

# NASBO CONFERENCE 2014

*Presented by: GILMORE & BELL, P.C.*



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**IRS Bond Audits**

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- The IRS has instituted an ongoing audit program for issuers of tax-exempt bonds
- Particular categories of issues are selected for audit each year
- While few issues are audited each year, the process can be time consuming and expensive for all participants

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**Post-Issuance Compliance Policy and Procedures**

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Tax Matters:

- IRS emphasis on written post-issuance compliance procedures for tax matters
- Annual check for:
  - Improper use of bond financed property
  - Sale or disposal of bond financed property
  - Completion of rebate calculations

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## Post-Issuance Compliance Policy and Procedures

Securities Matters:

- Continuing Disclosure Filings
  - Audit and other financial information
  - Material event notices
- Focus on disclosure in offering documents regarding past compliance

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## Municipal Advisor Rules

- SEC promulgated Municipal Advisor Rules under Dodd-Frank Act
- Effective Date of July 1, 2014
- Governs activities of "municipal advisors"
- Impacts the activities of underwriters and imposes certain restrictions

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## Municipal Advisor Rules

- If a party is a municipal advisor to an issuer for a bond issue, a fiduciary duty is owed to the issuer and the party cannot serve as underwriter with respect to the bonds
- Exception for Underwriters, but only for certain activities

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## Municipal Advisor Rules

Activities within the scope of an underwriting:

- Advice regarding structure, timing, terms and other similar matters.
- Preparation of rating strategies and materials and investor presentations.
- Advice regarding retail order periods and institutional marketing.
- Assistance in preparation of POS and OS, negotiation of documents, certificates and opinions, assistance with closing and preparation of post-sale reports.
- Structuring of refunding escrow cash flow requirements necessary to provide refunding and defeasance of an issue of municipal securities (excluding recommendation of escrow investments).
- Coordination of obtaining CUSIP numbers and DTC registration.
- Preparation of post-sale reports.

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## Municipal Advisor Rules

Activities outside the scope of an underwriting (e.g., "municipal advisor" activities):

- Advice on investment strategies and municipal derivatives (including derivative valuation services).
- Advice on the method of sale of municipal securities, assistance with competitive sales, and advice regarding selection of underwriters and other finance professionals.
- Advice on approval or authorization of issuance of municipal securities or with respect to a bond election.
- Advice on financial controls.
- Advice regarding terms of RFPs or RFQs.

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## Qualified Capital Purpose Undertaking Bonds (QCPUF)

- Abatement of environmental hazards, accessibility barriers, improvement of indoor air quality, correction of life safety code violations and mold abatement and prevention
- Bonds may be issued without an election
- 5.2¢ levy for 10 years

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## Public Facilities Construction and Financing Act

- Allows 2 or more “qualified public agencies” to cooperate to **issue bonds** to finance joint projects
- Qualified public agencies include school districts, ESUs, cities, villages, community colleges, counties, etc.
- Bonds exempt from Levy and spending lids

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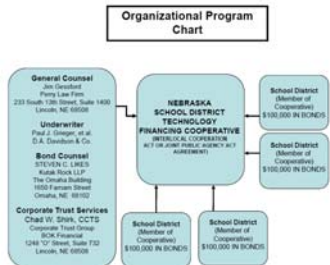
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## Public Facilities Construction and Financing Act

- The Nebraska Technology Financing Cooperative



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## Public Facilities Construction and Financing Act

- Bond limitations on IT projects:
  - Shall not exceed \$100,000
  - Short term with some being 1 year bonds

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## Public Facilities Construction and Financing Act

### • CAUTION ON QCPUF & TECH BONDS!

- § 79-458 implements a **\$1.20/\$100 taxable valuation** limitation for non-people voted bonds or freeholding is permitted.

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## Lease-Purchase Agreements

- District may lease-purchase buildings or equipment for not more than 7 years
- "No school district shall directly or indirectly issue bonds to fund any such lease-purchase plan for a capital construction project exceeding \$25,000 in costs" without an election

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QUESTIONS?

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