

# **Tax Exempt Bonds Compliance Check Questionnaire Initiative**

## **Interim Report on Charitable Financings: A Summary of Reported Data & Analysis**

Tax Exempt Bonds  
Tax Exempt & Government Entities  
Internal Revenue Service

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### **Executive Summary**

In 2007, the Tax Exempt Bonds (TEB) function of the IRS Tax Exempt and Government Entities Division (TE/GE) initiated a soft-contact compliance check program to evaluate the post-issuance compliance and record retention practices within the tax-exempt bonds industry. This interim report summarizes the data, analysis and preliminary conclusions regarding the Tax-Exempt Charitable Financings Compliance Check Questionnaire, the first project initiated under the new program.

#### Objective

In general, governmental issuers of tax-exempt bonds are responsible for ensuring that their financings satisfy all applicable federal tax requirements both at the time of issuance and for so long as such bonds remain outstanding. When such bonds are issued to finance a loan to another entity as part of a conduit financing, including the issuance of qualified 501(c)(3) bonds, the responsibility of monitoring post-issuance compliance and maintaining adequate records to substantiate compliance is often shared between the governmental issuer and the entity borrowing the bond proceeds. A failure to fulfill this shared responsibility may result in the bonds forfeiting their tax-exempt status.

The primary objective of this project was to identify the overall knowledge of § 501(c)(3) organizations of the post-issuance compliance and record retention requirements generally applicable to qualified 501(c)(3) bond issues. To accomplish this objective, the project requested certain information from a judgmental sample of two hundred and seven § 501(c)(3) organizations identifying outstanding tax-exempt bond liabilities at the end of the 2005 calendar year. The summaries in this report are based on the responses from 192 organizations. Eleven respondents indicated they did not have tax-exempt bond liabilities that were the subject of this questionnaire. Four organizations did not respond and have been referred for follow-up.

### Key Findings from Data

The compliance questionnaire addressed policies, practices, and recordkeeping of § 501(c)(3) organizations benefitting from tax-exempt financing in such key areas as use of proceeds and property, arbitrage, expenditures, and other filings and requirements.

Almost all (95%) of the responding § 501(c)(3) organizations reported that they had implemented written post-issuance compliance procedures or guidelines to ensure continued compliance with applicable federal tax requirements. However, a closer analysis of the narrative responses suggested that only 49% either had written specific procedures (16%) or implemented an ad hoc process (33%) to ensure effective monitoring of post-issuance compliance. Although this does not necessarily mean that one group or the other is more or less compliant with the tax-exempt bond rules, our examination experience suggests that the adoption and consistent utilization of formal procedures and practices generally improves the likelihood of post-issuance compliance.

Almost all (89%) of the responding § 501(c)(3) organizations reported that they assigned a management official the primary responsibility of monitoring post-issuance compliance. Moreover, a high percentage (89%) of the respondents reported that they provide some level of related training to these officials.

Almost all (97%) of the responding § 501(c)(3) organizations indicated that they maintained books and records necessary to substantiate compliance. However, some of the respondents indicated that they are not retaining certain types of required records on a consistent basis.

This Interim Report summarizes the data as reported to us. Other than review the narrative responses and supplemental information provided by the respondents, we have not independently tested or attempted to verify the accuracy or completeness of the responses.

### Summary of Preliminary Conclusions

While the responding § 501(c)(3) organizations largely recognized the importance of effective post-issuance compliance procedures, there may be significant gaps or divergent practices in the implementation of such procedures throughout the charitable financings market segment. Although nearly all respondents reported that they maintained written policies and practices in three key areas of compliance, about half of the respondents failed to describe their written procedures and guidelines despite being asked to do so. Gaps in maintenance of records and written procedures and practices is consistent with our past examination experience of qualified 501(c)(3) bond issues. Inconsistencies in some of the data reported to us warrant additional follow-up, including conducting additional field compliance checks to assess the veracity of data reported to us in the study.

Industry stakeholder associations have demonstrated strong support for the importance of implementing effective post-issuance compliance processes throughout the industry as well as TEB's emerging use of soft-contact compliance check projects in evaluating overall industry compliance. In particular, TEB has received informative comments from various associations with respect to record retention, tax-exempt bond related information returns, and the questionnaire used in this project.

Following the success of this charitable financings questionnaire project, TEB will continue to implement its new soft-contact compliance check program through the initiation of additional market segment projects. For example, TEB will immediately follow-up this project with a questionnaire focusing on the post-issuance compliance and record retention processes of governmental issuers.

Through increasing use of soft-contact compliance check projects, combined with an on-going partnership with Chief Counsel, Treasury, and the TE/GE Advisory Committee on record retention guidance, TEB will actively continue to promote post-issuance compliance while exploring opportunities to reduce overall taxpayer burden in the tax-exempt bonds industry.

## I. Introduction

This is an interim report on the Tax-Exempt Charitable Financings Compliance Check Questionnaire, a project initiated by the Tax Exempt Bonds (TEB) function of the IRS Tax Exempt and Government Entities Division as part of a new soft contact compliance check program.<sup>1</sup> The project principally evaluated whether exempt organizations described in § 501(c)(3) of the Internal Revenue Code (the “Code”) generally have a sufficient level of knowledge of the post-issuance tax compliance requirements applicable to their tax-exempt debt obligations. The initiative focused on measuring several aspects of post-issuance compliance practices including queries on:

- 1) Written procedures or guidelines;
- 2) Recordkeeping and retention policies;
- 3) Arbitrage yield restriction and rebate requirements;
- 4) Bond expenditures and asset management procedures; and
- 5) Private business use monitoring procedures.

In addition, the questionnaire asked the organizations about their compliance training programs for individuals responsible for monitoring post-issuance compliance of tax-exempt bond financings.

The data in this report is derived from the responses of 192 various § 501(c)(3) organizations who identified outstanding tax-exempt bond liabilities on their IRS Form 990, *Return of Organization Exempt from Income Tax*, filed for the calendar year or fiscal year 2005. The organizations in the initiative included hospitals, universities and colleges, senior housing projects, and other § 501(c)(3) organizations.

This report summarizes the data reported by the organizations and was not independently verified. Most of the respondents answered all of the questions; however, there were a few who failed to answer some questions or a part of a multiple-part question. The data is arranged to show the number and type of responses to the questions asked. Non-responses are noted, but do not appear to distort the results. The phrasing of some of the questions was ambiguous or did not always provide the respondent with an opportunity to respond “not applicable,” which may have distorted some of the results pertaining to certain questions.<sup>2</sup> Because of these varied responses, the data may not fully disclose the actual level of

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<sup>1</sup> Soft-contact compliance is an informal non-audit contact. The 2004 ACT Committee encouraged TE/GE to seek alternative means, such as “soft contacts,” to initiate contact with taxpayers.

<sup>2</sup> Certain respondents appear to have felt compelled to provide a YES or NO response rather than leave the response blank when their corresponding narrative suggested that a N/A response would have been the most appropriate response.

compliance with applicable post-issuance requirements. Nevertheless, the initiative provides the IRS with unique and valuable information of the knowledge and practices of § 501(c)(3) organizations relating to their post-issuance tax compliance requirements.

TEB has analyzed key aspects of this project. This interim report reflects our review, to date, and is subject to modification as our review continues. Our focus for this report centers on questions relating to the organization's written procedures and guidelines that ensure qualified 501(c)(3) bond financings remain in compliance with applicable federal tax requirements following the issuance of tax-exempt bonds. The main focus of the questionnaire was to ascertain the degree of written procedures or guidelines maintained by § 501(c)(3) organizations in regard to their monitoring of the proceeds of their bond issues with respect to expenditures, asset acquisitions, private business use of bond-financed property, and the investment of bond proceeds. In addition, the questionnaire attempted to ascertain the amount of specialized education provided to individuals identified as being responsible for monitoring post-issuance compliance of bond financings.

In the process of reviewing the responses, we noted the following:

1. Four organizations did not respond. These organizations have been referred for follow-up.
2. One organization was a foreign tax-exempt entity not governed under U.S. law. This organization filed a Form 990 but never applied for, nor was granted, exemption. Moreover, the tax-exempt liabilities reported on the Form 990 were not liabilities described under § 103 of the Code.
3. Ten other organizations had neither tax-exempt bond financings nor bond financings applicable to the initiative.

As a result of this questionnaire, a related initiative involving governmental tax-exempt bond issuances is in development with a scheduled deployment in calendar year 2008.

Part II discusses the post-issuance compliance of tax-exempt bonds. Part III describes the scope, methodology, and implementation of the project. Part IV summarizes the reported data and key points of analysis. Part V discusses TEB's preliminary analysis as well as preliminary conclusions and planned follow-up actions.

## **II. Post-issuance Compliance of Tax-Exempt Bonds**

### Current Law

Tax-exempt bonds are valid debt obligations of state and local governments, commonly referred to as "issuers." Section 103 of the Code generally excludes the interest paid on these obligations from taxable income. This means that the interest

paid to bondholders is not includable in their gross income for federal income tax purposes. This tax-exempt status remains throughout the life of the bonds provided all applicable federal tax laws are satisfied. Various requirements apply under the Code and Income Tax Regulations (the “Treasury Regulations”) including, but not limited to, information filing and other requirements related to issuance, the proper and timely use of bond-financed property, and arbitrage yield restriction and rebate requirements. The benefits of tax-exempt bond financing can apply to the many different types of municipal debt financing arrangements through which government issuers obligate themselves, including notes, loans, lease purchase contracts, lines of credit, and commercial paper.

Qualified 501(c)(3) bonds are tax-exempt qualified private activity bonds issued by a state or local government, the proceeds of which are used by a § 501(c)(3) organization in furtherance of its exempt purpose.<sup>3</sup> Generally, in order to qualify for recognition of exemption under § 501(a) of the Code as an organization described in § 501(c)(3), an organization must be organized and operated exclusively for educational, religious, or charitable purposes, and no part of the organization’s net earnings may inure to or for the benefit of any private shareholders or individuals.<sup>4</sup> Typical § 501(c)(3) organizations that benefit from tax-exempt bond financing include hospitals, universities, and organizations that provide low-income housing or assisted living facilities.

The post-issuance related federal tax rules applicable to qualified 501(c)(3) bonds generally fall into two basic categories: qualified use of proceeds and financed property requirements,<sup>5</sup> and arbitrage yield restriction and rebate requirements.<sup>6</sup> In order to comply with these and any other applicable requirements, issuers and the § 501(c)(3) organizations borrowing the bond proceeds must ensure that the rules are met both at the time that the bonds are issued and throughout the term of the bonds (“post-issuance tax law compliance”). The IRS encourages issuers and beneficiaries of tax-exempt bonds to implement procedures that will adequately enable them to safeguard against post-issuance violations that result in loss of the tax-exempt status of their bonds.<sup>7</sup>

Section 145(a) of the Code requires that proceeds of a qualified 501(c)(3) bond be used to finance property owned by either a § 501(c)(3) organization or a governmental unit. The term “501(c)(3) organization” is defined for this purpose as any organization described in § 501(c)(3) and exempt from tax under § 501(a).<sup>8</sup>

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<sup>3</sup> IRC § 145(a).

<sup>4</sup> IRC § 501(c)(3).

<sup>5</sup> IRC § 145(a) through (d); Treas. Reg. §§ 1.145-1 and 1.145-2.

<sup>6</sup> IRC § 148 and related Treasury Regulations.

<sup>7</sup> IRS Publication 4077, *Tax Exempt 501(c)(3) Bonds Compliance Guide*.

<sup>8</sup> IRC § 150(a)(4).

Qualified 501(c)(3) bonds lose their tax-exempt qualified status if at any time either: 1) the ownership test<sup>9</sup> is not satisfied; or 2) *both* the private business use test<sup>10</sup> and the private payment or security tests<sup>11</sup> are satisfied. If a § 501(c)(3) organization borrows proceeds of a qualified 501(c)(3) bond issue, the borrower must maintain its exempt status throughout the term of the bonds in order for the bonds to continue to remain qualified.<sup>12</sup>

Certain uses of proceeds of a qualified 501(c)(3) bond issue can result in private business use, including unrelated trade or business use<sup>13</sup> by the § 501(c)(3) organization borrowing the proceeds or private use by non-governmental parties other than the borrower.<sup>14</sup>

Treasury Regulations provide for certain remedial actions to cure uses of proceeds that would otherwise cause the qualified 501(c)(3) bonds to lose their exempt status.<sup>15</sup> Such remedial actions can include redemption or defeasance of bonds, alternative qualified use of disposition proceeds, or alternative use of the bond-financed facilities. Issuers and § 501(c)(3) organizations may also be eligible to enter into a closing agreement under the Tax Exempt Bonds Voluntary Closing Agreement Program.<sup>16</sup>

The § 501(c)(3) organization borrowing the proceeds of a qualified bond issue must allocate those proceeds among the various project expenditures in a manner demonstrating compliance with the qualified use requirements. Project expenditures include not only qualified use expenditures but also nonqualified use expenditures such as issuance costs.

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<sup>9</sup> **Ownership Test** — Section 145(a)(1) of the Code provides that all property financed by the net proceeds of a qualified 501(c)(3) bond issue must be owned by either a § 501(c)(3) organization or a governmental entity.

<sup>10</sup> **Private Business Use Test** — Section 141(b)(1) of the Code, as modified by § 145(a)(2)(B), provides that this test is satisfied if more than 5% of the net proceeds of the qualified 501(c)(3) bond issue is used for any private business use.

<sup>11</sup> **Private Payment or Security Test**— Section 141(b)(2) of the Code, as modified by § 145(a)(2)(B), provides that this test is satisfied if more than 5% of the payment of principal or interest on the bond issue is either made or secured (directly or indirectly) by payments or property used, or to be used, for a private business use.

<sup>12</sup> By inference, § 145(a)(1) of the Code precludes an organization which is neither a State or local governmental unit nor described in § 501(c)(3) from being a borrower of the proceeds of a qualified 501(c)(3) bond issue.

<sup>13</sup> **Unrelated Trade or Business**—Section 513 of the Code, in general, defines unrelated trade or business as any trade or business the conduct of which is not substantially related to the exercise or performance by the § 501(c)(3) organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under § 501.

<sup>14</sup> **Private Use by Parties other than the § 501(c)(3) Borrower**—Except for non-federal governmental persons, this term includes private, for-profit, and other tax-exempt organizations not described in § 501(c)(3) of the Code.

<sup>15</sup> Treas. Regs. §§ 1.145-2(a) and 1.141-12.

<sup>16</sup> See Notice 2008-31, 2008-11 C.B. 592 updating Notice 2001-60, 2001-2 C.B. 304.

Qualified 501(c)(3) bonds lose their tax-exempt status if they are arbitrage bonds.<sup>17</sup> In general, arbitrage is realized when the yield on investments acquired with proceeds of a bond issue exceeds the yield on the bond issue. However, the realization of arbitrage itself does not necessarily mean that the bonds are taxable arbitrage bonds. Two general sets of requirements under the Code must be applied in order to determine whether the bonds are arbitrage bonds: (1) the yield restriction requirements;<sup>18</sup> and (2) the arbitrage rebate requirements.<sup>19</sup> Each of these compliance regimes contains distinct requirements and safe harbors.<sup>20</sup>

Qualified 501(c)(3) bonds are also subject to a variety of federal tax requirements generally applicable to tax-exempt and qualified private activity bonds (including qualified 501(c)(3) bonds). Section 149 of the Code provides certain general rules applicable to all bonds including the filing of an information return upon issuance,<sup>21</sup> a general prohibition against federal guarantees,<sup>22</sup> and a general prohibition against hedging regarding interest rate risk through the issuance of tax-exempt bonds significantly prior to the planned expenditure of proceeds.<sup>23</sup> Section 147 of the Code

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<sup>17</sup> For purposes of § 103 of the Code, the term “arbitrage bond” means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly to acquire higher yielding investments, or to replace funds which were used directly or indirectly to acquire higher yielding investments. IRC § 148(a).

<sup>18</sup> IRC § 148(a).

<sup>19</sup> IRC § 148(f).

<sup>20</sup> The arbitrage yield restriction rules described under Treas. Reg. § 1.148-2(e) generally provide that the direct or indirect investment of the gross proceeds of an issue in higher yielding investments causes the bonds of the issue to be arbitrage bonds. Whether an investment yield is considered materially higher is dependent upon the type of investment acquired with bond proceeds and can be as low as 1/1000<sup>th</sup> of a percent. Definitions of materially higher yield for purposes of applying the arbitrage yield restriction rules are provided under Treas. Reg. § 1.148-2(d)(2). The term “materially higher yield” is generally defined as a percentage threshold amount that is added to the yield of the bond issue. For example, under the general rule for purpose and nonpurpose investments, the term generally means 1/8<sup>th</sup> of 1 percentage point. Moreover, several exceptions to this general restriction on permissible yield apply under different fact patterns. Such exceptions include the application of a temporary period (Treas. Reg. § 1.148-2(e)) or investments held in a reasonably required reserve or replacement fund (Treas. Reg. § 1.148-2(f)).

The arbitrage rebate requirements described under Treas. Reg. § 1.148-3 generally provide that the investment yield above the bond yield (positive arbitrage) realized on nonpurpose investments acquired with proceeds of a bond issue must be paid to the U.S. Treasury within certain prescribed timeframes (Treas. Reg. § 1.148-3(a)). Again, similar to the yield restriction rules, several exceptions apply to the rebate requirements including the spending exceptions (Treas. Reg. § 1.148-7) and the small issuer exception (Treas. Reg. § 1.148-8). Payments of arbitrage rebate are due within 60 days of the computation date dependent upon whether the bond issue is a fixed rate issue or a variable rate issue (See guidance on determining the computation date, Treas. Reg. § 1.148-3) and are submitted using IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*. Failure to timely pay an amount of arbitrage rebate when due may result in either the assessment of interest and a penalty or a determination that the bonds are taxable arbitrage bonds (Treas. Reg. § 1.148-3(h)).

<sup>21</sup> IRC § 149(e).

<sup>22</sup> IRC § 149(b).

<sup>23</sup> IRC § 149(g).



provides certain rules applicable to qualified private activity bonds generally, including the requirement that a bond issue receive governmental approval for their issuance following reasonable public notice<sup>24</sup> and a general limitation on the amount of proceeds of a bond issue which is expended on costs related to the issuance of the bonds.<sup>25</sup>

Section 6001 of the Code and § 1.6001-1(a) of the Treasury Regulations generally provide that books and records must be maintained that are sufficient to establish the amounts required to be shown in any return required to be filed.

In the case of a tax-exempt bond transaction, the primary taxpayers are the beneficial holders of the bonds. However, in most cases, the beneficial holders of tax-exempt bonds will not have any records to support their exclusion of the interest paid on those bonds. Instead, these records will generally be found in the bond transcript and the books and records of the issuer, the conduit borrower, and other participants to the transaction. Therefore, in order to ensure the continued exclusion of interest by the beneficial holders, it is important that the issuer, the conduit borrower, and other participants retain sufficient records to support the continued exclusion taken by the beneficial holders of the bonds. Pursuant to this statutory regime, IRS agents conducting examinations of tax-exempt bond transactions will look to these parties to provide books, records, and other information documents supporting the bonds continued compliance with federal tax requirements.

Additionally, in the case of many private activity bonds, the conduit borrowers are also primary taxpayers. For instance, the conduit borrower will generally deduct the interest indirectly paid on the bond issue through the loan documents. Conduit borrowers are also often entitled to claim depreciation deductions for bond-financed property. Consequently, conduit borrowers should maintain sufficient records to support their interest deductions, depreciation deductions or other tax deductions, exclusions or credits related to the tax-exempt bond issue.

Moreover, issuers and conduit borrowers should retain sufficient records to show that all tax-exempt bond related returns submitted to the IRS are correct. Such returns include, for example, IRS Forms 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*, 8038-G, *Information Return for Government Purpose Tax-Exempt Bond Issues*, 8038-GC, *Consolidated Information Return for Small Tax-Exempt Government Bond Issues*, 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, 8038-R, *Request for Recovery of Overpayment Under Arbitrage Rebate Provisions*, and 8328, *Carryforward Election of Unused Private Activity Bond Volume Cap*.

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<sup>24</sup> IRC § 147(f)

<sup>25</sup> See generally IRC § 147(g). Under Treas. Reg. § 1.150-1(b), the term issuance costs includes the following costs to the extent incurred in connection with the borrowing: underwriters' spread; counsel fees; financial advisory fees; rating agency fees; trustee fees; paying agent fees; bond registrar, certification, and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

In addition to the general rules under § 6001, issuers and conduit borrowers are subject to specific recordkeeping requirements imposed by various other sections of the Code and Treasury Regulations. For example, § 1.148-5(d)(6)(iii)(E) of the Treasury Regulations requires that an issuer retain certain records necessary to qualify for the safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

### ACT Reports

In addition to provisions in the Code and Treasury Regulations, general guidance relating to the post-issuance compliance of tax-exempt bonds is found in formal guidance documents,<sup>26</sup> IRS Tax Exempt Bonds Compliance Guides publications,<sup>27</sup> content available on the IRS public website,<sup>28</sup> and reports such as those from the Advisory Committee on Tax Exempt and Government Entities (the “ACT”).

The 2007 Report of ACT<sup>29</sup> (the “2007 ACT”) commented that:

Because most tax-exempt bonds will remain outstanding for many years, it is important for the 501(c)(3) organization borrowers to have procedures, which can be understood and implemented over time even as the responsible officials may change. The appropriate procedures vary substantially, depending upon the size and complexity of the borrower, the complexity of the financing, and the number of bond issues being monitored. It is most important to assign responsibility for post-issuance tax law compliance (and to ensure that sufficient information is routinely identified and maintained) to allow those who later inherit that responsibility to successfully continue the job. In many instances, bond counsel may, at the time of closing, assist in the development of a procedural framework for post-issuance tax compliance.

Whenever possible, monitoring of tax law compliance should be integrated with existing accounting systems so that those who directly manage bond-financed assets will be prompted to identify relevant facts at the time any changes are contemplated and to communicate such plans to the appropriate finance officials. For example, bond-financed property could be specially coded on an existing plant ledger in order to require advance review of

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<sup>26</sup> Revenue Procedures 97-13, 2005-40, and 2007-47 as well as Notices 88-130, 2006-63, 2008-27, and 2008-41.

<sup>27</sup> See footnote 7.

<sup>28</sup> Content on [www.irs.gov/bonds](http://www.irs.gov/bonds) includes answers to frequently asked questions on record retention standards applicable to tax-exempt bonds, student-training texts for TEB’s Phase I Basic Training and Phase II Advanced Training courses, and copies of ACT Reports.

<sup>29</sup> IRS Publication 4344 (Rev. 6-2007), *Advisory Committee on Tax Exempt and Government Entities Report of Recommendations*, dated June 13, 2007. See sub-section entitled “After the Bonds are Issued: Then What?”

contemplated sales, leases, or other contractual arrangements involving bond-financed property.

Because of the long term of many tax-exempt bonds, and the need to verify tax-law compliance throughout the term, special care should be given to record retention policies. Record retention requirements may differ from and be more stringent than those required under state law or other governing rules. Currently there is little published guidance on the format or types of documents to be retained and the length of the retention period that must be met to facilitate tax compliance administration.

The 2005 Report of ACT<sup>30</sup> noted:

Unlike most taxpayers where the overall examination life cycle is relatively short (e.g., three years after the filing of a Form 1040), the life cycle of a bond issue can be extremely long. A majority of tax-exempt bonds are issued to finance projects with a long useful life. And it is common for a bond issue to be sold with a final maturity of 30 years. In addition, if a bond issue is refinanced by another bond issue (refunding), the record retention requirements of the original bond would need to continue for the entire life of the refunding bond issue. Therefore, the final maturity of a typical bond issue creates a unique record retention burden since the possible examination period spans several decades.

Issuers of tax-exempt bonds are required to retain all records related to the investment and expenditure of the gross proceeds of the bond issue. Given the fact that many 501(c)(3) borrowers include multiple projects in a single bond issue, the volume of underlying invoices and investment records can be considerable and retention of all related records staggering.

Without adequate written procedures the organizational borrower's retention policies may be inadequate.

The 2007 ACT noted:

The goal of the types of procedures described here is to identify on a timely basis the facts relevant to the continued tax-exemption of outstanding bonds. The analysis of those facts and the crafting of solutions to potential problems may require on-going consultation with bond counsel. Issuers and borrowers should recognize that such consultation may go beyond the scope of bond counsel's initial engagement.

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<sup>30</sup> IRS Publication 4344 (Rev. 6-2005), *Advisory Committee on Tax Exempt and Government Entities Report of Recommendations*, dated June 8, 2005. See sub-section entitled "Tax-Exempt Bonds: Record Retention Burden."

The 2007 ACT also provided suggested procedures and record retention policies for post-issuance compliance.

In summary, the 2007 ACT stated:

Post-issuance tax compliance is an integral part of an issuer or borrower's debt management process. In some organizations, compliance may be adequately supported by ad hoc procedures or by the efforts of a single individual. However, consideration should be given to whether ongoing timely, reliable institutional compliance should be supported by practices integrated within the core policies and procedures of the institution. Such practices may assist newly elected or appointed officials in quickly identifying and understanding existing policies and remedies and who is responsible for their implementation in order to avoid a disruption of necessary activities.

Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on investments of bond proceeds and use of bond-financed property. It will require identifying existing policies, the responsible people, the applicable procedures, and the affected population. The facts will differ for every issuer or borrower. The questions may differ as well. The need for effective policies, procedures, and systems to ensure compliance will not.

### **III. Scope, Methodology, and Implementation of the Project**

#### Overview

The principal objective of the project was to evaluate and measure whether § 501(c)(3) organizations generally have a sufficient level of knowledge of the post-issuance tax compliance requirements applicable to the tax-exempt obligations for which they are the ultimate beneficiary. The project objective was intended to produce several compliance results.

First, the project was expected to identify trends of comprehensive and/or inadequate post-issuance debt management procedures that could be shared with the various stakeholder associations representing governmental issuers, § 501(c)(3) organization borrowers, investment groups, and public finance practitioners who comprise the qualified 501(c)(3) bond market segment. The sharing of this information (through outreach efforts, the irs.gov web site, and other appropriate media) is expected to enable issuers and borrowers of bond proceeds to better understand their tax responsibilities and increase overall compliance with applicable requirements.

Second, the project was expected to identify noncompliance trends and other information items for use in developing new compliance programs within TEB to increase overall compliance. For example, TEB could create new voluntary

compliance programs to address identified matters allowing governmental issuers and § 501(c)(3) organization borrowers to correct such items of noncompliance when correction is not available through existing remedial action provisions.<sup>31</sup> Similarly, TEB could create new examination training programs and audit tools to assist revenue agents in identifying and resolving potential record retention deficiencies.

To achieve this objective, TEB defined the scope of the project to focus upon the exempt organizations themselves rather than specific tax-exempt bond issues. This approach allowed TEB to target its information requests to general practices and procedures affecting all tax-exempt liabilities of the organization. It was determined during the project planning process that such an approach would yield more valuable information relating to the market segment as a whole, rather than targeting specific actions taken by § 501(c)(3) organizations with respect to individual bond issues (Appendix A).

TEB and the Exempt Organizations Compliance Area (“EOCA”) jointly implemented the project. EOCA was requested to participate for two principal reasons. First, given the project’s focus on § 501(c)(3) organizations in lieu of individual bond issues, EOCA expertise in serving this taxpayer segment was critical. For example, EOCA could help TEB draft correspondence in a manner more easily understood by exempt organizations. Second, TEB was able to benefit from EOCA’s experience in implementing similar compliance check questionnaire projects to ensure the successful implementation of this project.

In preparation for project implementation, TEB provided EOCA with all the planning process documentation including the draft letter and questionnaire. EOCA coordinated the finalization and publication of these documents in preparation for distribution. EO’s Customer Education & Outreach staff assisted EOCA in this effort. EOCA also developed a training program for its staff with technical assistance provided by TEB specialists.

TEB developed, with the assistance of a Government Entities research analyst, search queries to identify a diverse sample of exempt organizations reporting an outstanding end-of-year tax-exempt bond liability on its IRS Form 990 filed with the IRS for calendar year 2005.<sup>32</sup> EOCA research analysts used these queries to identify 207 § 501(c)(3) organizations representing a cross-section of different charitable purposes within the market segment. This sample also included a diverse range of amounts of outstanding tax-exempt bond liabilities in order to capture large, middle, and smaller 501(c)(3) borrowers.

EOCA staff initiated the project by sending the letters and questionnaires to each exempt organization identified in the project sample. EOCA staff followed its

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<sup>31</sup> Treas. Reg. § 1.145-2.

<sup>32</sup> The judgemental sample consisted of both calendar and fiscal year 2005 returns. These returns, at the time of the project’s initiation, were the most recent taxpayer data available.

standard procedures in conducting the project including making subsequent contacts to non-responsive organizations and researching returned correspondence. EOCA staff also received and addressed questions submitted by respondents. TEB provided technical assistance to EOCA in responding to these questions.

Upon receipt of the questionnaires from respondents, EOCA compiled the data extracted from the completed questionnaires and forwarded this data and the original case files to TEB for review. TEB analyzed the extracted data and narrative descriptions for response trends.

### Design of Compliance Check Questionnaire

IRS Form 13907, *Tax-Exempt Bond Financings Compliance Check Questionnaire* (Appendix B), consists of identifying questions (name and EIN), and twenty-seven specialized questions. The specialized questions are organized into five parts.

Part I, Post-Issuance Compliance – General (6 questions), requests information on:

1. Maintenance of written procedures or guidelines and descriptions of the procedures or guidelines in the following areas:
  - a. Proper and timely use of bond proceeds and bond-financed property;
  - b. Arbitrage yield restriction and rebate; and
  - c. Timely return filings and other general requirements.
2. Person(s) primarily responsible for monitoring post-issuance compliance.
3. Maintenance and descriptions of written procedures or guidelines for individuals when more than one person is responsible for maintaining post-issuance compliance records.
4. Training of responsible persons in post-issuance compliance requirements.
5. Tax-exempt status.
6. Remedial actions and VCAP options.

Part II, General Recordkeeping (3 questions) gathers information on the tax-exempt bond recordkeeping practices (policies) of the organizations. Information was requested on retention length, types of media used, and types of records maintained.

Part III, Investments and Arbitrage Compliance (5 questions), gathers information on the knowledge of arbitrage yield restriction and rebate requirements, including retention standards, arbitrage computations, and written procedures or guidelines for monitoring arbitrage compliance.

Part IV, Expenditures and Assets (8 questions), gathers information on the maintenance of records of the allocations of the bond proceeds to expenditures and issuance costs, contracts, reimbursements, asset schedules, depreciation schedules, and purchase and sale of bond-financed assets.

Part V, Private Business Use (5 questions), gathers information on the maintenance of records of the organization's unrelated trade or business activities allocated to the bond-financed facilities; and trade or business activities by third parties that are allocated to the bond-financed facilities.

#### **IV. Summary of Reported Data**

This part summarizes the data derived from the compliance questionnaire responses regarding the post-issuance bond compliance and record retention practices of § 501(c)(3) organizations borrowing the proceeds of qualified 501(c)(3) bond issues.

The questionnaire was sent to 207 identified organizations. There were 203 responses received. The 4 non-respondents have been referred for classification to determine the appropriateness of opening an examination of a specific bond issue for which they are the beneficiary or other follow-up. There were 11 respondents whose responses indicated that they did not have bonds or that their bonds were not 501(c)(3) bonds. One responder was a foreign charity. Four responding organizations indicated that they were on-behalf-of issuers of tax-exempt bonds.<sup>33</sup> One respondent indicated it was an entity that had transferred its bonds to another entity. Three respondents were student loan issuers. In addition, 4 respondents were entities selected in error. After adjusting for the above, data from 192 entities was analyzed.

Additionally, 2 responses were received from organizations not mailed a questionnaire.<sup>34</sup>

This data is also shown in a schedule (Appendix C) showing the types and number of responses.

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<sup>33</sup> An entity that fails to qualify as a political subdivision which issues tax-exempt bonds "on behalf of" a political subdivision as a "constituted authority" or as a "63-20 corporation". See Rev. Rul. 63-20, 1963-1 C.B. 24, and Rev. Proc. 82-26, 1982-1 C.B. 114.

<sup>34</sup> These organizations indicated that they received a copy of the questionnaire from one of the selected organizations. They submitted an unsolicited questionnaire. These questionnaires were not included in the data summary or analysis.

### Reconciliation of Questionnaires to Responses

# of Questionnaires sent out	207	100%
Non-Respondents	(4)	(2%)
Additional Respondents	2	-
Total Respondents	205	-
On-behalf of Issuers	4	2%
Foreign Entity	1	<1%
Transfer Bonds	1	<1%
Student Loan Bonds	3	1%
Selected in Error	4	2%
Number of Respondents for the Project	192	93%

### Key Points of Analysis

After the initial review of the questionnaires and the responses thereto, the key points analyzed were whether, and in what form, post-issuance compliance procedures were present. The responses to questions concerning the written procedures or guidelines were reviewed.<sup>35</sup> From the analysis, compliance issues and trends were observed that will serve as a basis for future compliance initiatives and outreach programs.

The analysis reviewed the yes/no and narrative responses to the identified key questions. From this analysis, the compliance issues and trends were noted.

### Part I, Post-Issuance Compliance – General

The purpose of this part of the questionnaire was to determine the general post-issuance compliance of issuers of qualified 501(c)(3) bonds. Organizations were queried on the following items: (1) actual procedures; (2) individuals assigned to monitor these procedures; (3) training of individuals assigned to monitor post-issuance compliance; and (4) awareness of remedial actions available to prevent bonds from becoming taxable.

#### Question 1, Written Procedures or Guidelines:

The purpose of this question was to ascertain whether § 501(c)(3) organizations maintained written procedures or guidelines to ensure that qualified bond financings remain in compliance with federal tax requirements after the bonds are issued.

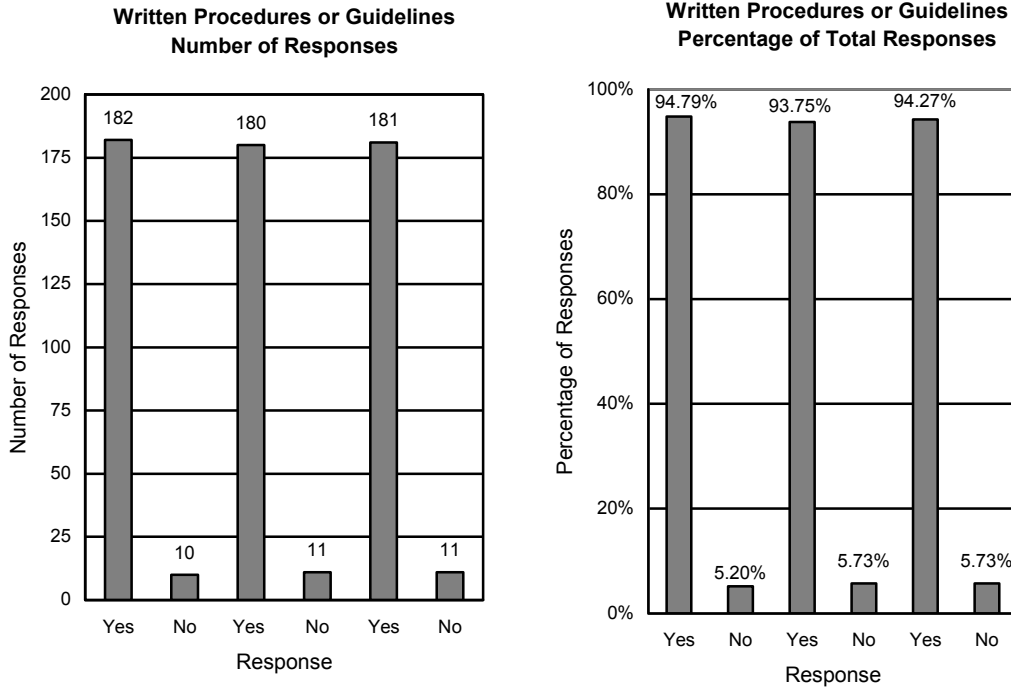
The question focused on three areas: use of proceeds and property, arbitrage, and other filings and general requirements. The following charts show the YES/NO responses to whether the § 501(c)(3) organization maintained written post-issuance procedures or guidelines to ensure that their tax-exempt bond financings remained

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<sup>35</sup> Questions 1, 3, 13, and 14 of Form 13907, *Tax-Exempt Bond Financings Compliance Check Questionnaire*.



in compliance with applicable federal tax requirements. The first bar on the left refers to use of proceeds and property, the middle bar refers to arbitrage, and the third bar refers to other filings and general requirements.



At first glance, the responses indicate a significantly positive trend in the implementation of post-issuance practices and procedures.

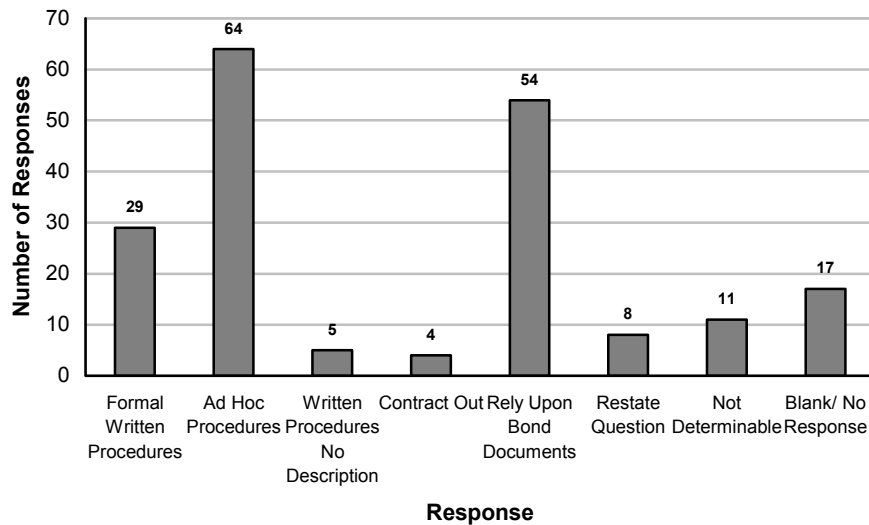
Overall, 182 (94.79%) of the respondents reported that they have written procedures or guidelines to ensure that their tax-exempt bond financings remained in compliance with requirements relating to the proper and timely use of bond proceeds and bond-financed property. Moreover, 180 (93.75%) reported that they have arbitrage yield restriction and rebate written procedures. Additionally, 181 (94.27%) reported having procedures to ensure timely filings and other general requirements. These responses to the YES/NO questions appear to indicate that most of the § 501(c)(3) organizations have written procedures or guidelines to ensure post-issuance compliance.

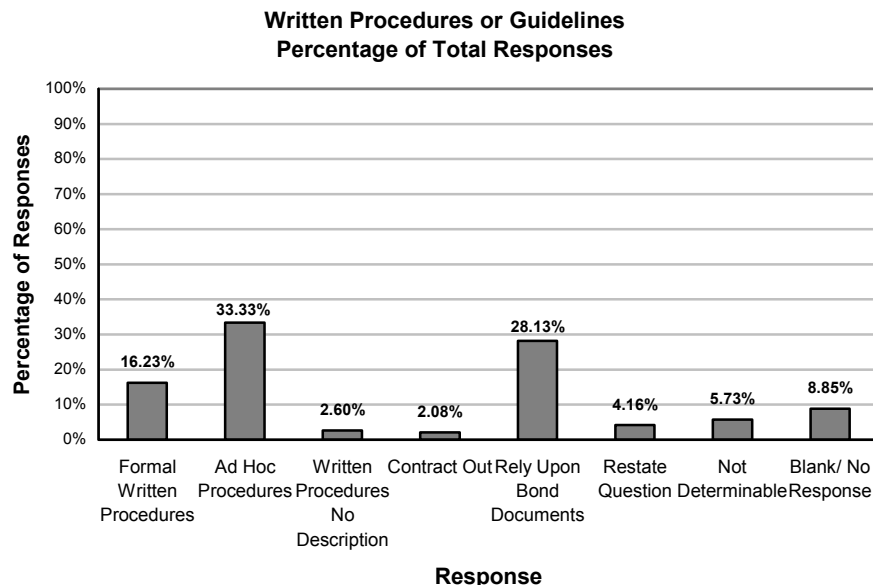
However, Question 1 also asked each respondent to describe its procedures or guidelines regarding each of the three separate compliance issues (use of proceeds or property, arbitrage, or other filings and general requirements). We conducted a thorough review of the narrative responses to this question to further study the respondents' procedures and practices in these areas. Based on these narrative responses of the 192 respondents, we were able to identify if the organization:

1. provided a copy of their procedures or indicated conclusively in their narrative that they had written procedures;
2. indicated in their narrative that they had procedures (and described these procedures in sufficient detail) but did not indicate that they had written procedures – such were identified as having “ad hoc” procedures. An “ad hoc” procedure was identified as maintaining records, approving expenditures, recognizing general arbitrage yield restriction and rebate requirements, and adherence to reporting requirements and due dates, but with no formal written procedures;
3. indicated that they had written procedures but provided no description of their procedures in their narrative;
4. indicated in their narrative that they contracted out their post-issuance compliance responsibilities;
5. indicated in their narrative that they relied upon the requirements contained in the bond documents as their guideline for post-issuance compliance;
6. provided a narrative that restated the content of the question, instead of describing their procedures or guidelines;
7. provided a non-responsive statement; or
8. provided no response.

The following charts show the analyzed responses after the narratives were reviewed:

**Written Procedures or Guidelines**  
**Number of Responses After Narrative Analysis**





Of the 182 respondents answering YES that they maintained written procedures: 29 (16.23%) demonstrated conclusively that they had formal written procedures; and 64 (33.33%) indicated that they performed, on an “ad hoc”<sup>36</sup> basis, procedures necessary to ensure post-issuance bond compliance. Five respondents (2.6%) indicated that they had written procedures but their narrative failed to adequately describe them. Four (2.08%) of the 182 respondents indicated that they contract out or engage specialists to monitor and maintain post-issuance compliance of their bond-financed activities and facilities.

Of those respondents that reported they have written procedures, our analysis of the narrative responses and supplemental information found that 54 (28.13%) relied solely on the requirements stated in the tax certificates or other descriptive bond documents as their means to comply with their post-issuance requirements. Finally, 8 (4.18%), 11 (5.73%), and 17 (8.85%), respectively, of the respondents either restated the question in their narrative, provided a non-responsive description in their narrative, or provided no narrative at all.

The 29 respondents that submitted proof of formal, written procedures in their narrative responses showed that their procedures generally followed the recommendations of the Advisory Committee of TE/GE (ACT) report dated June 13, 2007. Moreover, the 64 respondents who indicated “ad hoc” procedures, and the 5 that did not adequately describe their procedures, generally indicated in their narratives that they also were following the ACT recommendations.

<sup>36</sup> An “ad hoc” procedure was identified as maintaining records, approving expenditures, recognizing general arbitrage yield restriction and rebate requirements, and adherence to reporting requirements and due dates, but with no formal written procedures.

To summarize, at least 94% of the respondents answered YES to the questions asking whether they had written policies or procedures to assure post-issuance compliance in three key areas (use of proceeds and property, arbitrage, and other filings and general requirements). However, when asked to describe their written policies and practices, only 16% of the respondents provided a description or other information that clearly demonstrated that they had such written policies or procedures.

Greater percentages of respondents indicated, based on the descriptions and supplemental information, that they either performed ad hoc procedures (33%) or relied solely on bond documents (28%) to comply with post-issuance compliance requirements. Certain respondents (19%) provided no meaningful information to describe their policies or procedures, and 2% reported they contracted out the process to others.

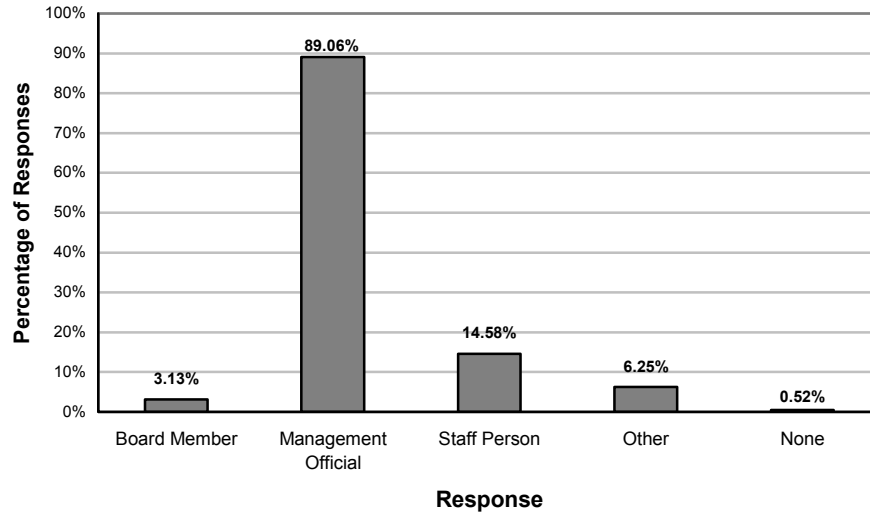
Ninety-eight (51%) of the 192 respondents to this question referred to or appeared to be using the ACT report recommendations in their narrative responses. All of the 29 respondents that adequately described their written policies and procedures appeared to be generally following the June 2007 ACT report recommendations, and 69 other respondents also appeared to be following such recommendations.

Further field work is needed to determine the varying policies and procedures being used by 501(c)(3) organizations and others to satisfy post-issuance compliance requirements with respect to qualified (c)(3) and other tax-exempt bonds.

#### Question 2, Primary Person Responsible for Monitoring Compliance:

The purpose of this question was to ascertain the individual(s) primarily responsible for monitoring post-issuance compliance of bond financings, as one way to assess the level of importance assigned by § 501(c)(3) organizations to their post-issuance tax compliance requirements.

**Primary Person Responsible for Monitoring Compliance**

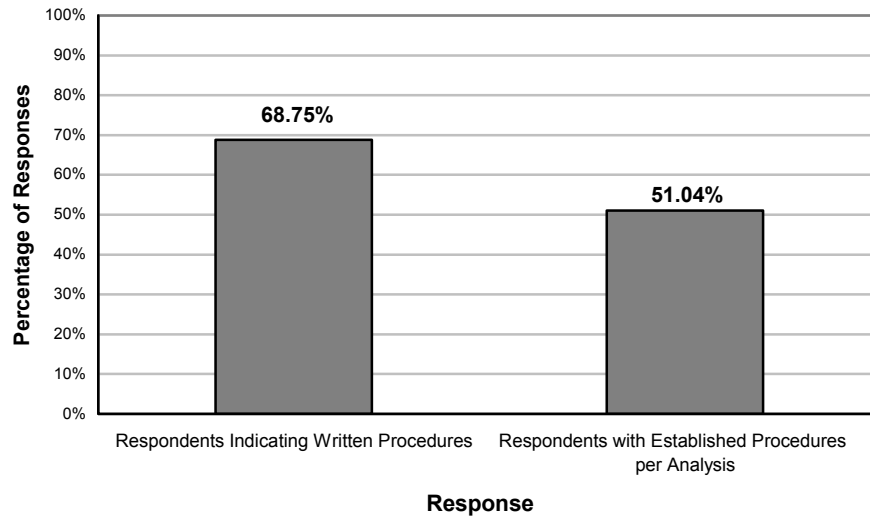


Of the 192 respondents, 6 (3.13%) and 171 (89.06%), respectively, reported they had as their primary responsible person a board member or management official. Twenty-eight (14.58%) and 12 (6.25%), respectively, reported that either a staff or other person also held a high level of responsibility. One of the organizations reported that they had no one responsible. Several respondents indicated multiple individuals were responsible for monitoring their post-issuance compliance requirements.

**Question 3, Written Procedures When More Than One Individual is Responsible:**

The purpose of this question was to ascertain if § 501(c)(3) organizations, generally, have written procedures or guidelines for individuals to follow when more than one individual is responsible for maintaining post-issuance tax compliance of bond financings.

**Established Procedures for Monitoring Official**



Of the 192 respondents, 132 (68.75%) reported having written procedures or guidelines to coordinate post-issuance compliance when more than one individual shares this responsibility. However, our analysis of the supplemental responses found 98 of the 192 respondents (51.04%)<sup>37</sup> actually had either formal written, “ad hoc,” or some other form of established procedures.

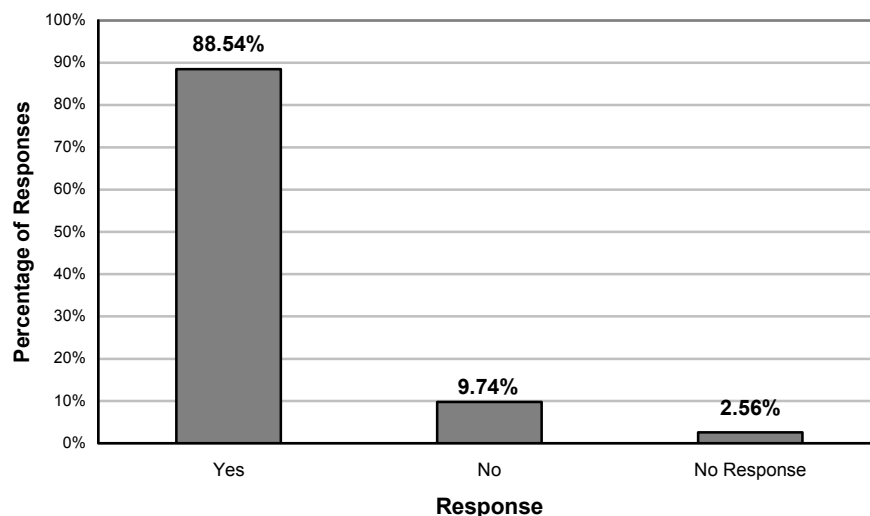
Question 4, Training or Education:

The purpose of this question was to ascertain whether or not § 501(c)(3) organizations provided specific training or educational resources to the personnel responsible for ensuring post-issuance tax compliance.

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<sup>37</sup> Formal written procedures 29 respondents  
 Ad Hoc procedures 64 respondents  
 Written but inadequate description 5 respondents  
 Respondents 98  
 Total respondents 192  
 % of Respondents to Total Respondents 51.04%

#### Organizations Providing Training or Education



Of the 192 respondents, 170 (88.54%) reported that they provide educational or training resources to the individuals responsible for ensuring post-issuance compliance.

#### Question 5, Tax-Exempt Status:

The purpose of this question was to ascertain whether the responding tax-exempt organizations were revoked or reclassified under a different tax-exempt subsection of the Code other than 501(c)(3).

None of the 192 respondents reported that they were revoked or reclassified. However, 1 did not respond to the revocation question and 3 did not respond to the reclassification question.

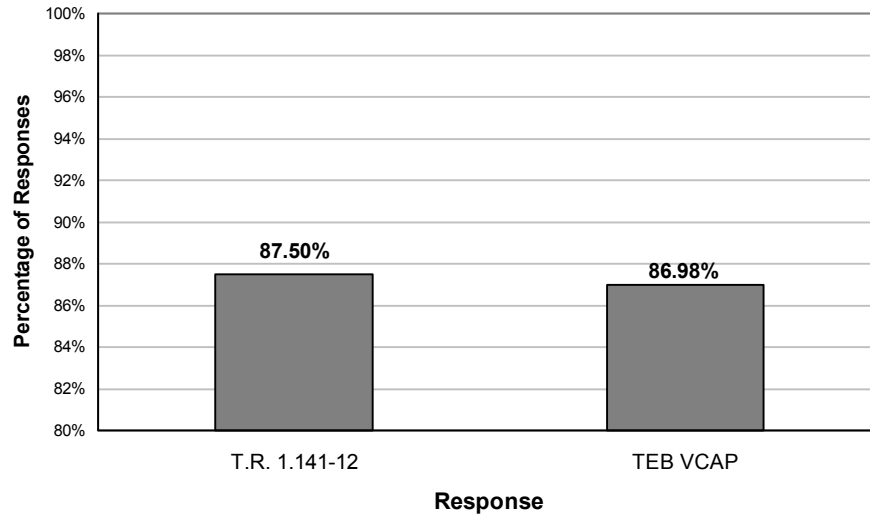
#### Question 6, Awareness of Remedial Actions and VCAP:

The purpose of this question was to ascertain the awareness of § 501(c)(3) organizations of either the self-correction remedial action provisions available under the Treasury Regulations or voluntary compliance options available under TEB VCAP.<sup>38</sup>

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<sup>38</sup> Tax Exempt Bonds Voluntary Closing Agreement Program (see footnote 14).

### Voluntary Compliance Awareness



Of the 192 respondents, 168 (87.50%) and 167 (86.98%) reported that they are aware of the remedial action provisions described under Treas. Reg. § 1.141-12<sup>39</sup> and TEB VCAP, respectively.

### Part II, General Recordkeeping

The purpose of this part of the questionnaire was to ascertain the retention practices for tax-exempt bond related records and what specific records (both organizational and bond related) that are being maintained by § 501(c)(3) organizations.

#### Question 7, Tax-Exempt Bond Records:

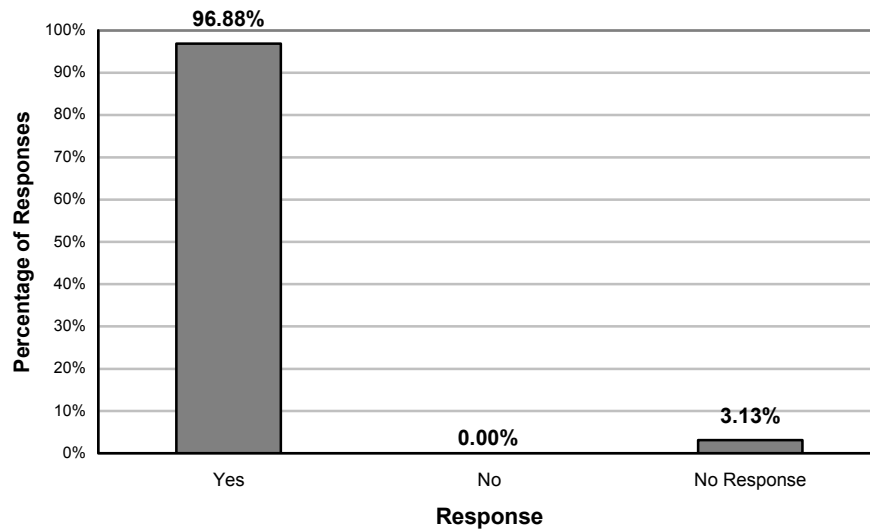
The primary purpose of this question was to ascertain whether tax-exempt organizations maintained their records pertaining to their tax-exempt bonds. Secondly, the question also sought to determine how long organizations maintained such records.

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<sup>39</sup> As provided by Treas. Reg. § 1.145-2.



### Organizations Maintaining Records

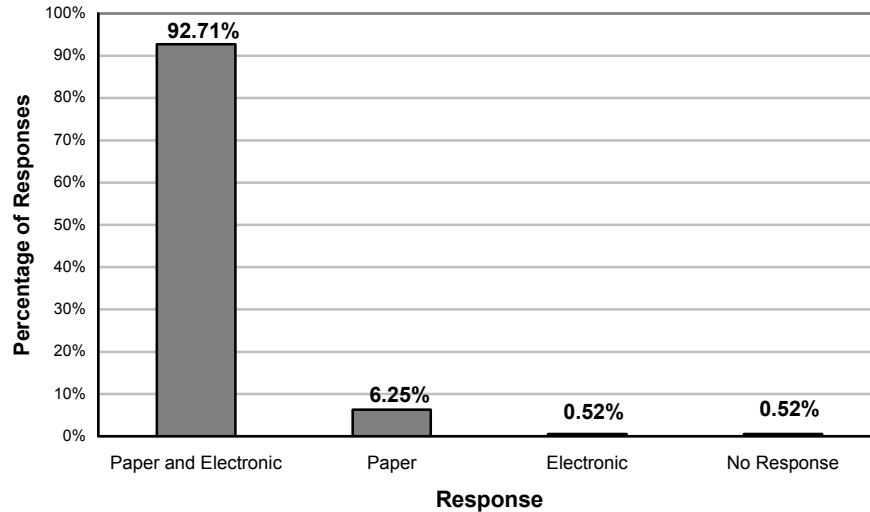


Almost all of the respondents (186 (96.88%)) reported that they maintain records pertaining to their tax-exempt bonds. Six did not answer the question either positively or negatively. In addition, 188 (97.92%) reported that they retain these records for at least the life of the bonds.

#### Question 8, Record Medium:

The purpose of this question was to determine what media § 501(c)(3) organizations typically use to maintain their bond-related records.

**Medium for Maintaining Records**



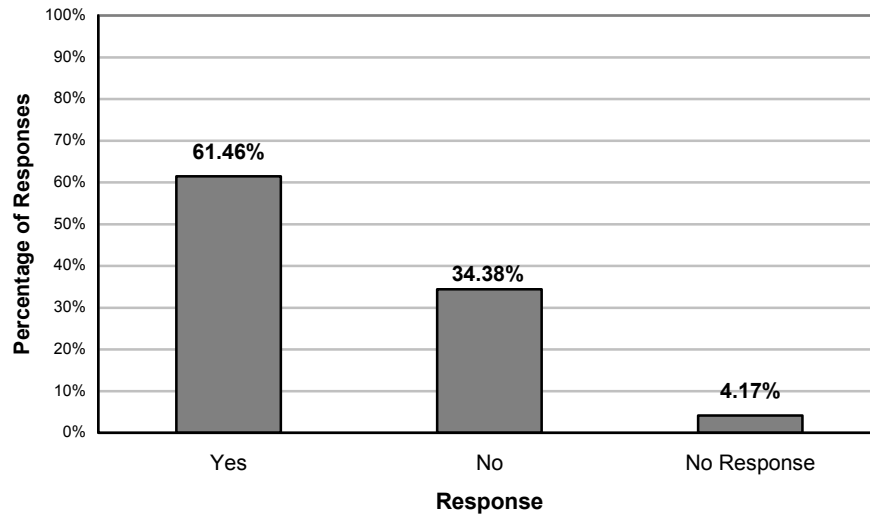
Of the 192 respondents, 178 (92.71%) reported that they used both paper and electronic media to maintain their records. Twelve (6.25%) reported that they used only paper media. One (.52%) reported that it used only electronic media. One respondent (.52%) did not provide an answer.

Question 9 (parts a through q), Retention of Copies of Records:

The purpose of this question was to determine what records are being maintained by the § 501(c)(3) organization. The records inquired about included both records pertaining to the general records required to be maintained by § 501(c)(3) organizations as well as records pertaining to the organization's tax-exempt bond financings.

The responses to the different parts of this question varied. Certain responding organizations indicated that some parts of the question were not applicable to them (e.g., parts c, e, k, l, m, n, p, and q), but only parts m, o, and q specifically provided for a not applicable ("N/A") response. It is presumed that some of these responding organizations may have either not responded to these parts due to the absence of an N/A option or responded with a NO response. Because of the lack of an N/A response to these questions, they are not being commented on in this report.

#### Maintain Copy of Form 1023



Only 118 (61.46%) of the respondents reported, for part a, that they maintained a copy of their IRS Form 1023, *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*. Sixty-six (34.38%) reported that they did not and 8 (4.17%) did not respond. Section 6104(d)(1)(a)(i) of the Code requires that a § 501(c)(3) organization provide, if requested, a copy of the application form for inspection by the public.

Almost all (190 or more respondents) indicated that they maintained copies of the following records:

1. IRC § 501(c)(3) determination letter (part b);
2. Organizing documents (part d);
3. Most recently filed Form 990 (part f);
4. Audited financial statements (part g); and
5. Bond transcripts, official statements and other offering documents of their bond financings (part h).

#### Part III, Investments and Arbitrage Compliance

The purpose of this part of the questionnaire was twofold. One, the questions sought to determine the retention level of specific records relating to investments and arbitrage compliance. Two, the questions sought to identify the procedures or guidelines § 501(c)(3) organizations have implemented to monitor compliance with arbitrage yield restriction and rebate requirements.

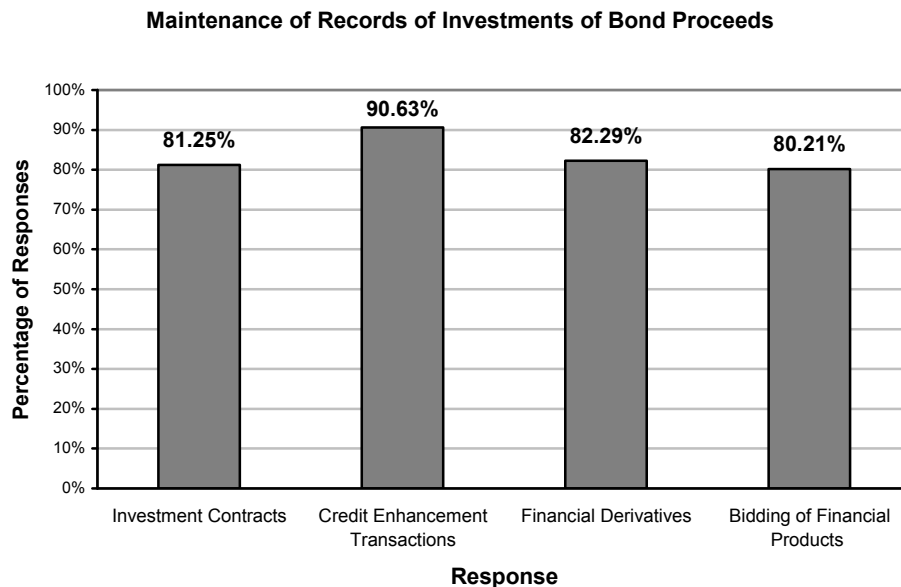
Question 10, Maintenance of Allocations of Investments and Investment Earnings:

The purpose of this question was to ascertain the extent to which § 501(c)(3) organizations maintained records of their allocations of investments and investment earnings to their bond financings. These records are integral for investment and arbitrage compliance.

All 192 of the respondents reported that they maintained these records.

Question 11 (parts a through d), Records of Investments of Bond Proceeds:

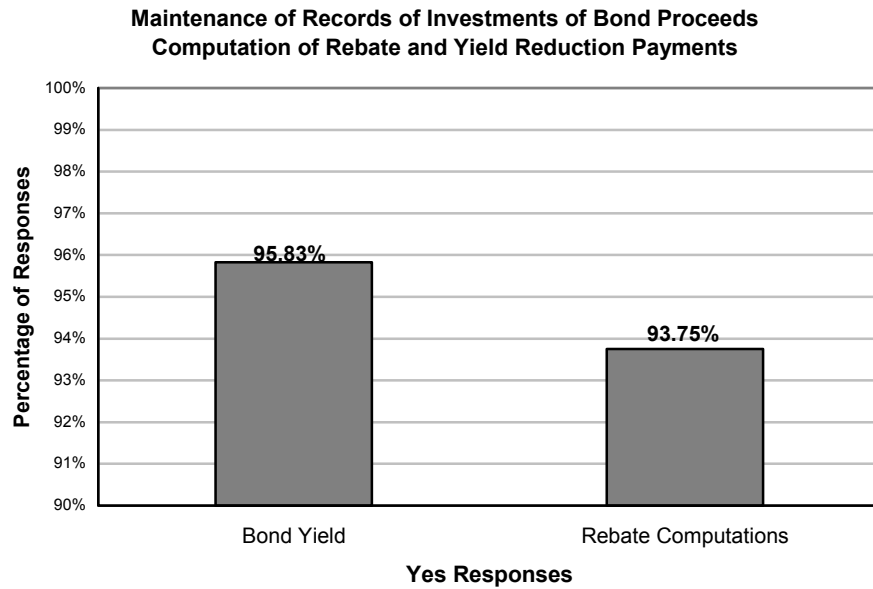
The purpose of this question was to determine whether § 501(c)(3) organizations were maintaining specific records relating to the investment of their bond proceeds. These records are integral in determining whether a bond issue meets the yield restriction and rebate requirements or is in jeopardy of being viewed as an arbitrage bond.



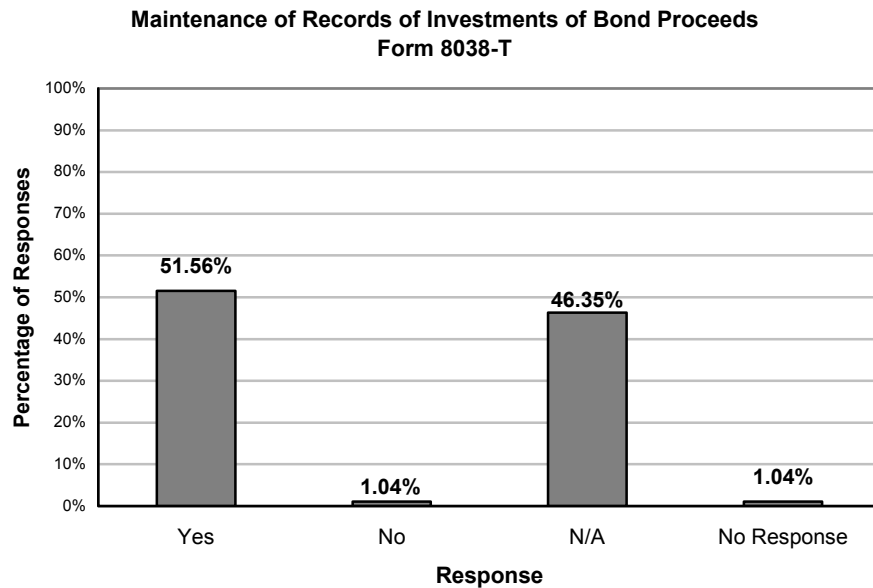
At least 154 (80.21%) of the respondents reported that they maintained these records. However, a further review of the structure of the question indicates that some or all of the parts of the question may or may not be applicable to the responding organization. Some of the responding organizations may have not responded to these parts because an N/A option was not provided; or they may have responded with a YES or NO response when N/A would have been more appropriate.

Question 12 (parts a through d), Maintenance of Arbitrage Related Records:

The purpose of this question was to determine whether organizations were maintaining specific records relating to the investment of proceeds of their bond issue. These records are integral in determining the amount of arbitrage realized as well as the timely submission of rebate or yield reduction payments.



Of the 192 respondents, 184 (95.83%) reported that they maintained records relating to their computations of bond yield, and 180 (93.75%) reported that they maintained records relating to their computations of rebate and yield reduction payments.



Of the 192 respondents, 99 (51.56%) indicated that they retained Form 8038-T; 2 (1.04%) indicated that they did not retain this form; 89 (46.35%) indicated that this question was not applicable to them; and 2 (1.04%) did not respond.

Part d of the question relating to retention of Form 8038-R did not offer a N/A option. Some of the responding organizations may not have responded to this part because an N/A option was not provided; or they may have responded with a YES or NO response when N/A would have been more appropriate. Because of the lack of an N/A response to this part, it is not being commented on in this report.

#### Questions 13 and 14, Procedures Relating to Monitoring Arbitrage Activities:

The purpose of these questions was to determine whether § 501(c)(3) organizations had written procedures or guidelines for monitoring their compliance with applicable arbitrage yield restriction and rebate requirements. In order to ensure compliance with the arbitrage requirements under § 148 of the Code (including the requirement to rebate excessive arbitrage earnings to the U.S. Treasury), procedures should be instituted that monitor investment activities that may result in arbitrage noncompliance.

Eighty-nine respondents (46.35%) to question 13 reported that they have procedures to monitor compliance with applicable yield restriction requirements on subsequent reinvestment of bond proceeds in lower yielding investments. One hundred organizations (52.08%) reported that this was not applicable to them.

The respondents to question 14 were not offered the N/A option. Therefore, some of the responding organizations may not have responded to this question because the N/A option was not provided; or they may have responded with a YES or NO response when N/A would have been more appropriate. Because of the lack of the N/A option to this question, it is not being commented on in this report.

#### Part IV, Expenditures and Assets

##### Questions 15 through 22, Expenditures and Assets Records:

The purpose of this part of the questionnaire was to determine the retention level of specific records relating to allocations of bond proceeds to expenditures, including whether § 501(c)(3) organizations were maintaining records of the expenditures made from bond proceeds; and whether they were maintaining records of assets purchased with bond proceeds.

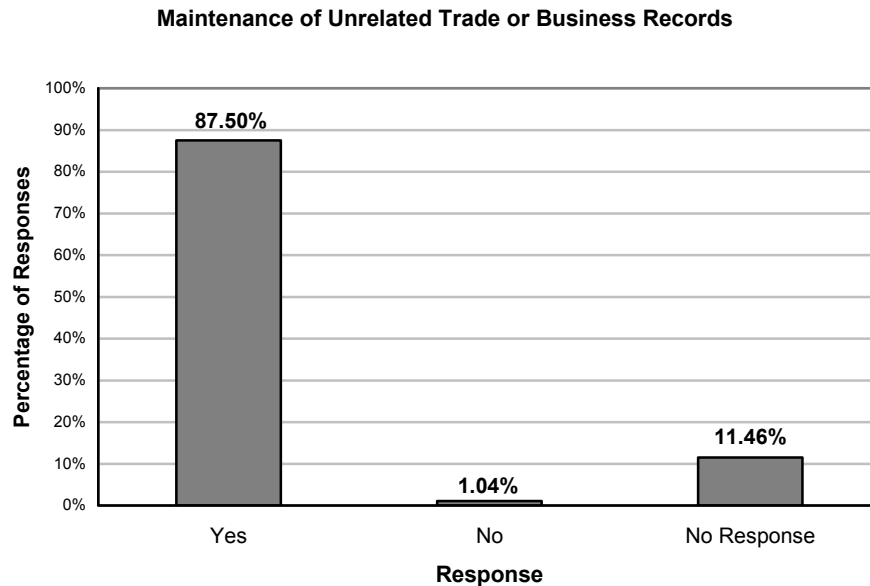
Respondents to these questions, for the most part (96.88% to 100.00%), reported that they do maintain these records.

### Part V, Private Business Use

The purpose of this part of the questionnaire was to determine the retention level of specific records relating to private business (unrelated trade or business) use of bond-financed facilities as well as the trade or business activities by third parties who utilize the bond-financed facilities. In addition, this part also attempted to ascertain what types of arrangements § 501(c)(3) organizations entered into with respect to their bond-financed property.

Question 23, Maintenance of Unrelated Trade or Business Activity Records:

The purpose of this question was to ascertain whether § 501(c)(3) organizations maintained records relating to the unrelated trade or business use of their bond-financed facilities. This question is integral in determining whether the bond issue remains in compliance with the modified private business tests,<sup>40</sup> which limit to only 5% the amount of bond proceeds that may be used to finance unrelated trade or business use of bond-financed property.



One hundred seventy of the 192 respondents (88.54%) responded to this question. Of the 192 respondents, 168 (87.50%) indicated that they keep these records. Twenty-two (11.46%) provided no response.

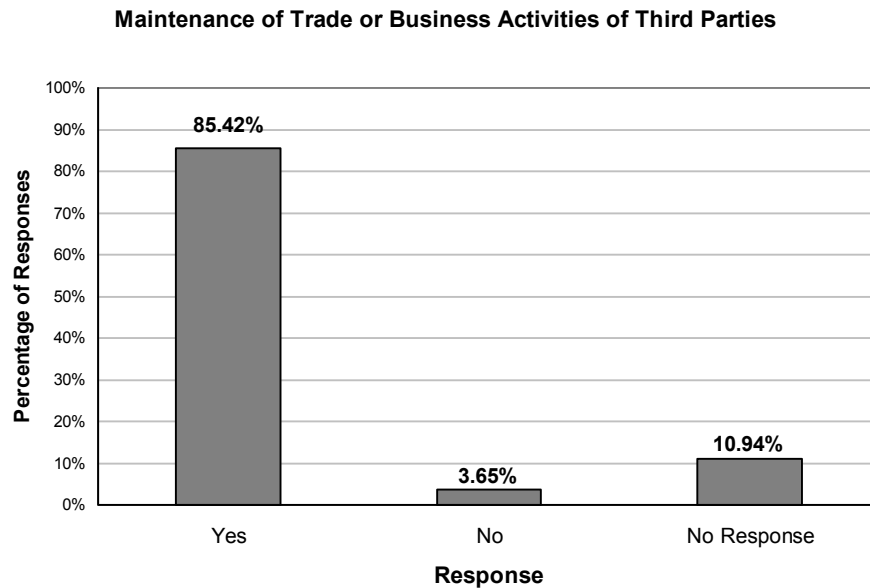
However, the respondents to question 23 were not offered an N/A option. As a result, some of the responding organizations may have not responded to this question because an N/A option was not provided.

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<sup>40</sup> IRC §§ 145(a)(2) and 141(b).

**Question 24, Maintenance of Trade or Business Use Activity Records of Bond-Financed Property by Third Parties:**

The purpose of this question was to determine whether § 501(c)(3) organizations maintained records of the trade or business activities of third parties who had use of the bond-financed facilities. As with question 23, this is integral in determining whether the bond issue remains in compliance with the modified private business tests.



One hundred seventy-one of the 192 respondents to the questionnaire (89.06%) responded to this question. Of the 192 respondents, 164 (85.42%) reported that they keep these records. Twenty-one (10.94%) provided no response.

However, the respondents to question 24 were not offered an N/A option. As a result, some of the responding organizations may have not responded to this question because an N/A option was not provided.

**Question 25 and 26, Arrangements for Bond-Financed Property:**

The purpose of these questions was to determine what types of potentially nonqualified or “bad” use arrangements were entered into by § 501(c)(3) organizations and whether records were maintained with respect to these arrangements.



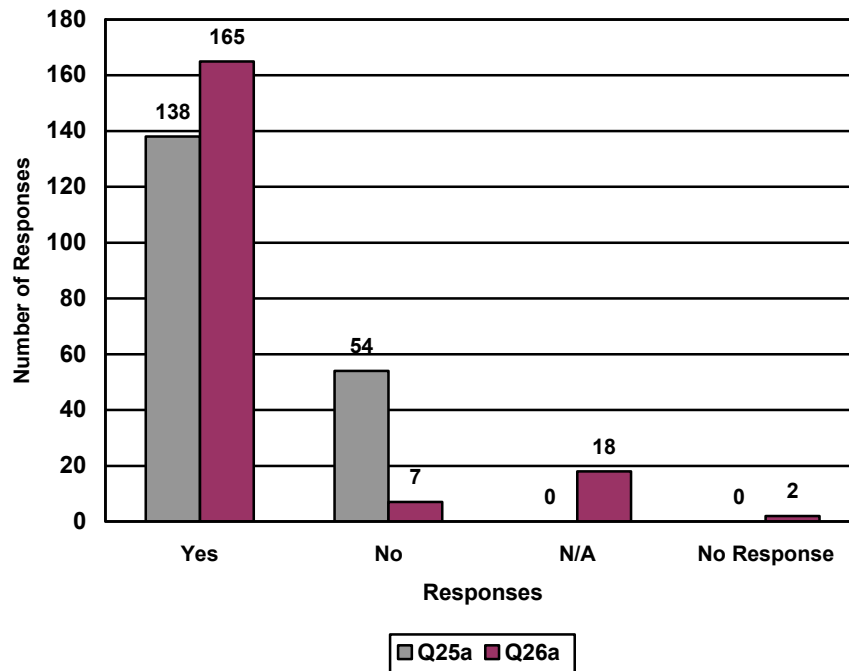
Question 25 asked whether the § 501(c)(3) organization entered into any of the following arrangements:

1. Management and other service agreements;
2. Research contracts;
3. Naming rights contracts;
4. Ownership;
5. Leases;
6. Subleases;
7. Leasehold improvement contracts;
8. Joint venture arrangements;
9. Limited liability corporation arrangements; or
10. Partnership arrangements.

Question 26 asked whether the respondents maintained records for the arrangements entered into in Question 25 above.

Each of the above arrangements could potentially jeopardize the tax-exempt status of the bond issue if it relates to an unrelated trade or business activity. The following chart shows the responses to questions 25a and 26a regarding whether they entered into any management and other service agreements, and whether they maintained copies of these agreements.

Questions 25a & 26a Management/Services Agreements



The respondents to questions 25a and 26a were not offered an N/A option. However, certain respondents wrote “N/A” next to the YES and NO boxes on the returned questionnaire. Nonetheless, some of the responding organizations may not have responded to this question because an N/A option was not provided; or they may have responded with a YES or NO response when an N/A response would have been more appropriate.

## **V. Preliminary Analysis & Conclusions**

The data derived from the questionnaires aided us in evaluating § 501(c)(3) organizations’ knowledge of post-issuance compliance requirements applicable to their qualified 501(c)(3) bond issuances. From our analysis, we were able to identify the types of practices used by the respondents to support their responses stating that they maintained written procedures and record retention policies. We were also able to identify weaknesses in the questionnaire process and develop improved questions for future questionnaire projects.

### Preliminary Analysis

Between 93% and 95% of the respondents reported that they had post-issuance written procedures or guidelines to ensure that their tax-exempt bonds remained in compliance with the federal tax requirements applicable to the proper and timely use of bond proceeds and bond-financed property, arbitrage yield restriction and rebate, and timely filing of returns and other general requirements. However, our analysis indicated that only 49% actually had written (16%) or ad hoc (33%) procedures or guidelines. A small percentage (5%) indicated written procedures but did not provide a sufficient description for a conclusive determination. The remaining respondents either: (1) indicated that they relied on procedures contained in their bond documents (28%); (2) only restated the question in their response (4%); (3) did not provide enough detail to determine what procedures, if any, they were following (6%); or (4) did not give a response (9%). The analysis indicates that 84% of the § 501(c)(3) organizations do not have written procedures, while a slight majority do not have any formal procedures.

The § 501(c)(3) organizations indicated that the primary person(s) responsible for monitoring post-issuance compliance are management officials (89%) and board members (3%). Few responded that no one was responsible. The responses indicate that the § 501(c)(3) organizations in the study are predominately delegating the responsibility for post-issuance compliance to a high-level person within the organization. Moreover, 89% of the § 501(c)(3) organizations indicated that they are providing training to the persons responsible for monitoring their post-issuance compliance.

The responses indicate that there is a high level of awareness (approximately 87%) of the self-correction options under the Treasury Regulations and the voluntary correction programs under TEB VCAP.

The record retention policies of the § 501(c)(3) organizations indicated that nearly all of the organizations (97%) adequately maintained the necessary bond records to ensure post-issuance compliance. However, some of the organizations responded that they did not keep certain required tax-exempt records, such as their Form 1023. Failure to maintain these records may violate statutory requirements applicable to § 501(c)(3) organizations and could result in noncompliance with the requirements of § 145.

The responses to the questionnaire indicated that there is a high recognition of the importance of post-issuance compliance and recordkeeping, however, the overall effectiveness of the implementation of such programs is questionable. Further testing through examinations or other field tests may be warranted to further assess compliance in these areas.

### Lessons Learned

Several of the questions that did not do so should have provided an opportunity for the respondent to answer “not applicable.” We believe that our failure to provide this opportunity may have adversely affected the reliability of the responses in several instances, as noted in this report, and prevented us from reporting precise data in those instances. The apparent divergence between the YES and NO responses to Question 1 and the accompanying narrative responses highlights the need to request supplemental or narrative responses with respect to key questions. Also, future questionnaires will likely request information regarding the dates the respondents adopted or last revised their policies or practices, to determine how long such policies or practices were in place.

On the positive side, TEB learned important lessons regarding the benefits of partnering with external stakeholders, including the ACT, NABL and others, in order to more effectively implement a compliance initiative and work to improve compliance in the market segment.

### Preliminary Conclusions

Our analysis of the data gathered from the questionnaire allowed us to draw certain preliminary conclusions concerning the level of post-issuance compliance relative to the implementation of formal written procedures or guidelines, including recordkeeping and retention policies as they apply to arbitrage yield restriction and rebate requirements, bond expenditures and asset management requirements, and private business use monitoring requirements.

Overall, our analysis indicated a high level of compliance in each of the aforementioned areas. However, there still appears to be significant misconceptions and inadequacies concerning the responsibilities of governmental issuers and conduit borrowers in post-issuance compliance.

#### Post-Issuance Compliance Gaps:

The data indicates approximately half of the respondents in the study has either written or “ad hoc” procedures to ensure post-issuance compliance and record retention practices. However, the data also indicates a significant percentage lacks formal written procedures and safeguards. This conclusion is consistent with previous TEB examination experience which has noted significant pockets of industry inattention to post-issuance compliance, particularly with respect to maintenance of records throughout the life of the bonds.

Recent ACT committee reports addressed post-issuance compliance procedure and record retention practice issues prior to commencement of this project. Their analysis recognized that tax-exempt bonds are issued to finance projects with long useful lives, oftentimes with bond maturities of 30 years or more. In addition, subsequent refundings of bond issues necessitate the retention of the refunded bond issue’s records for the life of the refunded and refunding bond issues, a span of potentially several decades. The reports also noted the significant record retention burdens resulting from a single issue financing multiple projects. The reports concluded that, without written procedures, retention policies might be inadequate.

The IRS believes that it is important for § 501(c)(3) organizations to have procedures that can be understood and implemented over time even through changes of responsible officials. The appropriate procedures may vary substantially, depending on the various complexities of the issue. Assigning responsibility for post-issuance compliance is critical. Sufficient records need to be maintained to allow newly installed officials to successfully continue this compliance monitoring. Monitoring of post-issuance compliance and recordkeeping should be integrated with existing accounting systems. Thus, formal record retention policies for tax-exempt bond records are necessary to guarantee continuity in ensuring effective post-issuance compliance practices.

#### Industry Recognition of Importance of Post-Issuance Compliance:

Subsequent to the issuance of the questionnaire, it has been observed that industry stakeholder associations are actively discussing the importance of post-issuance compliance procedures and record retention programs, as well as, the identification of best practices. In some instances, these associations have collaborated in working on best practices guidance. The IRS applauds these and similar efforts.

TEB has received comments from many different stakeholders in response to Notice 2006-63, a formal request for comments on record retention guidance and limitation programs. These comments have been extremely informative, particularly with respect to the practical difficulties of the retention of certain types of tax-exempt bond records required to substantiate post-issuance compliance. TEB anticipates continued joint efforts in the future to address these burdens.

#### Industry Feedback on Soft-Contact Approach to Compliance:

While an active examination program is fundamental to ensuring compliance, TEB has recognized the industry's very positive response to alternative soft-contact compliance approaches. Specifically, comments have suggested that information gathering projects, such as this compliance questionnaire, should be an integral component to the IRS's tax-exempt bond compliance program.

Initial comments from the industry indicate a heightened interest in receiving feedback from the results of this questionnaire. Certain stakeholder associations have also shown a willingness to make suggestions directed toward improving future questionnaires. Similarly, the industry, as a whole, was very proactive in submitting comments on the recently released Form 990 and corresponding Schedule K, *Supplemental Information on Tax Exempt Bonds*. TEB will continue to encourage the tax-exempt bond community to provide input that assists TEB in developing mechanisms that effectively collect data for compliance purposes.

#### Future Post-Issuance Compliance Check Questionnaires:

In continuing efforts to obtain relevant post-issuance compliance data, TEB will issue a questionnaire targeting post-issuance compliance and record retention practices of governmental bond issuers. The questionnaire is expected to be sent to a sampling of governmental bond issuers in calendar year 2008. Data gathered from this questionnaire will measure the effectiveness of governmental bond issuers relative to their post-issuance procedures and record retention policies. An added benefit of the forthcoming questionnaire will be the increased awareness, by all segments of the tax-exempt bond community, of the importance of post-issuance and record retention policies and procedures.

TEB will continue to review the data obtained from this questionnaire, including reviewing narrative responses and supplemental information to test the responses to the questions. TEB will also develop follow-up efforts for implementation in 2010 to determine whether our increased emphasis on record retention and written policies and procedures has led to improved policies and practices in the market segment.

TEB's ultimate goal is to promote post-issuance compliance while continuing to work with the industry on reducing the taxpayer burden relative to record retention and other tax-exempt bond requirements. TEB will work to strengthen its outreach efforts in this area, and will continue to collaborate with Chief Counsel and Treasury on record retention guidance. TEB will also collaborate with the ACT Committee on a new project related to record retention.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT BONDS COMPLIANCE INITIATIVE  
PROJECT PLANNING PROCESS

Title of Initiative: Qualified 501(c)(3) Bonds Compliance Survey Project  
Expected Start Date: 03/15/2007  
Expected Completion Date: 06/30/2007  
Contact Person: Steven Chamberlin, SE:T:GE:TEB:CPM

I. OBJECTIVE OF PROJECT/INITIATIVE

The purpose of the initiative is to evaluate whether 501(c)(3) exempt organizations generally have a sufficient level of knowledge of the post-issuance tax compliance requirements applicable to their tax-exempt debt obligations. The initiative will focus on measuring several aspects of post-issuance compliance knowledge and practices including: 1) record retention requirements; 2) qualified use of bond-financed property requirements; 3) arbitrage yield restriction and rebate requirements; 4) debt management policies and procedures; and 5) awareness of voluntary compliance and educational resources.

The initiative will utilize the compliance check approach to measure the compliance levels in organizational and operational practices. The data collected will be general in nature and not pertain to any specific tax-exempt bond issuance. Rather, the data will be utilized to recommend improved enforcement and educational efforts.

II. HOW DOES THIS OBJECTIVE RELATE TO INCREASING VOLUNTARY COMPLIANCE, REDUCING TAXPAYER BURDEN, AND IMPROVING QUALITY AND PRODUCTIVITY?

Trends of noncompliance or inadequate post-issuance debt management procedures that are identified through these compliance checks will be shared with the various stakeholder associations representing governmental issuers, exempt organization borrowers, investment groups, and public finance practitioners who comprise the qualified 501(c)(3) bond market segment through outreach efforts, the IRS web site, and other appropriate media. Sharing of information enables issuers and borrowers of bond proceeds to comply with the applicable law. Identifying noncompliance trends and

inadequate procedural safeguards enables the Service to develop alternative corrective actions to foster voluntary compliance as well as plan for future examination initiatives.

### III. INFORMATION AVAILABLE

Data gathered in these compliance checks will be used to develop educational resources and voluntary compliance programs to assist exempt organization borrowers in meeting their post-issuance tax responsibilities. Information of this nature is necessary to ensure overall levels of compliance.

### IV. EMPLOYEE SUPPORT AND COORDINATION

The initiative will be implemented by Exempt Organizations Compliance Area (EOCA) staff using their local procedures for compliance check projects. TEB Compliance & Program Management (CPM) staff will coordinate the initiative with EOCA including the development of planning documents and providing technical assistance during the project. TEB Field Operations (FO) staff will draft the compliance check survey based on past experience working qualified 501(c)(3) bond examinations.

### V. HOW WILL THE INITIATIVE BE CONDUCTED?

CPM will provide EOCA with the planning process documents including a draft letter and compliance check survey. CPM will provide EOCA with all necessary technical assistance both prior to and during the project. EOCA will initiate the project by sending the letters and surveys to each exempt organization in the project sample. The project sample will consist of each exempt organization which indicated an end-of-year outstanding balance of tax-exempt debt on its Form 990 filed for the year 2006.

EOCA will follow its local procedures in conducting the project including making subsequent contacts to non-responsive organizations and researching returned correspondence. EOCA will compile the data extracted from the completed surveys and forward the results to CPM for analysis.

### VI. HOW WILL THE OBJECTIVE OF THE INITIATIVE BE MEASURED?

The objective of the initiative is to measure several components of post-issuance compliance knowledge and practices including: 1) record retention requirements; 2) qualified use of bond-financed property requirements; 3) arbitrage yield restriction and rebate requirements; 4) debt management policies and procedures; and 5) awareness of voluntary compliance and educational resources. The questions contained in the compliance check survey relate to each of these components.

CPM will analyze the data compiled and forwarded by EOCA to determine both the overall knowledge of post-issuance compliance requirements and the overall quality of debt management procedural safeguards.

## VII. COMPLIANCE IMPLICATIONS

Information gathered from this initiative will be used to provide educational resources to the tax-exempt charitable financing market segment including the stakeholder associations representing governmental issuers, exempt organization borrowers, investors, and public finance practitioners. The availability of such resources will have a positive impact in helping the market segment generally and borrowers specifically to understand their post-issuance compliance responsibilities. Through its outreach efforts, TEB will also alert the market segment to potential compliance weaknesses and encourage taking of voluntary corrective actions to ensure post-issuance compliance.

Information gathered from this initiative will also be used to develop additional voluntary compliance programs and to train TEB revenue agents in resolving potential record retention deficiencies.

Compliance Initiative Approval:

Signature:

Date:

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Director, Tax Exempt Bonds SE:T:GE:TEB



This questionnaire asks for information regarding your post-issuance bond compliance and record retention practices. Please complete the questionnaire and follow the instructions in the accompanying letter for returning it to us.

Name of Organization: \_\_\_\_\_

Employer Identification Number: \_\_\_\_\_

**PART I - POST-ISSUANCE COMPLIANCE - GENERAL**

1. Do you have written procedures or guidelines to ensure that qualified 501(c)(3) bond financings remain in compliance with the following federal tax requirements after the bonds are issued:

- a. Proper and timely use of bond proceeds and bond-financed property?  Yes  No
- b. Arbitrage yield restriction and rebate?  Yes  No
- c. Timely return filings and other general requirements?  Yes  No

For each yes answer, briefly describe your procedures or guidelines.

2. Who is primarily responsible for monitoring post-issuance compliance of bond financings?

- Board Member (e.g., Director, Trustee)
- Management Official (e.g., Chief Financial Officer, Comptroller, Treasurer)
- Staff Person            What is the person's title? \_\_\_\_\_
- Other Person            What is the person's title? \_\_\_\_\_
- None

3. Do you have written procedures or guidelines for individuals to follow when more than one person is responsible for maintaining the records needed to ensure post-issuance compliance of bond financings?  Yes  No

If yes, briefly describe the procedures or guidelines.

4. Do you provide training or educational resources to personnel that are responsible for ensuring compliance with the post-issuance private use limitations for bond-financed property?  Yes  No
5. With respect to your tax-exempt status:
- a. Has your 501(c)(3) tax-exempt status been revoked?  Yes  No
- b. Has your tax-exempt status been reclassified under another 501(c) section (e.g., section 501(c)(4) social welfare organization, section 501(c)(7) social club)?  Yes  No
6. Do you know about the following options for voluntarily correcting failures to comply with post-issuance compliance requirements:
- a. Taking certain remedial actions described under section 1.141-12 of the income tax regulations?  Yes  No
- b. Entering into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2001-60?  Yes  No

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## PART II - GENERAL RECORDKEEPING

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7. Do you maintain records pertaining to your tax-exempt bonds?  Yes  No
- If yes, for how long?
- Less than 1 year     1-2 years     3-7 years     8-15
- Life of bonds     Life of bonds plus 3 years
8. What medium do you use to maintain your bond records?
- Paper     Electronic media (CD, disks, tapes)     Both paper and electronic
9. Do you maintain copies of the following records:
- a. Form 1023, *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*?  Yes  No
- b. Your favorable section 501(c)(3) determination letter?  Yes  No
- c. Any correspondence between your organization and the Service related to a significant change in your activities?  Yes  No
- d. Your organizing documents (articles of incorporation, bylaws and amendments)?  Yes  No
- e. Your recent Form 990-T, *Exempt Organization Business Income Tax Return*?  Yes  No
- f. Your recent Form 990, *Return of Organization Exempt From Income Tax*?  Yes  No
- g. Your audited financial statements?  Yes  No

- h. Bond transcripts, official statements and other offering documents of your bond financings?  Yes  No
- i. Minutes and resolutions authorizing the issuance of your bond financings?  Yes  No
- j. Certifications of the issue price of your bond financings?  Yes  No
- k. Any formal elections for bond financings (e.g., election to employ an accounting methodology other than specific tracing)?  Yes  No
- l. Appraisals, demand surveys, or feasibility studies for bond-financed property?  Yes  No
- m. Documents related to government grants associated with construction, renovation or purchase of bond-financed facilities?  Yes  No  
 N/A
- n. Publications, brochures, and newspaper articles for your bond financings?  Yes  No
- o. Trustee statements for your bond financings?  Yes  No  
 N/A
- p. Correspondence (letters, e-mails, faxes, etc.) for your bond financings?  Yes  No
- q. Reports of any prior IRS examinations of your organization or bond financings?  Yes  No  
 N/A

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### PART III - INVESTMENTS AND ARBITRAGE COMPLIANCE

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- 10.** Do you maintain documentation of allocations of investments and investment earnings to your bond financings?  Yes  No
- 11.** Do you maintain documentation for investments of your bond financing proceeds related to:
- a. Investment contracts (e.g., guaranteed investment contracts)?  Yes  No
- b. Credit enhancement transactions (e.g., bond insurance contracts)?  Yes  No
- c. Financial derivatives (swaps, caps, etc.)?  Yes  No
- d. Bidding of financial products?  Yes  No
- 12.** Do you maintain copies of the following arbitrage-related documents for your bond financings:
- a. Computations of bond yield?  Yes  No
- b. Computation of rebate and yield reduction payments?  Yes  No
- c. Form 8038-T, *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate*?  Yes  No  
 N/A
- d. Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*?  Yes  No

13. Do you have procedures or guidelines for monitoring instances where compliance with applicable yield restriction requirements depends on subsequent reinvestment of bond proceeds in lower yielding investments?  Yes  No  
 N/A
14. Do you have specific procedures or guidelines for monitoring bond financings that you expect will comply with the arbitrage rules as a result of the application of a temporary period exception (section 148(c) and section 1.148-2(e)) or a spending exception (section 148(f)(4) and section 1.148-7(c), (d), and (e))?  Yes  No

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#### PART IV - EXPENDITURES AND ASSETS

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15. Do you maintain documentation of allocations of bond-financing proceeds to expenditures (e.g., allocation of bond proceeds to expenditures for the construction, renovation or purchase of facilities you own and use in the performance of your exempt purpose)?  Yes  No
16. Do you maintain documentation of allocations of bond-financing proceeds to bond issuance costs?  Yes  No
17. Do you maintain copies of requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to bond proceeds spent during the construction period?  Yes  No
18. Do you maintain copies of all contracts entered into for the construction, renovation or purchase of bond-financed facilities?  Yes  No
19. Do you maintain records of expenditure reimbursements incurred prior to issuing bonds for facilities financed with bond proceeds?  Yes  No
20. Do you maintain a list or schedule of all bond-financed facilities or equipment?  Yes  No
21. Do you maintain depreciation schedules for bond-financed depreciable property?  Yes  No
22. Do you maintain documentation that tracks your purchase and sale of bond-financed assets?  Yes  No

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#### PART V - PRIVATE BUSINESS USE

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23. Do you maintain records of all unrelated trade or business activities allocated to your bond-financed facilities?  Yes  No
24. Do you maintain records of trade or business activities by third parties that you allocate to your bond-financed facilities?  Yes  No
25. Have you entered into any of the following arrangements for bond-financed property:
- a. Management and other service agreements?  Yes  No
- b. Research contracts?  Yes  No
- c. Naming rights contracts?  Yes  No
- d. Ownership?  Yes  No

- e. Leases?  Yes  No
- f. Subleases?  Yes  No
- g. Leasehold improvement contracts?  Yes  No
- h. Joint venture arrangements?  Yes  No
- i. Limited liability corporation arrangements?  Yes  No
- j. Partnership arrangements?  Yes  No
- 26.** Do you maintain copies of the following agreements when entered into with respect to your bond-financed property:
- a. Management and other service agreements?  Yes  No
- b. Research contracts?  Yes  No
- c. Naming rights contracts?  Yes  No
- d. Ownership documentation (e.g., deeds, mortgages)?  Yes  No
- e. Leases?  Yes  No
- f. Subleases?  Yes  No
- g. Leasehold improvement contracts?  Yes  No
- h. Joint venture arrangements?  Yes  No
- i. Limited liability corporation arrangements?  Yes  No
- j. Partnership arrangements?  Yes  No
- 27.** In general, how do you ensure that your qualified 501(c)(3) bonds remain tax exempt after they are issued?

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## Appendix C Data Tables of Questionnaire Responses

### Part I - Post-Issuance Compliance - General

Question Number	Question Text					
1	Do you have written procedures or guidelines to ensure post-issuance compliance for the following items:	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>None</b>	
a.	Proper and timely use of bond proceeds and bond-financed property?	182	10	0	0	
b.	Arbitrage yield restriction and rebate?	180	11	0	1	
c.	Timely return filings and other general requirements?	181	11	0	0	
2	Who is responsible for monitoring post-issuance compliance?	<b>Board Member</b>	<b>Management Official</b>	<b>Staff</b>	<b>Other</b>	<b>None</b>
		6	171	28	12	1
		<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>None</b>	
3	Do you have written procedures to follow when more than one person is responsible for maintaining records to ensure post-issuance compliance?	132	38	20	2	
4	Do you provide training/educational resources to those who are responsible for ensuring post-issuance compliance with private use limitations?	170	18	0	4	
5a.	Has your 501(c)(3) tax-exempt status been revoked?	0	191	0	1	
5b.	Has your tax-exempt status been reclassified under another 501(c) section?	0	189	0	3	
6a.	Do you know that you may take remedial actions described in Reg. §1.141-12 to voluntarily correct failures?	168	23	0	1	
6b.	Do you know that you may enter into a closing agreement as described in Notice 2001-60 to voluntarily correct failures?	167	23	0	2	

## Appendix C Data Tables of Questionnaire Responses

### Part II - General Recordkeeping

Question Number	Question Text					
7	Do you maintain records pertaining to your tax-exempt bonds?	Yes	No	N/A	None	
		186	0	0	6	
	How long do you keep them?	Less than 3 Years	3-7 yrs	8-15 yrs	Life of bonds	Life of bonds + 3 yrs
		0	1	1	8	180
8	What medium do you use to maintain your bond records?	Paper	Electronic	Both		
		12	1	178		
9	Do you maintain copies of the following records:	Yes	No	N/A	None	
a	Form 1023?	118	66	0	8	
b	Favorable §501(c)(3) determination letter?	177	5	0	10	
c	Any correspondence between your organization and the IRS concerning a change in your activities?	191	0	0	1	
d	Your organizing documents?	168	9	0	15	
e	Recent Form 990-T?	192	0	0	0	
f	Recent Form 990?	192	0	0	1	
g	Audited financial statements?	191	0	0	1	
h	Bond transcripts, official statements, and other offering documents?	191	0	0	1	
i	Minutes and resolutions authorizing issuance of your bond financings?	191	0	0	1	
j	Certifications of the issue price of your bond financings?	190	1	0	1	
k	Any formal elections for bond financings?	159	18	0	15	
l	Appraisals, demand surveys, or feasibility studies for bond-financed property?	173	7	0	12	
m	Documents related to government grants associated with construction, renovation, or purchase of bond-financed property?	59	2	130	1	
n	Publications, brochures, and newspaper articles for your bond financings?	162	28	0	2	
o	Trustee statements for your bond financings?	190	0	2	0	
p	Correspondence for your bond financings?	176	14	0	2	
q	Reports of any prior IRS examinations of your organization or bond financings?	84	0	107	1	

## Appendix C Data Tables of Questionnaire Responses

### Part III – Investments and Arbitrage Compliance

Question Number	Question Text	Yes	No	N/A	None
10	Do you maintain documentation of allocations of investments and investment earnings to your bond financings?	192	0	0	
11	Do you maintain documentation for investments of your bond proceeds related to:				
a.	Investment contracts?	156	16	0	20
b.	Credit enhancement transactions?	174	6	0	12
c.	Financial derivatives?	158	13	0	21
d.	Bidding of financial products?	154	18	0	20
12	Do you maintain copies of the following arbitrage-related documents:				
a.	Computation of bond yield?	184	3	0	5
b.	Computation of rebate and yield reduction payments?	180	6	0	6
c.	Form 8038-T?	99	2	89	2
d.	Form 8038-R?	87	38	0	67
13	Do you have procedures for monitoring compliance with applicable yield restriction compliance when a subsequent reinvestment of bond proceeds results in lower yielding investments?	89	1	100	2
14	Do you have procedures for monitoring bond financings when you expect to apply a temporary period or spending exception?	162	18	0	12

### Part IV - Expenditures and Assets

15	Do you maintain documentation of allocation of bond proceeds to expenditures?	192	0	0	0
16	Do you maintain documentation of allocation of bond proceeds to bond issuance costs?	192	0	0	0
17	Do you maintain copies of requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to proceeds spent during construction phase?	189	2	0	1
18	Do you maintain copies of all contracts entered into for construction, renovation, or purchase of bond-financed facilities?	186	6	0	0
19	Do you maintain records of expenditure reimbursements incurred prior to issuing bonds for facilities financed with bond proceeds?	188	2	2	2
20	Do you maintain a schedule of all bond-financed facilities or equipment?	191	1	0	0
21	Do you maintain depreciation schedules?	189	2	0	1
22	Do you maintain documentation that tracks the purchase and sale of bond-financed assets?	186	4	0	2



## Appendix C Data Tables of Questionnaire Responses

### Part V – Private Business Use

		Yes	No	N/A
23	Do you maintain records of all unrelated trade or business activities allocated to your bond-financed facilities?	168	2	0
24	Do you maintain records of trade or business activities by third parties that you allocate to your bond-financed facilities?	164	7	0
25	Have you entered into any of the following arrangements for your bond-financed property:			
a.	Management and other service agreements?	138	54	0
b.	Research contracts?	74	117	0
c.	Naming rights contracts?	35	156	0
d.	Ownership?	34	158	0
e.	Leases?	111	80	0
f.	Subleases?	36	156	0
g.	Leasehold improvement contracts?	43	148	0
h.	Joint venture arrangements?	18	173	0
i.	Limited liability corporation arrangements?	22	168	0
j.	Partnership arrangements?	5	184	0
26	Do you maintain copies of the following agreements when entered into with respect to your bond-financed property?			
a.	Management and other service agreements?	165	7	18
b.	Research contracts?	115	24	49
c.	Naming rights contracts?	88	40	62
d.	Ownership documentation?	116	27	46
e.	Leases?	141	15	33
f.	Subleases?	87	38	64
g.	Leasehold improvement contracts?	95	32	62
h.	Joint venture arrangements?	75	40	74
i.	Limited liability corporation arrangements?	80	38	71
j.	Partnership arrangements?	67	45	77