



IRS Issues Final Report on Bond Questionnaire Project

On July 13 the Internal Revenue Service issued a [final report](#) on its Tax-Exempt Bond Compliance Questionnaire Project for nonprofit financings. The Report includes the Service's conclusions drawn from questionnaires that were distributed to a national sampling of nonprofit hospitals, universities, cultural institutions and nonprofit secondary schools in order to gain a better understanding of compliance levels with laws and regulations that govern tax-exempt bonds. The Project is just a part of the Service's increased emphasis on compliance matters, which also is reflected in new portions of the IRS Form 990, increased audit activity and heightened scrutiny of corporate governance issues relating to 501(c)(3) institutions. The Report's key points are the following:

While labeled as "final," the Report is really just the beginning. The Service found "significant misconceptions and inadequacies" in respondents' tax-exempt bond compliance efforts. Institutions should expect to see additional questionnaires and other Service initiatives designed to promote greater compliance with tax-exempt bond regulations. Failure to respond to these "soft contact" questionnaires can result in an audit referral.

The Service made clear in the Report its expectation that nonprofit entities adopt and actually implement formal compliance procedures with respect to tax-exempt bond laws and regulations. Tax regulatory or other agreements delivered at the time bonds are

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Questions can also be directed to any of the following lawyers:

issued are not enough. Those procedures should include elements concerning training of relevant personnel regarding ongoing compliance and transition procedures when the relevant personnel no longer serve in that capacity. In future audits, the Service's examiners likely will ask to see not only compliance procedures, but also evidence that they are being followed.

The Service emphasized in the Report the issue of record retention. Although the Report shows that the Service appreciates the burden placed on institutions having to retain records for the life of a long-term bond issue, the Report also reminds institutions that the burden lies with the institution and the issuer to retain the records needed to protect the tax-exempt status of the bonds. As an additional incentive to adopt and implement post-issuance compliance procedures, the Service may adopt a safe harbor that would alleviate the record retention burden by indentifying procedures that meet minimum requirements.

Squire Sanders has a [bond counsel practice](#) with lawyers who are nationally known for their expertise in compliance matters for tax-exempt bonds and who are in frequent direct contact with the Service. Squire Sanders is able to assist 501(c)(3) organizations in complying with applicable Internal Revenue Code provisions, Treasury regulations and related bond covenants. If you have questions regarding your institution's compliance efforts, please contact any of the lawyers listed in this Update or the Squire Sanders lawyer with whom you work.

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