

IRS Announces New Round of 'Compliance Check' Surveys of 501(c)(3) Borrowers

Ropes & Gray Prepares Model Post-Issuance Compliance Program

In a teleconference yesterday, the IRS announced that it will be sending a new round of “compliance check” surveys to an undetermined number of 501(c)(3) borrowers, requesting information as to the borrowers’ practices and procedures for maintaining post-issuance compliance with the 501(c)(3) bond rules. The IRS indicated that these surveys will be similar to the ones sent to approximately 200 501(c)(3) borrowers in 2007 and focus in part on written compliance procedures. They will be sent to a sampling of borrowers who did not receive the 2007 survey.

The IRS also discussed its preliminary findings from the 2007 surveys, particularly with respect to the survey questions concerning the adoption of written procedures for maintaining post-issuance compliance. Although over 90% of respondents indicated that they indeed had adopted such procedures, the IRS indicated that only 15% of the respondents provided narrative responses that suggested the borrowers had actually implemented and were following such procedures on a regular basis.

Still, the IRS expressed satisfaction with the fact that the compliance check survey itself appeared to have prompted many borrowers to adopt written procedures. The IRS indicated that the next round of survey questions will request more specific narrative descriptions of the procedures, will invite (although not require) borrowers to submit copies of their written procedures, and will ask borrowers to identify when the written procedures were adopted. For borrowers who have not yet adopted written procedures, the IRS stated pointedly that “now is the time.”

In view of the IRS’s focus on written procedures with respect to post-issuance compliance, we recommend that all 501(c)(3) borrowers adopt such procedures (who have not already done so). Although not technically a requirement to maintain compliance with the 501(c)(3) bond rules, the adoption of such procedures undoubtedly will increase the likelihood of the borrower consistently performing the necessary monitoring, recordkeeping and other tasks required to maintain post-issuance compliance. Such procedures also will enable a borrower to respond thoroughly to the questions regarding written procedures in the event it receives a compliance check survey. Moreover, if the IRS identifies a violation of the bond rules in the course of an audit, a borrower with strong written procedures (and who regularly follows such procedures) will be better positioned, as a practical matter, to seek a reasonable resolution with the IRS than a borrower with nonexistent or ad-hoc procedures.

[R&G Prepares Model Post-Issuance Compliance Program](#). To assist its clients in this regard, Ropes & Gray has prepared a model compliance program consisting of a comprehensive set of procedures and guide to post-issuance compliance, and assistance, as requested, in implementing the procedures. We have delivered copies of the procedures and guide to a number of university and hospital clients and are advising several clients on adapting the procedures to their particular circumstances. The table of contents to the procedures and guide can be found by [clicking here](#).

For further information about Ropes & Gray’s model compliance program, or if you have any other questions about 501(c)(3) bond compliance, please contact one of the following members of Ropes & Gray’s Public Finance Group:

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