

CITY AND COUNTY OF DENVER POST ISSUANCE COMPLIANCE PROCEDURES

DEBT POLICY

The City and County of Denver (the “City”) has a Debt Policy to facilitate compliance with all applicable federal, state and local laws and regulations related to its financed obligations (“Obligations”). These Procedures are to be read and effected in conjunction with the Debt Policy.

PURPOSE

These Procedures outline established practices within the Department of Finance relating to post issuance activities of the City’s Obligations. This document is only intended to provide a general overview of the City’s post issuance compliance procedures and does not include agency-level procedures.

This document supplements the City’s Executive Order No. 114 related to ongoing disclosure of Obligations and the Tax Certificate for each outstanding series of Obligations. In the event this document conflicts, in whole or in part, with the Tax Certificate, the terms of the Tax Certificate shall control.

PROCEDURES

I. GENERAL

The Manager of Finance remains ultimately responsible under the City’s Charter but designates by title the positions to undertake certain required activities in these Procedures by stating the positions are “responsible for” that activity.

The Controller’s Office is primarily responsible for the administration of the accounting and reporting for the City’s non-Enterprise Obligations. Senior finance staff for each of the City’s Enterprise Funds (i.e. the Enterprise CFO, Finance Director, Finance Manager, etc., generally referred to in this document as the “Enterprise Controller”) are responsible for the accounting and reporting for Obligations issued on behalf of their respective funds.

The Cash, Risk & Capital Funding Division (“CRCF”) is responsible for post issuance compliance activities relating to conduit debt issuances. CRCF is also responsible for the investment of all financing proceeds that are subject to arbitrage and yield restriction rules, including providing direction for investment of trustee-held funds.

All external inquiries or requests for information from the IRS, SEC or other regulatory source, whether received in person or by other means, should be directed to the Debt Administrator, who will involve any appropriate personnel, including the Controller’s Office, the City Attorney’s Office, bond counsel, or other City Departments or consultants, if and when appropriate.

II. **ARBITRAGE COMPLIANCE**

These procedures apply to all of the City's Obligations that are subject to arbitrage rebate or yield restrictions under federal tax rules.

The City shall contract with a qualified professional financial service provider (i.e. an "Arbitrage Consultant") to assist in monitoring the compliance of its Obligations with the rebate and yield restriction requirements of Section 148 of the Internal Revenue Code. Consultation with the appropriate personnel, including the City Attorney, Arbitrage Consultant and/or bond counsel is expected prior to responding to regulatory inquiries and/or audits of existing Obligations.

A. Arbitrage Rebate Calculations. In consultation with the appropriate personnel, including the Arbitrage Consultant and/or bond counsel, the Controller's Office or Enterprise Controller is responsible for performing annual rebate calculations based on the delivery date of each applicable Obligation, unless market conditions or existing negative arbitrage balances indicate calculations are not necessary. At a minimum, rebate calculations should be performed on or prior to each five-year anniversary date of the issue date of the bonds. Such calculations shall include, but not be limited to:

1. Calculating "yield" of bond proceeds in investments, including investments in financial investment agreements such as swaps and guaranteed investment contracts;
2. Determining arbitrage spending exceptions and evaluating spend-down compliance during any exception time periods in partnership with the Capital Program Administrator;
3. Monitoring compliance of temporary period expenditures of bond proceeds; and
4. Calculating arbitrage rebate amounts.

B. Yield Restriction Requirements. The Controller's Office is responsible for monitoring adherence to yield restriction requirements in accordance with federal tax regulations, including the preparation of any required "Yield Reduction Payment Reports" and making any required yield reduction payments under the yield restriction requirements.

C. Evaluation of Exceptions to Arbitrage and Rebate Requirements. The Controller's Office, in consultation with the appropriate personnel, including the Arbitrage Consultant and/or bond counsel, is responsible for evaluating the eligibility of any Obligation for a particular exception to arbitrage and rebate requirements (i.e. 6-month, 8-month, 2-year spending exceptions) and assessing whether the exception requirements were met.

D. Documentation. The Controller's Office is responsible for documenting and retaining all such calculations in order to demonstrate that the City has complied with all requirements for arbitrage yield restriction and rebate requirements. See also Section VI. RECORDS RETENTION.

III. ACCOUNTING AND MONITORING OF BOND PROCEEDS

- A. Accounting.** The City will account for Obligation proceeds in such a manner that it can actively monitor the investment of Obligation proceeds, the spend-down of Obligation proceeds, and the use of Obligation proceeds. The Controller's Office is responsible for designating unique identifiable numbers in the City's accounting system for project funds and reserve funds for each issuance.
- B. Investments.** The investment of Obligation proceeds will be undertaken in accordance with the City's Investment Policy and the governing bond documents relating to its Obligations. CRCF is responsible for establishing the appropriate investment plan for bond proceeds.
1. CRCF is responsible for ensuring that investments acquired with bond proceeds are purchased at fair market value.
 2. Investment earnings from the City's investment pool are allocated monthly on a pro-rata basis, and the Controller's Office is responsible for producing and distributing a monthly Investment Earnings Report.
- C. Monitoring of Spend-down of Bond Proceeds.**
1. The Capital Program Administrator and each Enterprise Controller is responsible for monitoring the spend-down of bond proceeds to ensure compliance with applicable federal tax regulations.
 2. The Capital Program Administrator and each Enterprise Controller will provide reporting of spend-down of bond proceeds for Arbitrage exception purposes upon request by the Controller's Office.
- D. Monitoring of use of proceeds and use of tax-exempt financed facilities.** The City will take reasonable action to monitor the use of tax-exempt financed facilities to ensure compliance with federal regulations pertaining to the private use of and payment for financed facilities. Business activities by third parties will be tracked and verified.
1. **Private Use.** The Capital Program Administrator is responsible for monitoring the use of bond proceeds to prevent nongovernmental use of tax-exempt bond proceeds. The Capital Program Administrator will alert the Debt Administrator upon knowledge of any proposed changes in the use of bond proceeds. The City Attorney's Office and Real Estate Division are responsible for monitoring the use of tax-exempt bond-financed properties (i.e. Leases, Management Contracts, Naming Rights, etc.) and will alert the Debt Administrator upon knowledge of any proposed changes in the use of any financed facilities.
 2. **Private Payment.** The Budget Director and/or his designee will alert the Debt Administrator upon knowledge of any proposed changes in the source of repayment for debt service (i.e. federal grants, third party sources).

IV. CONTINUING DISCLOSURE

The City will make reasonable efforts comply with contractual continuing disclosure requirements and to assist underwriters in their efforts to comply with SEC Rule 15c2-12 and MSRB Rule G-36.

In order to assist with compliance and monitoring of its various disclosure requirements, the City will contract with a third parties, including Dissemination Agents, who may also provide reminders of critical filing due dates, alerts regarding rating changes, and ongoing training on continuing disclosure best practices.

- A. Annual Disclosure Statement.** CRCF is responsible for preparing and publishing a Disclosure Statement annually within 270 days of its fiscal year end in accordance with its Continuing Disclosure Undertakings executed and delivered by the City in connection with the issuance of Obligations. This Disclosure Statement will be filed with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (EMMA) system, which can be accessed at <http://emma.msrb.org/>, and will be posted to the Department of Finance website and the Denver International Airport website, as applicable, at the following locations:
 - 1) <http://www.denvergov.org/finance/DenverDepartmentofFinance/OurDivisions/CashRiskCapitalFunding/DisclosureStatements/tabid/443744/Default.aspx>
 - 2) <http://business.flydenver.com/stats/>
- B. Event Disclosures.** CRCF is responsible for filing with EMMA within a reasonable time after the occurrence of any of the events listed on its Continuing Disclosure Undertakings, as further described in the Debt Policy. Filing with EMMA within 10 business days shall be deemed reasonable.
- C. Key Terms of Private Placements.** CRCF is responsible for filing with EMMA the key terms of any new or amended Private Placements or Direct Purchase facilities with credit/liquidity providers.
- D. Other Disclosures.** CRCF is responsible for filing with EMMA a copy of the City’s Comprehensive Annual Financial Report annually, as well as any other voluntary information the City deems pertinent to the market. The Airport Finance team is responsible for filing with EMMA its quarterly and annual financials.

V. ONGOING DUE DILIGENCE, FILING, AND REPORTING

The City will actively monitor its outstanding Obligations and file and report on these Obligations in a timely manner and/or as required by SEC or other federal regulations.

A. Monitoring and Reporting related to Existing Obligations.

- 1. Tracking of Existing Obligations.** The Controller’s Office is responsible for recording information on all new and refunded Obligations into the City’s debt software system.
- 2. Swap Exposure.** CRCF will monitor the City’s outstanding swaps and prepare reports on at least a quarterly basis which include current mark-to-market positions.
- 3. Variable Rate Obligations.** The Controller’s Office is responsible for inputting rates under variable rate Obligations into the City’s debt software system. CRCF is responsible for monitoring such rates and preparing reports on at least a quarterly basis.
- 4. Dashboards.** CRCF is responsible for preparing “Dashboards” summarizing its City and Enterprise Obligations for posting onto Transparent Denver on a quarterly basis.

5. **Financial Covenant Checklist.** In conjunction with the City’s annual audit, CRCF is responsible for reviewing compliance with existing financial covenants under all existing Obligations on an annual basis.
6. **List of City Financed Assets.** CRCF, in collaboration with the Real Estate Division, is responsible for monitoring those City assets pledged as leased properties under existing Certificates of Participation as well as those City assets are available for future financings.
7. **Site Visits.** CRCF, in collaboration with the Real Estate Division, is responsible for determining whether a site visit is warranted and conducting a site visit to monitor those City assets which are subject to tax-exempt financing.

B. Filing Requirements

1. **Arbitrage Calculations.** The Controller’s Office or Enterprise Controller, working in conjunction with the Arbitrage Consultant and/or bond counsel, is responsible for filing all necessary forms and making all required payments to the IRS, copies of which should be provided to CRCF. The Controller’s Office or Enterprise Controller will maintain a record of computation dates and requirements.
2. **Tax-Credit Subsidies.** CRCF, working in conjunction with any Paying Agent on the Obligations, is responsible for making all necessary Form 8038-CP filings and performing all related actions to ensure the City receives payments for its tax-credit bonds.

C. Annual Compliance Review.

The Manager of Finance, who is also the City’s Compliance Officer under Executive Order 114, or his/her designee in CRCF (the “Compliance Officer”), is responsible for reviewing compliance under all existing Obligations on an annual basis. The purpose of the Annual Compliance Review is to identify any non-compliance or possible violation of federal tax requirements or SEC regulations in order to ensure the timely correction of those violations with remedial action.

The Annual Compliance Review should include the following:

1. Financial Covenant Checklist. Refer to Section V. (A)(e) above.
2. Confirmation with the Controller’s Office and Enterprise Controller(s) that all arbitrage rebate and yield restriction requirements have been met.
3. Confirmation with the Capital Program Administrator and Enterprise Controller(s) that bond proceeds are being spent down in accordance with applicable federal tax regulations.
4. Confirmation with the Capital Program Administrator and Enterprise Controller(s) that there have not been any new or proposed changes in the use of financed facilities which could potentially constitute private use.
5. Confirmation with the City Attorney’s Office and Real Estate Division that there have not been any new or proposed changes in the use of financed facilities related to Leases, Management Contracts, Naming Rights, etc.
6. Confirmation that all Continuing Disclosure requirements in Section IV have been met.

7. Reassessment of List of City Financed Assets and of which City assets are available for future financings.
8. All reporting requirements related to existing Obligations as outlined in Section V.(A) (B), (C), and (D) have been met.
9. Review of these Post Issuance Compliance Procedures and updating as necessary.

D. Non-Compliance. The Manager of Finance will actively review these Post Issuance Procedures to identify if any instances of non-compliance arise. In the case non-compliance or possible violation is identified, CRCF will develop a plan as set forth in the Debt Policy to achieve compliance.

VI. RECORDS RETENTION

CRCF will file a physical copy of all governing bond documents relating to its Obligations with the Clerk and Recorder's Office, and may provide a copy to the City Attorney's Office and retain a copy within CRCF. CRCF will also maintain one electronic transcript of each Obligation series, to be filed on the shared Debt folder on the City's network. Documents should be retained until at minimum three years after the final maturity of an issue (or any later refunding transaction).

Additional documents to be retained include but are not limited to the following, with the primary responsible party listed in parentheses:

- A. Closing Memo (CRCF)
- B. Costs of Issuance summaries, invoices and records of their payment (CRCF)
- C. Investment Earnings on Bond Proceeds and Escrow Investments' Statements (Controller's Office)
- D. Swap Agreements and payment records (CRCF and Controller's Office)
- E. Certificate of Official Intent for reimbursement of pre-bond issue costs (CRCF)
- F. Documents demonstrating calculations for arbitrage spending exceptions (Controller's Office or Enterprise Controller(s))
- G. Documents demonstrating arbitrage rebate calculations (Controller's Office or Enterprise Controller(s))
- H. Documents filed with the IRS, including arbitrage spending exceptions, arbitrage rebate amounts and payments of arbitrage rebate amounts (Controller's Office or Enterprise Controller(s))
- I. Redemption and Defeasance Documents (CRCF)
- J. Contracts regarding use of any bond-financed property or facilities, including management, service and use contracts with nongovernmental entities, as well as documentation that such contracts do not adversely affect the tax-exempt status of the bonds financing the property (City Attorney's Office)

- K. Documents demonstrating spend down compliance of bond proceeds including capital projects completed, final amount(s) of proceeds expended, and project completion dates (Budget and Management Office)

CONTINUING EDUCATION

The Debt Administrator should be aware of any changes or updates to federal tax and securities law regarding tax-exempt and tax-credit bonds, continuing disclosure, etc. Continuing education and training should be sought periodically from the City and Airport financial advisors, bond counsel, and other professional resources.

The Debt Administrator shall provide copies of these procedures and any relevant Tax Certificate(s) to the Executive Directors and staff of departments and agencies who benefit from bond proceeds. Departments receiving bond proceeds or using bond-financed property as a result of bond issues shall receive training at the time of such issue to be provided by CRCF. Training shall also be provided internally in the Department of Finance by the Debt Administrator regarding any changes in federal tax and securities law.

VII. REVIEW

These procedures shall be reviewed annually as part of the Annual Compliance Review to be updated as necessary.