REMINDER

Oklahoma institutions of higher education with outstanding bond issues must comply with the terms and conditions included in the Continuing Disclosure Agreements (CDAs) that were signed when their bonds were issued. These continuing disclosure obligations include the filing of audited financial reports with the online Electronic Municipal Market Access (EMMA) system maintained by the Municipal Securities Rulemaking Board. Most CDAs require that these reports be filed within 180 days of the end of the issuer's fiscal year (December 27, 2015 for the filing of Fiscal Year 2015 audited financial reports).

Do not assume that your underwriter, trustee, financial advisor or other third party will take care of these filings for you. <u>Unless you have a contract with one of these entities that specifically spells out that they are serving as your disclosure agent, the responsibility remains with you, as the issuer</u>.

Institutions should review each of the CDAs associated with outstanding bond issues and identify all information that must be disclosed on a continuing basis. Filing the information on the EMMA system will meet this disclosure requirement. If any report or document has not been filed, it should be added to EMMA immediately, together with a notice that it is a late filing. It is especially important to add prior fiscal year audited financial reports, if they have not been timely filed.

Immediate Actions:

1) **Log in to the EMMA system (create an account if you do not have one);**

2) **Check each of your outstanding issues to confirm that prior filings have been made;**

3) **If required disclosure information has not been filed, add it immediately;**

4) **File your audited financial report for Fiscal Year 2015 as soon as it is available, together with any updated reports or materials you have committed to disclose in your CDA.**

5) **Determine whether any required material event notices have been filed. If a material event has occurred, but there was no filing, post that notice immediately.**

Note: Individual campuses are not obligated to make continuing disclosure filings under the CDA for the Oklahoma Development Finance Authority's Master Lease Program. However, <u>failure to expend bond issue proceeds in a timely manner or any change in use of a bond-funded facility over the life of the loan should be reported to the ODFA immediately so appropriate disclosures can be filed</u>.

Continuing Disclosure

The responsibilities of an issuer of municipal bonds are described in a number of ways during the issuance process: (i) compliance with state and federal law; (ii) conforming to the covenants in the legal documents governing the sale; and (iii) satisfying any applicable regulations. During the issuance process, an issuer is assisted by its bond counsel, financial advisor and other professionals to ensure that all of these requirements are met.

Compliance with certain applicable federal tax requirements normally occurs at the closing of the bond transaction, while other federal tax requirements require on-going monitoring after the issuance of the bonds. Issuance-related requirements include filing a Form 8038 series information return (including 8038, 8038-G, 8038-GC, 8038-B and 8038-TC). At closing, the issuer must have a reasonable expectation of on-going, post-issuance compliance.

Once the bonds have been sold and delivered to investors, an issuer must recognize that it has many monitoring, reporting, and record-keeping responsibilities that continue as long as the bonds are outstanding - and record-keeping extends even beyond the final bond redemption date. For federally tax-exempt bonds, the failure of an issuer (or its agent) to comply with any applicable federal tax requirement jeopardizes the preferential tax status of those bonds.

Post-issuance federal tax requirements generally fall into two categories: (1) qualified use of proceeds and financed property; and (2) arbitrage yield restriction and rebate. Qualified use requirements involve monitoring of the various direct and indirect uses of bond-financed property over the life of the bonds and calculations of the percentage of non-qualified uses. This is extremely important, since exceeding the limits on non-qualified use can result in a "change in use" determination and possibly to the loss of tax exemption for the bondholder. Arbitrage requirements also require monitoring over the life of the bonds to determine whether both the yield on investments acquired with bond proceeds are properly restricted and whether the issuer must file a Form 8038-T to pay a yield reduction payment and/or rebate payment.

Written Procedures for Monitoring Compliance

Issuers should adopt written procedures, applicable to all bond issues, which go beyond reliance on the tax certificates included in bond documents provided at closing. Sole reliance on the closing bond documents may result in procedures insufficiently detailed or not incorporated into an issuer's operations. Strong post-issuance compliance practices should include:

- Due diligence review at regular intervals;
- Identifying the officials or employees responsible for review;
- Training of the responsible officials/employees;
- Retention of adequate records to document compliance (e.g., records relating to expenditure of proceeds);
- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

Source: Internal Revenue Service. Additional information is available at www.irs.gov/Tax-Exempt-Bonds