

# THE BOND BUYER

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## IRS Starts Checks on Compliance

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WASHINGTON - The Internal Revenue Service yesterday launched its post-issuance compliance check on governmental bond issuers, sending 200 of them questionnaires asking for detailed information about their compliance and record-retention procedures and practices.

An issuer will have 90 days to respond to the four-page questionnaire, but the IRS said it may grant a 30-day extension if it is warranted.

Clifford Gannett, director of the IRS' tax-exempt bond office, stressed in a release that the survey is part of the office's new "soft contact approach" to compliance, which he said, "allows us to obtain important information efficiently and at a reduced burden to the community when compared to examinations of the bond issues."

But TEB officials have said that these questionnaires - unlike earlier ones sent to charitable, nonprofit groups - could be followed up with audits in some cases.

The office also told issuers in the two-page letters accompanying the surveys: "If you fail to reply by the above date, we may forward your governmental bond issue for examination consideration."

In an interview, Gannett downplayed the possibility of audits.

"This is primarily for the education of governmental entities with respect to the general tax requirements related to their bonds," he said. "And it's educating our program about the post-issuance compliance procedures and practices that governmental entities are using with the hope that we can improve our educational projects as well as voluntary initiatives."

He also noted that an advisory committee is working on a record-keeping project and said the issuers' responses on record-keeping will help them make recommendations.

TEB expects to issue a report on the survey's findings after it receives and compiles the responses to the questions.

Steve Chamberlin, manager of TEB's office of compliance and program management,

said that the 200 issuers being surveyed were selected from a pool of about 16,600 entities that issued governmental bonds in 2005, based on an aggregation of the Form 8038Gs they filed for the year. The 200 represent a random sampling of those that issued more than \$10 million in bonds during the year and those that issued less, he said.

This is the second major post-issuance compliance survey conducted by the IRS. Last May, the agency sent questionnaires to about 200 nonprofit organizations, asking them to detail their post-compliance and record-retention procedures and practices. IRS officials said that those surveys were for informational purposes only and would not be followed up with audits. They have maintained that stance.

But in a report on the survey results issued in September, the IRS said that more than half of the organizations that responded to the questionnaires were unable to describe their procedures for complying with the tax laws after their bonds were issued.

Bond lawyers said the questionnaires to governmental issuers differ from those sent to the charitable groups in that they ask for "written procedures" and ask issuers to "describe in detail" instead of "briefly describe" responses. The IRS also included a N/A option for issuers so that they can indicate when questions do not apply to them.

The questionnaire sent to governmental issuers contains five sections: general post-issuance compliance, general record-keeping, investments and arbitrage compliance, expenditures and assets, and private business use.

The first section asks issuers to describe or provide their written procedures on the use and expenditure of bond proceeds and the proper use of bond-financed property.

It also asks who is primarily responsible for monitoring post-issuance compliance for bond financings and whether they have received training on how to ensure compliance with the private-use restrictions for bond-financed property.

"Are you aware of the ... options available for voluntarily correcting failures to comply

with post-issuance compliance activities?" the questionnaire asks.

The second section asks issuers the extent to which their bond records are retained, whether documents are kept in paper or electronic form, and how long records are maintained. It asks issuers whether they keep copies of more than 21 different kinds of documents, including appraisals, correspondence, minutes and resolutions, certifications of the issue price, and documents related to government grants associated with bond-financed facilities.

In the third section, the IRS wants to know if issuers maintain detailed records on investments and arbitrage compliance, including investment contracts, credit enhancement transactions, financial derivatives, and documents related to the bidding of financial products. The agency also asks if issuers keep records related to computations of bond yield, rebate, or yield restriction payments.

It also wants to know if issuers have written procedures for monitoring investment yields to determine if yield restriction or arbitrage rules are breached. If such procedures exist, the IRS wants to know when were they implemented.

In the fourth section, it asks if issuers maintain records documenting the allocation of bond proceeds to expenditures, including issuance costs. The agency also wants to know if issuers keep copies of requisitions, draw schedules and requests, invoices and contracts for construction or acquisition, as well as asset lists of bond-financed facilities or equipment and depreciation schedules for bond-financed depreciable property.

"Do you maintain records that track your purchases and sales of bond-financed assets?" the agency asks.

In the last section, the IRS wants to know if issuers maintain copies of management or other service agreements, research contracts, naming rights contracts, leases, sub-leases, deeds or mortgages, joint venture arrangements, or corporation or partnership arrangements. □