

Policy Number:	GB-Finance-4	Effective Date:	July 16, 2019
Approved By:	Governing Body (Resolution 2019-71)	Sunset Date:	None
Approval Date:	July 16, 2019	Prepared By:	Finance Dept.
Repeals/Replaces:	Current Post Issuance Compliance Policy (Resolution 2016-168)		
Statutory Authority:	N/A		
Cross References:	Debt Policy (GB-Finance-3)		
Policy Purpose:	To establish best practices for the City regarding compliance with federal tax law following the issuance of governmental tax-exempt debt (including compliance with ongoing disclosure requirements under federal securities law)		

1. Introduction.

This Post Debt Issuance Tax Compliance Policy and Procedures is intended to guide the City in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed bonds, notes and other obligations (collectively “bonds”) of the City for bonds issued on or after June 19, 2012 (the date this policy was originally adopted). This policy addresses obligations of the City that arise and will continue following the issuance of bonds. These obligations may arise as a result of federal tax law (with respect to tax-exempt securities) and securities laws (with respect to ongoing disclosure) or as a result of contractual commitments made by the City.

This policy outlines obligations that may be applicable to each issue of bonds and identifies the party to be responsible for monitoring compliance. For the City, the Chief Financial Officer (the “Compliance Officer”) will be responsible for ensuring that the policy and procedures are followed and checklists and records maintained. The Compliance Officer may delegate responsibility to employees and outside agents for developing records, maintaining records, and checklists. The City will provide educational opportunities (opportunities to attend educational programs/seminars on the topic) for the parties identified in this policy with responsibilities for post-issuance compliance in order to facilitate their performance of these obligations.

2. Ethics, Integrity and City Values.

Section 1-6-H-1 *et seq.* of the City Code establishes a Code of Ethics for all City employees. This Code of Ethics is reinforced through the City’s Personnel Policies/Procedures and the City’s values. The City’s values are:

- Make every decision with integrity
- Deliver results through teamwork

- Provide exceptional service
- Lead into the future with vision
- Be dedicated to excellence
- We Care

All City employees involved with debt issuance and post debt issuance tax compliance processes shall act in an honest and professional manner in accordance with the City's values, Code of Ethics, and Personnel Policies/Procedures

3. Transcripts.

The City's bond counsel shall provide the City with a transcript related to the issuance of bonds (for each issue). It is expected that the transcript will include a full record of the proceedings related to the issuance of bonds, including proof of filing an 8038-G or 8038-GC, if applicable.

Bond transcripts will be retained by the Compliance Officer at City Hall, in the City of Lenexa, Kansas.

4. Federal Tax Law Requirements.

These requirements only apply if the bonds are issued as tax-exempt securities.

1. Use of Proceeds.

a. If the project(s) to be financed with the proceeds of the bonds will be funded with multiple sources of funds, the City will adopt an accounting methodology that maintains each source of funding separately and monitors the actual expenditure of proceeds of the bonds.

b. Records of expenditures (timing of expenditure and object code) of the proceeds of bonds will be maintained by the Compliance Officer.

c. Records of interest earnings on the proceeds of bonds will be maintained by the Compliance Officer. Interest earnings on proceeds will be deposited in the fund in which the proceeds of the bonds were deposited. If for any reason interest earnings will not remain in the fund in which the proceeds of bonds were deposited, then the plan for use of interest earnings will be discussed with the City's bond counsel.

d. Records of interest earnings on bond reserve funds will be maintained by the Compliance Officer (unless the original principal amount of the bond issue, including other issues during the same calendar year, was \$5,000,000 or less).

2. *Arbitrage Rebate.* The Compliance Officer ("Rebate Monitor") will monitor compliance with the arbitrage rebate obligations of the City for each issue of bonds. The City will provide educational opportunities, through attendance at educational

programs/seminars on the topic of arbitrage regulations, to support the Rebate Monitor and facilitate his/her performance of these obligations.

a. If the Rebate Monitor determines that the total principal amount of tax- exempt governmental obligations (including all tax-exempt leases) issued or incurred by the City during any calendar year, including the issue, will not be greater than \$5,000,000, the Rebate Monitor will not be required to monitor arbitrage rebate compliance, but will monitor expenditures and the use of proceeds after completion of the project as set forth in number 3 below.

b. If the Rebate Monitor determines that the total principal amount of governmental obligations (including all tax-exempt leases, etc.) of the City issued or incurred will be greater than \$5,000,000, the Rebate Monitor will monitor arbitrage rebate compliance.

i. Rebate Exceptions. The Rebate Monitor will review the closing certificate, arbitrage letter of instructions, tax certificate, tax agreement or other transcript document relating to the instructions for compliance with federal tax law (the “tax certificate”) in the transcript in order to determine whether the City expected to comply with a spending exception that would permit the City to avoid having to pay arbitrage rebate. If the tax certificate identifies this spending exception (referred to as the six-month exception, the 18-month exception or the 24-month spend-down exception), then the Rebate Monitor will monitor the records of expenditures (described in “*Use of Proceeds*” above) to determine whether the City met the spending exception. If the City met the relevant spending exception, the Rebate Monitor will retain documentation demonstrating timing of expenditures, and will not need to perform arbitrage rebate calculations or pay an arbitrage rebate to the federal government.

ii. Rebate Compliance. If the City did not meet or does not expect to meet any of the spending exceptions described in (i) above, the City will:

(a) Review the investment earnings records retained as described in “*Use of Proceeds*” above. If the investment earnings records clearly and definitively demonstrate that the rate of return, on investments of all proceeds of the issue, were lower than the “arbitrage yield” on the issue then the Rebate Monitor may retain documentation describing the basis for such determination in lieu of following the steps described in the following paragraph. The “arbitrage yield” can be found in the tax certificate or Form 8038-G in the transcript.

(b) Retain the services of an arbitrage rebate consultant in order to calculate any potential arbitrage rebate liability. The rebate consultant may be selected no later than the completion of the project to be financed with the proceeds of the issue but in no event later than the date the bonds mature or are redeemed in full. The selected rebate consultant shall provide a written report to the City with respect to the issue and with respect to any arbitrage rebate owed if any.

(c) Based on the report of the rebate consultant, file reports with the Internal Revenue Service (IRS), no later than 60 days after the fifth anniversary of the date of each issue, and every five years thereafter, with the final installment due no later than 60 days following the retirement of the last obligation of the issue.

3. *Unused Proceeds Following Completion of the Project.* Following completion of the project(s), financed with the issue proceeds (or three years from the date of issuance if this occurs first), the Compliance Officer will:

a. Review the expenditure records to determine whether the proceeds have been allocated to the project(s) intended and if any questions arise, consult with bond counsel in order to determine the method of re-allocation of proceeds; and

b. Direct the use of remaining unspent proceeds in accordance with the limitations set forth in the authorizing proceedings (e.g., bond resolution, bond ordinance, trust indenture, etc.) and if no provision is otherwise made for the use of unspent proceeds, to the redemption or defeasance of outstanding bonds of the issue.

c. If after three years unused proceeds remain, the Compliance Officer will consult with bond counsel regarding potential yield restriction or yield reduction payments relating to the unspent bond proceeds.

4. *Facilities and Use of the Facilities Financed with Proceeds, Private Use.* The Compliance Officer will monitor and confirm that the City maintains an asset list or other record regarding all facilities and equipment that are bond-financed, and depreciation schedules for such facilities and equipment. In order to maintain tax-exemption of securities issued on a tax-exempt basis, the financed facilities (projects) are required to be used for governmental purposes during the life of the issue.

The Compliance Officer will coordinate with City staff to monitor and maintain records regarding any private use of the projects financed with tax-exempt proceeds. The IRS Treasury Regulations prohibit private business use (use by private parties including nonprofit organizations and the federal government) of tax-exempt financed facilities beyond permitted *de minimus* amounts unless cured by a prescribed remedial action. Private use may arise as a result of activities such as the following:

a. Sale of the facilities;

b. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;

c. Management contracts (in which the City authorizes a third party to operate a facility, e.g., cafeteria), research contracts and naming rights contracts;

d. Preference arrangements (in which the City permits a third party

preference, such as parking in a public parking lot); and

e. Joint-ventures, limited liability companies or partnership arrangements.

If the Compliance Officer identifies private use of tax-exempt debt financed facilities, the Compliance Officer will consult with the City's bond counsel to determine whether private use will adversely affect the tax-exempt status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

5. *Records Retention.*

a. Records with respect to matters described in this Section 4 (Federal Tax Law Requirements) will be retained by the City for the life of the bond issue (and any issue that refunds the bond issue) and for a period of six years thereafter.

b. Records to be retained:

(i) The transcript;

(ii) Arbitrage rebate reports prepared by outside consultants;

(iii) Detailed records of expenditures of bond proceeds (including interest earnings);

(iv) Work papers that were provided to the rebate consultants;

and

(v) If no rebate report was prepared, then records of expenditures and investment receipts showing timing of expenditure and the object code of the expenditure and in the case of investment, timing of receipt of interest earnings. (Maintenance of underlying invoices should not be required; however, if those documents are maintained as a matter of policy in electronic form, then continue to maintain those records in accordance with this policy).

(vi) Copies of all certificates and returns filed with the IRS (e.g., for payment of arbitrage rebate) and all reports regarding IRS examinations of City or its bond financings.

(vii) Copies of all documents related to potential private use as set forth in "*Facilities and Use of the Facilities Financed with Proceeds, Private Use*" above, including leases, user agreements for use of the financed property (agreements that provide for use of the property for periods longer than 30 days), whether or not the use was within the four walls, e.g., use of the roof of the facility for a cell phone tower.

(viii) Documents to establish valuation and source of funding for bond-financed project, including appraisals, demand and feasibility studies and grant contracts.

(ix) Construction and purchase contracts.

(x) Records related to investment contracts, credit enhancement contracts, derivatives and all related bidding documents.

(xi) Any other documentation necessary to establish the qualification for tax-exemption of the bonds.

6. *IRS Correspondence and Audits.*

The Compliance Officer will consult with Bond Counsel immediately upon receipt of any correspondence from, or opening of an examination of any type, with respect to bonds by the IRS.

5. Ongoing Disclosure.

1. *Annual Report.* In each year that the City has bonds outstanding subject to SEC Rule 15c2-12, no later than the SEC report date included in the City's transcript of proceedings for such obligations (the "Annual Report Due Date"), the Compliance Officer shall file, or cause its dissemination agent, if applicable, to file, its annual report (the "Annual Report") with the Municipal Securities Rulemaking Board (the "MSRB") through its Electronic Municipal Market Access facility for municipal securities disclosure ("EMMA"). In preparing its Annual Report, the Compliance Officer shall review each of its outstanding continuing disclosure undertakings (collectively, the "Undertakings") to determine the quantitative financial information and operating data which, together with the audited financial statements, shall constitute the content of the Annual Report.

2. *Event Filings.*

a. *Obligations Issued before February 27, 2019.* For its Undertakings with respect to bonds issued before February 27, 2019, the Compliance Officer shall monitor the following events and provide notice of such events to the MSRB through EMMA as required by the applicable Undertaking:

- i. Principal and interest payment delinquencies;
- ii. Non-payment related defaults;
- iii. Unscheduled draws on debt service reserves reflecting financial difficulties;
- iv. Unscheduled draws on credit enhancements reflecting financial difficulties;

- v. Substitution of credit or liquidity providers, or their failure to perform;
- vi. Adverse tax opinions or events affecting the tax exempt status of the security;
- vii. Modifications to the rights of security holders;
- viii. Bond calls;
- ix. Defeasances;
- x. Release, substitution or sale of property securing repayment of the securities;
- xi. Rating changes;
- xii. Bankruptcy, insolvency, receivership or similar event of the City*;
- xiii. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- xiv. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

b. *Obligations Issued after February 27, 2019.* For its Undertakings with respect to bonds issued on or after February 27, 2019, the Compliance Officer shall monitor the following events and provide notice of such events to the MSRB through EMMA as required by the applicable Undertaking, but not later than 10 business days after occurrence:

- i. Principal and interest payment delinquencies;
- ii. Nonpayment-related defaults, if material;

* This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

- iii. Unscheduled draws on debt service reserves reflecting financial difficulties;
- iv. Unscheduled draws on credit enhancements reflecting financial difficulties;
- v. Substitution of credit or liquidity providers, or their failure to perform;
- vi. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- vii. Modifications to rights of security holders, if material;
- viii. Bond calls, if material, and tender offers;
- ix. Defeasances;
- x. Release, substitution or sale of property securing repayment of the securities, if material;
- xi. Rating changes;
- xii. Bankruptcy, insolvency, receivership or similar event of the City*;
- xiii. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- xiv. Appointment of a successor or additional trustee or the change of name of a trustee, if material;

* This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

xv. Incurrence of a financial obligation[†] of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect security holders, if material; and

xvi Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the City, any of which reflect financial difficulties.

6. Other Notice Requirements.

D. Other Notice Requirements. In some instances, the proceedings authorizing the issuance of bonds will require the City to file information periodically with other parties, e.g., bond insurers, banks, rating agencies. The types of information required to be filed may include (1) budgets, (2) annual financial reports, (3) issuance of additional debt obligations, and (4) amendments to financing documents. The Compliance Officer of the City will maintain a listing of those requirements and monitor compliance by the City.

7. Periodic Review Requirements.

The Compliance Officer will periodically review the implementation of this policy with the City's Governing Body during the term of any bonds.

8. Policy Revisions.

The Compliance Officer will periodically seek the advice of Bond Counsel or other municipal finance advisors or professionals that he or she deems appropriate to revise the terms of this policy. The Compliance Officer may approve clarifications to this policy that he or she deems appropriate in consultation with Bond Counsel.

[†] SEC Rule 15c2-12 defines "financial obligation" to mean a debt obligation, derivative instrument entered into in connection with a debt obligation, or any guarantee of such debt obligation or derivative instrument. The definition expressly excludes municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board.