificate and/or other documents pertaining to the Bonds that are finalized in connection with the issuance of the Bonds.

The Authority shall ~~encourage or~~ 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.~~ in the manner more fully set forth in the California Health Facilities Financing Authority Model Borrower Post-Issuance Tax Compliance Procedures for Tax- Exempt Bonds (Attachment A).

Unless otherwise provided by the indenture (or similar document) 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 or other financial institution to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the Authority 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 Authority's policy that the Borrower shall be responsible for:~~

~~•~~ ———The Borrower shall be responsible for compliance with all requirements under the Federal arbitrage regulations. As more fully set forth in the California Health Facilities Financing Authority Model Borrower Post-Issuance Tax Compliance Procedures for Tax-Exempt Bonds (Attachment A), the Borrower is responsible for:

- determining the likelihood of satisfying an exception to the arbitrage rebate requirement for all or a portion of the proceeds of the Bonds;

- engaging the services of a Rebate Service Provider and, prior to each rebate calculation date, causing the trustee or other financial institution investing Bond proceeds 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 the efforts of the Rebate Service Provider;

- ~~•~~ assuring the 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~~consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements, including 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 Authority~~.~~; and
- establishing procedures to ensure investments acquired with Bond proceeds are acquired at their fair market value.

The Borrower, in the Tax Certificate ~~relating to the Bonds~~ and/or other documents pertaining to the Bonds that are finalized ~~at or before~~ in connection with the issuance of the Bonds, shall ~~agree to undertake~~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 Authority's policy that the~~
The Borrower shall be responsible for:

- ~~•~~ monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) 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~~change in use, or ~~arrangements involving~~potential change in 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~~discuss any existing or planned use of Bond-financed or refinanced assets~~,~~ and 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~~Bonds or take other remedial action, if such counsel advises that a remedial action is necessary.

The Borrower, in the Tax Certificate ~~relating to the Bonds~~ and/or other documents pertaining to the Bonds that are finalized ~~at or before~~in connection with the issuance of the Bonds, shall ~~agree to undertake~~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 Authority's policy that the~~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 pertaining to the Bonds that are finalized ~~at or before~~in connection with the issuance of the Bonds, shall ~~agree to retain~~designate an officer or employee responsible for retaining the records listed above.