



**Policy 433, Debt Management Policy  
Post-Issuance Tax Compliance Procedures  
For Tax-Exempt Bonds  
(as of February 6, 2020)**

The purpose of these Post-Issuance Tax Compliance Procedures is to satisfy the Management and Compliance requirement of Vermont State Colleges System Policy 433, Debt Management Policy, and otherwise to establish policies and procedures in connection with tax-exempt bonds issued by the System so as to ensure that the System complies with all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of any bonds.

As of the date of these Procedures, the System's outstanding tax-exempt bond issues are:

1. Revenue Refunding Bonds, Series 2013 (the "2013 Bonds")
2. Vermont State Colleges System Bonds, 2017 Series A (the "2017 Bonds")
3. Vermont State Colleges System Bonds, 2020 Series A (the "2020 Bonds")

Collectively, these bond issues shall be referred to as the "Bonds."

**General**

Ultimate responsibility for all matters relating to System financings and re-financings rests with the Chief Financial Officer of the System (the "Administrator"). The Administrator will be assisted by designated personnel within the Office of the Chancellor, to include the System Controller and the Director of Business Services and their designees or successors.

The Administrator shall be informed of requirements of the relevant tax law, and where necessary should seek training to include attendance at educational conferences, as well as regular consultation with attorneys specializing in tax-exempt finance, including those who served as bond counsel or issuer counsel for the issuance of any of the Bonds (collectively, "Bond Counsel") and with the Rebate Service Provider (as defined below) as needed. Contact information for Bond Counsel and a Rebate Service Provider is included as Exhibit A.

**Post-Issuance Compliance Requirements**

External Advisors / Documentation

The Administrator and other appropriate System personnel 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 the appropriate tax status. These requirements and procedures shall be documented in System resolutions, Tax Certificates and other documents finalized at or before issuance of the Bonds. These 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 Administrator and other appropriate System personnel 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. A checklist from the Government Finance Officers Association (GFOA) and the National Association of Bond Lawyers (NABL) is attached for reference as Exhibit B which includes, without limitation, requirements among which the most likely to be applicable are highlighted.

Whenever necessary or appropriate, the System shall engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect to the investment of Bond proceeds.

#### Role of the System as Bond Issuer

Unless otherwise provided by System resolutions, unexpended Bond proceeds shall be held by the Bond Trustee on behalf of the System, and the investment of Bond proceeds shall be managed by the Administrator. The Bond Trustee and the Administrator shall maintain records and shall prepare regular, periodic statements to the System regarding the investments and transactions involving Bond proceeds.

#### Arbitrage Rebate and Yield

Unless a Tax Certificate documents that Bond Counsel has advised that arbitrage rebate will not be applicable to an issue of Bonds:

- the System shall engage the services of a Rebate Service Provider, and the System or the bond trustee under the applicable series resolution (the “Bond Trustee”) shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis;
- upon request, the Administrator and other appropriate System personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- the Administrator and other appropriate System personnel shall monitor efforts of the Rebate Service Provider and assure 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; and

- during the loan origination period and thereafter, the Administrator and other appropriate System personnel shall monitor the investment and origination of loans with Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable yield limitations, following the issue date of the Bonds. To the extent loan forgiveness or yield reduction payments are required to achieve compliance with loan yield limitations; the System will employ the procedures in the following paragraph on a timely basis.
- at least annually in connection with its fiscal year-end audit process, the System will prepare an analysis of the spread between the bond yield and the loan yield for each of its outstanding Bond issues. The analysis will reflect all available actual data as to loan origination and repayments, delinquencies, defaults, recoveries after default and other factors effecting yield as of the date of calculation, and reasonable projections as to future results. If the analysis suggests that the loan forgiveness and/or yield restructure payments (to the extent permitted under applicable regulations) are or may be required to be made, the Administrator will develop a specific plan for implementing such measures in consultation with Bond Counsel and the Rebate Service Provider and the System will take such action or actions as may be necessary prior to the time required under federal tax law.
- The System shall retain copies of all required arbitrage reports, loan yield analyses and Bond Trustee statements as described below under “Record Keeping Requirements.”

#### Use of Bond Proceeds

The Administrator and other appropriate System personnel shall, where applicable:

- monitor the use of Bond proceeds and the use of loan proceeds by following the System procedures set forth in the System resolutions to ensure compliance with covenants and restrictions set forth in applicable System resolutions and Tax Certificates;
- maintain servicing records identifying the loans that are financed or refinanced with proceeds of each issue of Bonds;
- consult with Bond Counsel and other professional expert advisers in the review of any contracts or arrangements involving use of Bond proceeds to ensure compliance with all covenants and restrictions set forth in applicable System resolutions and Tax Certificates;
- maintain records for any contracts or arrangements involving the use of Bond proceeds as might be necessary or appropriate to document compliance with all covenants and restrictions set forth in applicable System resolutions and Tax Certificates;

- meet as needed with Bond Counsel and personnel responsible for Bond-financed loans to identify and discuss any existing or planned use of loan proceeds, to ensure that those uses are consistent with all covenants and restrictions set forth in applicable System resolutions and Tax Certificates.

### **Record Keeping Requirements**

Unless otherwise specified in applicable System resolutions or Tax Certificates, the System shall maintain 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 System at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to loans financed or refinanced by Bond proceeds, including (without limitation) master loan agreements, loan servicer reports reflecting the loan pools origination and repayment and, from each partner college, any contracts and school certification worksheets supporting the individual loan amounts disbursed, as well as documents relating to costs reimbursed with Bond proceeds, if any; and
- copies of all records of investments, investment agreements, required arbitrage reports and loan yield analyses and underlying documents, including trustee statements.

### **Remedial Action**

If the System discovers a potential tax violation, the System shall immediately consult with Bond Counsel and determine appropriate corrective measures. Ultimately, such measures may include participation in the Internal Revenue Service's Voluntary Closing Agreement Program, if necessary.

## Exhibit A: Contact Information

### **Vermont Bond Bank (Conduit Issuer for 2017 Series A and 2020 Series A Bonds)**

20 Winooski Falls Way, Suite 305  
Winooski VT 05404

Michael Gaughan, Executive Director  
(802) 654-7377  
[michaelg@vtbondagency.org](mailto:michaelg@vtbondagency.org)

Lorraine Lydon, Assistant  
(617) 832-6431  
[llydon@mintz.com](mailto:llydon@mintz.com)

### **Bond Counsel**

#### **Stitzel Page & Fletcher (Counsel to VSC for 2020 Series A Bonds)**

171 Battery Street  
Burlington, VT 05402

Robert Fletcher  
(802) 660-2555  
[rfletcher@firmspf.com](mailto:rfletcher@firmspf.com)

#### **Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (Counsel to Vermont Bond Bank)**

One Financial Center  
Boston, MA 02111

Meghan Burke, Partner  
(617) 348-1663  
[mdburke@mintz.com](mailto:mdburke@mintz.com)

Lorraine Lydon, Assistant  
(617) 832-6431  
[llydon@mintz.com](mailto:llydon@mintz.com)

#### **Locke Lord, LLP (Counsel to State of Vermont)**

111 Huntington Avenue (Prudential Center)  
Boston, MA 02199

Stephanie Massey, Partner  
(617) 239-0558  
[stephanie.massey@lockelord.com](mailto:stephanie.massey@lockelord.com)

Jennifer Capasso Mendonça, Partner  
(617) 239-0845  
[jennifer.mendonca@lockelord.com](mailto:jennifer.mendonca@lockelord.com)

### **Rebate Service Provider**

#### **Omnicap Group LLC**

2286 E. Maple Avenue  
El Segundo, CA 90245  
Fax: (866) 813-3613

Jeff Smith, President  
(310) 318-3095  
[jsmith@omnicap.net](mailto:jsmith@omnicap.net)

Eddie McRoberts, Managing Director  
(310) 318-3094  
[emcroberts@omnicap.net](mailto:emcroberts@omnicap.net)

**Bond Trustee (for 2017 and 2020 Bonds)**

**US Bank**

One Federal Street, 10th Floor  
Boston, MA 02110

Laura Cawley  
(617) 603-6452

[laura.cawley@usbank.com](mailto:laura.cawley@usbank.com)

**Bond Trustee (for 2013 Bonds)**

**BNY Mellon**

500 Ross Street, 12th Floor  
Pittsburgh, PA 15262

Michael Jones  
(412) 234-8492

[michael.jones1@bnymellon.com](mailto:michael.jones1@bnymellon.com)

**Exhibit B: NABL/GFOA Post-Issuance Compliance Checklist**



## POST ISSUANCE COMPLIANCE CHECKLIST

The National Association of Bond Lawyers (“NABL”) and the Government Finance Officers Association (“GFOA”) have jointly developed the following checklist to assist bond counsel in discussing with issuers and conduit borrowers, as applicable, post issuance compliance matters. The checklist is divided into three parts: tax, securities and State law matters. The checklist can serve as a framework for discussion at an appropriate time during the transaction or as a written document prepared by bond counsel and furnished to the issuer or conduit borrower after completion of the financing. Bond counsel may need to explain various items on the checklist to provide the issuer with a more complete understanding of the noted concept. The checklist can be amended or supplemented as needed to address the particular financing issue. Issuers and conduit borrowers are encouraged to contact bond counsel at any time they may have questions or concerns pertaining to tax, securities or State law issues.

In the “document reference” column, where applicable, the financing document pertaining to the referenced point should be named. This will assist others on the finance team – present and future – to be able to locate the original notation. The “responsibility” column should list the various offices/desks within the government or legal or other professional that have been engaged for the purpose of that section who is/are responsible for maintaining the noted task. This list covers a broad spectrum of financing purposes of which only some will apply to your financing. Instances where each line will be completed are unlikely. However, you are encouraged to review the entire document and complete the lines that are applicable to your financing.

The checklist is intended to help issuers and/or borrowers throughout the entire lifetime of the financing to identify matters that need to be analyzed by the issuer and perhaps by counsel. Issuers are encouraged to retain and distribute the checklist to all “responsible” parties and others who may find it useful during the lifetime of a financing. **Keeping the checklist throughout the lifetime of the financing is important. Thus, issuers are encouraged to keep the document with the transcript.**

The completion and distribution of this checklist does not presume a contractual obligation on parties to complete these tasks.





# National Association of Bond Lawyers

## POST ISSUANCE COMPLIANCE CHECKLIST

TRANSACTION PARTIES		
Overall Responsible Office for Debt Management Activities	_____	
Bond Counsel	_____	
Trustee	_____	
Paying Agent	_____	
Rebate Specialist	_____	
Other:	_____	
Other:	_____	
Other:	_____	
A. TAX LAW REQUIREMENTS	Document Reference	Responsibility
1. <b>General Matters.</b>		
(a) Proof of filing Form 8038, 8038-G or 8038-GC. Copies of Form 8038, etc., to State authorities as required by State procedures.		
(b) "Significant modification" to bond documents results in reissuance under Treas. Reg. § 1.1001-3. Proof of filing new Form 8038, etc., plus final rebate calculation on pre-modification bonds.		
2. <b>Use of Proceeds: Governmental Bonds or Qualified 501(c)(3) Bonds.</b>		
(a) No private business use arrangement with private entity (includes federal government) beyond permitted <i>de minimis</i> amount unless cured by remedial action under Treas. Reg. § 1.141-12.		
(i) Sale of facilities.		
(ii) Lease.		
(iii) Nonqualified management contract. Rev. Proc. 97-13.		
(iv) Nonqualified research contract. Rev. Proc. 97-14.		
(v) "Special legal entitlement."		

(b) Additional requirements for qualified 501(c)(3) bonds.		
(i) No unrelated business activity income in facility beyond permitted <i>de minimis</i> amount.		
(ii) No activities jeopardizing 501(c)(3) exemption of 501(c)(3) borrower.		
(c) Remedial action may consist generally of redemption or defeasance of bonds (with notice of defeasance to IRS). Where disposition is a cash sale, remedial action may be an alternative qualifying use of proceeds. If bonds are 501(c)(3) bonds, alternative use must have “TEFRA” hearing and elected official approval prior to sale of original facilities. Proof of filing new Form 8038, etc.		
<b>3. Private Activity Bonds. IRC §142.</b>		
(a) Exempt facilities—in general.		
(i) Continuing use of exempt facilities in accord with basis of tax exemption.		
(ii) Use excess proceeds for redemption or defeasance (with notice of defeasance to IRS) within 90 days of determination that proceeds will not be spent, or date financed facility is placed in service. Treas. Reg. § 1.142-2(c).		
(b) Residential rental project bonds.		
(i) Meet low-income requirements for qualified project period. IRC §142(d).		
(ii) Proof of filing annual reports of compliance by project operator on Form 8703.		
(c) Qualified mortgage bonds.		
(i) Good faith compliance efforts for mortgage eligibility. IRC §143(a)(2).		
(ii) Spend proceeds or redeem bonds within 42 months of issuance; use mortgage prepayments after first 10 years to redeem bonds at next semiannual debt service date after receipt.		

(iii) Proof of filing annual reports of mortgagor income due 8/15. Treas. Reg. § 1.103A-2(k)(2)(ii).		
(d) Small issue manufacturing bonds using \$10,000,000 (\$20,000,000 for 2007) capital expenditure limit: monitor capital expenditures during three years after issuance for compliance with limit. IRC §144(a).		
(e) Acquisition of existing facilities: make qualifying rehabilitation within 24 months unless covered by exceptions. IRC §147(d).		
<b>4. Arbitrage.</b>		
(a) Rebate. IRC §148(f).		
(i) First installment of arbitrage rebate due on fifth anniversary of bond issuance plus 60 days.		
(ii) Succeeding installments every five years.		
(iii) Final installment 60 days after retirement of last bonds of issue.		
(iv) Monitor expenditures prior to semi-annual target dates for six-month, 18-month, or 24-month spending exception.		
(b) Monitor expenditures generally against date of issuance expectations for three-year or five-year temporary periods or five-year hedge bond rules.		
(c) For advance refunding escrows, confirm that any scheduled purchases of 0% Securities of State and Local Government Series are made on scheduled date.		
<b>5. Special Rules for Pool Bonds.</b>		
(a) Redeem bonds at one-year and three-year expenditure target dates. Pay 95% of costs of issuance within 180 days. IRC §149(f), as amended 2006.		
(b) 501(c)(3) pools: redeem bonds at one-year expenditure target date. IRC §147(b)(4).		
<b>6. Record Retention.</b>		

(a) Maintain general records relating to issue for life of issue plus any refunding plus three years.		
(b) Maintain special records required by safe harbor for investment contracts or defeasance escrows. Treas. Reg. § 1.148-5.		
(c) Maintain record of identification on issuer's books and records of "qualified hedge" contract. Treas. Reg. § 1.148-4(h)(2)(viii) and § 1.148-11A(i)(3).		
(d) Maintain record of election not to take depreciation on leased property that must be treated as owned by a governmental unit. Treas. Reg. § 1.103(n)-2T Q/A7.		
(e) Maintain record of agreements and assignments between governmental units that affect volume cap allocations under IRC §146. Treas. Reg. § 1.103(n)-3T Q/A8, 13 & 14.		
(f) Maintain record of election to utilize the \$10,000,000 small issue bond limit on the books and records of the issuer. Treas. Reg. § 1.103-10(b)(2)(vi).		
<p>7. <b>Allocations of Bond Proceeds to Expenditures.</b></p> <p>Make any allocations of bond proceeds to expenditures needed under Treas. Reg. § 1.148-6(d) and § 1.141-6(a) by 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years after the bonds were issued or 60 days after the issue is retired.</p>		
<b>B. DISCLOSURE REQUIREMENTS</b>		
1. <b>SEC Rule 15c2-12 Requirements.</b>		
(a) Determine applicability of continuing disclosure undertaking ("CDU").		
<p>(b) Identification of "obligated person" for purposes of Rule 15c2-12.</p> <p>Governmental Bonds: Issuer. Private Activity Bonds: Issuer or Borrower.</p>		
(c) Name of Dissemination Agent, if applicable.		
(d) Periodically determine that required CDU filings have been prepared, sent to and received by NRMSIR's.		

(e) Information required to be provided to NRMSIR and SID:		
(i) Annual Reports.		
(1) Quantitative financial information and operating data disclosed in official statement.		
(2) Audited financial statements.		
(ii) Other information.		
(1) Change of fiscal year.		
(2) Other information specified in CDU.		
(f) Material Event Disclosure.  Notification by obligated person to SID and each NRMSIR, in timely manner, of any following events with respect to bonds, if event is material within the meaning of the federal securities laws:		
(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 bonds.		
(vii) Modifications to rights of holders of the bonds.		
(viii) Bond calls.		
(ix) Defeasances.		
(x) Release, substitution or sale of property securing repayment of the bonds.		

(xi) Rating changes.		
(g) Failure of the obligated person to timely file financial information (including audited financial statements) and operating data with SID and either each NRMSIR or MSRB.		
<p>2. <b>Notification to Underwriters of Bonds.</b></p> <p>Determination of whether bond purchase agreement requires issuer of the bonds to notify underwriters for a specified period of time of any fact of event that might cause the official statement to contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.</p>		
3. <b>Information Required to be Filed with Other Entities.</b>		
(a) Trustee.		
(b) Rating Agency(ies).		
(c) Bond Insurer.		
(d) Credit Enhancer.		
Examples:		
(i) Financial records.		
(1) Annual.		
(2) Quarterly.		
(ii) Budgets.		
(iii) Issuance of additional bonds.		
(iv) Events of default.		
(v) Notices of redemption.		
(vi) Amendments to bond documents.		
<p>4. <b>Local Disclosure.</b></p> <p>State and/or local requirements.</p>		

<b>C. MISCELLANEOUS STATE LAW AND DOCUMENT REQUIREMENTS</b>		
<b>1. Security.</b>		
(a) Proof of filing UCC statements with appropriate authorities as required by State procedures.		
(i) Initial UCC financing statements filed with appropriate authorities. UCC 9-515(a).		
(ii) Continuation statements filed by fifth anniversary. UCC 9-515(d).		
(iii) Transfer by government or governmental unit not requiring a UCC statement. UCC 9-102(a)(45) (UCC exception adopted in certain jurisdictions).		
(iv) Public finance transaction in connection with debt securities (all or portion of securities have initial stated maturity of 20 years; obligated party is State or State governmental unit) qualifies for 30-year filing. UCC 9-515(b)		
(v) Other local requirements or exceptions.		
(b) Proof of filing recorded mortgages, deeds of trust with appropriate authorities and proof of delivery of originals to trustee or custodian.		
<b>2. Insurance.</b>		
(a) Proof of receipt of final title policy and proof of delivery to trustee or custodian.		
(b) Monitor compliance with property and casualty insurance requirements.		
<b>3. Financial Covenants.</b>		
Monitor compliance with rate covenant or other covenants not included in B(3) above.		
<b>4. Transfer of Property.</b>		
(a) Restrictions on transfer of cash.		
(b) Restrictions on releases of property.		
(c) Restrictions on granting liens or encumbering property.		

<p>5. <b>Investments.</b></p> <p>Compliance with permitted investments.</p>		
<p>6. <b>Derivatives.</b></p> <p>Entering into and ongoing compliance of derivatives contracts is complex and a universe in and of itself. GFOA has created a Derivatives Checklist and a Recommended Practice on the Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy to assist issuers with understanding these products. These documents can be found at: <a href="http://gfoa.org/services/rp/debt.shtml">http://gfoa.org/services/rp/debt.shtml</a>.</p>		