

POST-ISSUANCE COMPLIANCE WEBINAR 2025 UPDATES

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CPE and MCLE Credits

- Responses to polling questions will be utilized to verify attendance
- You must respond to **all 3 polling questions** to be eligible for credits
- Email csixtos@blxgroup.com
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A Comprehensive Overview of Post-Issuance Tax Law and SEC Secondary Market Disclosure for 501(c)(3) Organizations and State and Local Governments Who Utilize Tax-Exempt Financing

October 23-24, 2025
Conrad Nashville & Virtual

Registration open now:

<http://www.blxgroup.com/picworkshop2025>

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We encourage you to reach out to your BLX representative or Orrick attorney to discuss the particular facts of your situation.

Discussion Outline

- I. Washington Update
- II. NIH Research Funding
- III. Investing Bond Proceeds and Managing Arbitrage Rebate Compliance
- IV. IRS Oversight Update

WASHINGTON UPDATE

Poll Question #1

Statement: I have been closely following the activities in DC surrounding tax reform and the impact on tax-exempt bonds --

A1: True

A2: False

US Municipal Bond Market

\$4.1 TRILLION ANNUALLY

Municipal finance is used in many industries, including:



Education

School districts, charter schools and higher education



Transportation

Roads, bridges, light rail, and transportation infrastructure



Healthcare

Hospitals and other healthcare entities



Utilities

Public power, water, and sewer



Housing

Housing finance agencies and military housing



Economic Development

Redevelopment and general infrastructure projects, including renewable energy



General Government

States, cities, towns, and municipal governments for various urban planning including hotels and stadium financing

Other industries that use municipal finance include:



Police and Municipal
Volunteer Fire Departments



Sanitation, Refuse,
and Public Works



Conduits and Industrial
Development Authorities



Port and Airport
Authorities



Indian Tribal
Finance and Gaming



Morgan Stanley



nuveen



Tax Reform 2025

- How we got here: key provisions in 2017 Tax Cuts and Jobs Act (“TCJA”) set to expire at the end of 2025
- Trump Administration wants to extend or potentially expand tax cuts
- Search for revenue “offsets” to pay for tax cuts

Tax Reform 2025

- What's at stake as GOP Congress looks for offsets?
 - Full repeal of tax exemption for municipal bonds
 - Repeal of tax exemption for qualified private activity bonds (healthcare, higher ed)
- Recall that in 2017 advance refundings were no longer permitted and used as a revenue offset
- Could debate around SALT deduction impact tax-exempt bonds

Tax Reform 2025

- Timeline
 - July?
 - September?
 - “Don’t make plans for Christmas”
- Breaking News – Monday, May 12
 - Tax Title of House Bill released
 - Tax-exempt bonds not adversely impacted in initial release

Tax Reform 2025

- Advocacy efforts – get involved!
 - GFOA and the Public Finance Network's #builtbybonds
 - Contact members of congress

Tax Reform 2025



NIH RESEARCH FUNDING

NIH Research Funding

- Trump Administration efforts
 - Cap of indirect cost rate (overhead) on research grants at 15% for both new and existing grants
 - Halting new grant awards
 - Pausing payments on existing awards

NIH Research Funding

- Impact on private business use (“PBU”) calculations and compliance for research activities occurring in tax-exempt bond financed facilities
- Impact on continuing disclosure filings

NIH Research Funding – PBU Implications

- Sponsored research occurring in tax-exempt bond financed space may generate PBU
 - Special legal entitlement / indirect use of space
- Agreements must be analyzed for compliance with Rev Proc 2007-47 – safe harbor for basic research
- Calculating PBU for sponsored research – Revenue Methodology
 - Sanctioned in IRS filing

NIH Research Funding – PBU Implications

- Information required to calculate PBU (revenue methodology)
 - Non-qualified research revenues
 - Total research revenues

*Revenues from **non-qualified** research agreements
(net of royalties and licensing fees)*

*Revenues from **aggregate of qualified and non-qualified** research
agreements (net of royalties and licensing fees)*

NIH Research Funding – PBU Implications

- NIH research is generally qualified research
- Removal of NIH revenues from the calculation (Revenue Methodology) of PBU could have the impact of raising the PBU %

NIH Research Funding – PBU Implications

- Items to consider
 - What is the current PBU % of your research facilities
 - How much of your current research is NIH sponsored
 - How much of your bond issue(s) was spent on research facilities (what %)
 - Was any “qualified equity” spent on the research facilities

NIH Research Funding – Continuing Disclosure Implications

- Continuing Disclosure filings on EMMA (annual, quarterly and voluntary) constitute "speaking to the market" and are subject to antifraud provisions of federal securities laws
- Carefully evaluate continuing disclosure filing requirements in light of the current financial and operating facts and circumstances
- Have financial/operating conditions been affected by recent economic and financial events, such as federal administrative actions?
- Include disclosure to provide investors context and material information

NIH Research Funding – Continuing Disclosure Implications

- Financial effects of the NIH announced limitation of a 15% indirect cost recovery rate on new and existing NIH grants are uncertain due to ongoing litigation
 - Disclosure should provide information about total federal funding including:
 - Historic total federal funds received and amount of indirect cost recovery before limitation
 - Briefly discuss implications if proposed 15% limitation was implemented

Legal and Regulatory – Continuing Disclosure Implications

- Other legal and regulatory actions, such as executive orders or legal actions may have material effects on financial and operating conditions
 - Approach annual and quarterly filings using the same disclosure outreach process when preparing primary disclosure for bond sale
 - Evaluate current events through a critical lens and include disclosure to get ahead of questions from investors and provide meaningful context for financial and operating performance

INVESTING BOND PROCEEDS AND MANAGING ARBITRAGE REBATE COMPLIANCE

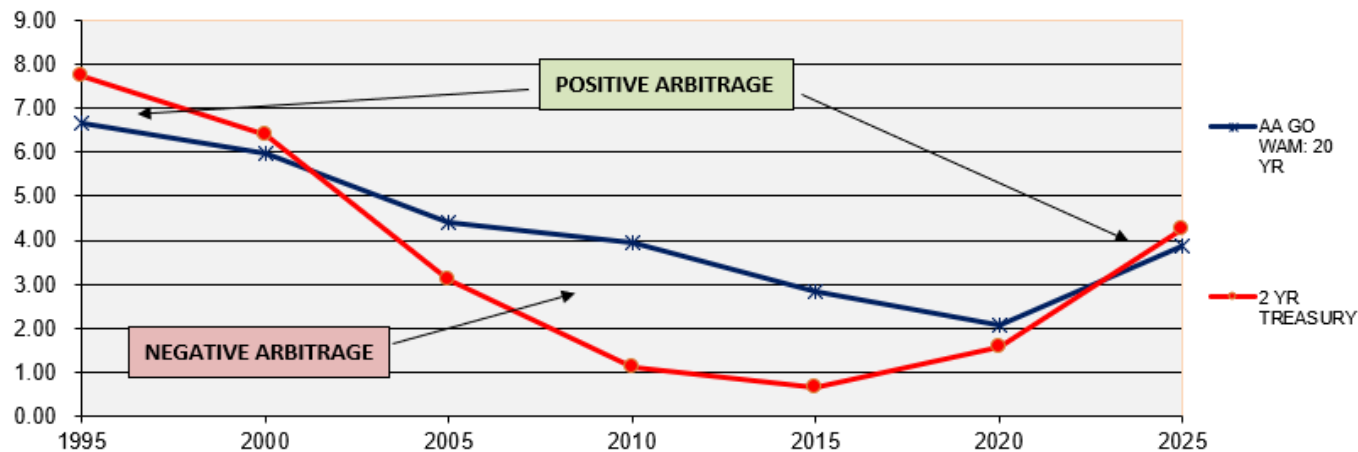
Poll Question #2

Statement: My organization has recently made a rebate payment or currently has a bond issue with a positive rebate liability accrued --

A1: True

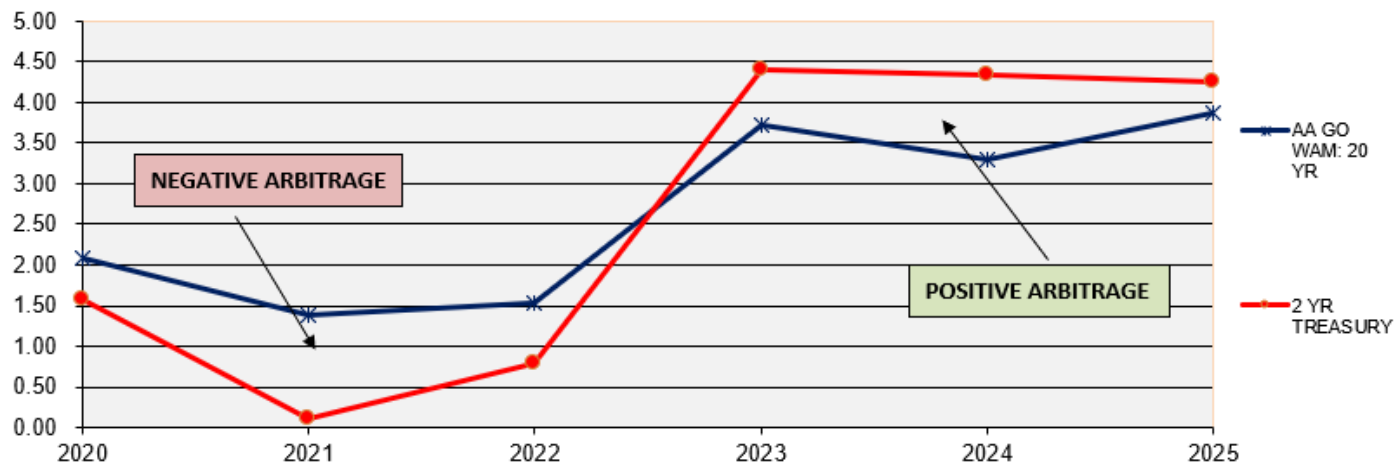
A2: False

Arbitrage & Its History



	1995	2000	2005	2010	2015	2020	2025
AA GO (20 YR WAM):	6.65	5.99	4.40	3.94	2.82	2.08	3.87
2 YR TREASURY:	7.72	6.38	3.11	1.10	0.66	1.58	4.25
SPREAD	1.07	0.39	(1.29)	(2.84)	(2.16)	(0.50)	0.38
ARBITRAGE	POS.	POS.	NEG.	NEG.	NEG.	NEG.	POS.

Recent Arbitrage Trends



	2020	2021	2022	2023	2024	2025
AA GO (20 YR WAM):	2.08	1.38	1.53	3.72	3.30	3.87
2 YR TREASURY:	1.58	0.12	0.78	4.41	4.33	4.25
SPREAD	(0.50)	(1.26)	(0.75)	0.69	1.03	0.38
ARBITRAGE	NEG.	NEG.	NEG.	POS.	POS.	POS.

Restricted Proceeds

Arbitrage Rebate

- ✓ Gross proceeds
 - Sale proceeds – amounts received from the sale of the bonds
 - Investment proceeds – earnings on sale proceeds
 - Replacement proceeds – typically amounts pledged to pay debt service
 - Transferred proceeds – prior bond proceeds that become proceeds of the refunding bonds

Yield Restriction

- ✓ Amounts remaining beyond applicable “temporary period” (3 years)
- ✓ Amounts beyond the “reasonably required reserve”, the lesser of ...
 - 10% of par amount
 - 125% of average annual debt service
 - Maximum annual debt service
- ✓ Advance refunding escrows
- ✓ Transferred proceeds

Permitted Investments

- Categories of Permitted Investments* for Tax Exempt Bond Proceeds
 - Structured Portfolios / Managed Portfolios
 - Investment Agreements (GICs)
 - Forward Delivery Agreements (FDA/FPISA)
 - Money Market Funds / Pooled Funds
 - State & Local Government Securities

**For more info on Permitted Investments go to BLX Institute at www.blxgroup.com*

Flat or Inverted Yield Curve

- 6-Month Spending Exception
 - 100% in 6 months - Another six months for de minimis amount (less than 5% of proceeds of issue)
 - Only exception available for refunding issues
- 18-Month Spending Exception
 - 15% in 6 months
 - 60% in 12 months
 - 100% in 18 months (de minimis allowance of lesser of 3% of issue price or \$250,000)
 - Time extension for reasonable retainage – up to another year, not to exceed 5% of the proceeds subject to the 18-month exception

Flat or Inverted Yield Curve

- 2-Year Construction Spending Exception
 - Fairly limiting as only applies to construction issues (75% or more used for construction purposes)
 - 10% in 6 months
 - 45% in 12 months
 - 75% in 18 months
 - 100% in 24 months (de minimis allowance of lesser of 3% of issue price or \$250,000)
- Time extension for reasonable retainage – up to another year, not to exceed 5% of available construction proceeds

Flat or Inverted Yield Curve

- *Track IRS payments and refund claim opportunities*
 - *Statute of Limitations: 2-yr from Final Computation Date*
- Project Investment Strategies
 - Goal: to lock in and retain positive arb if expecting to meet a spending exception.
 - Options: GIC / Portfolio / Pooled / MMKT Funds / SLGS

Upward Sloping Yield Curve

- *Focus on fundamentals. Monitor DSFs and reserve for overfunding / replacement proceeds*
- *Negative arbitrage at issuance but be mindful of YR starting at the 3-yr mark*
- Reserve Fund Investment Strategies
 - GIC to first call date / final maturity / other term
 - Collateralize?
 - Open market security or securities
 - 6 months / 1 year

Upward Sloping Yield Curve

- Project Fund Strategies
 - GIC to projected final maturity
 - Portfolio of securities to projected final maturity

IRS OVERSIGHT UPDATE

IRS Oversight Update

- 2020 – 2022: Impact of IRS staffing changes and COVID-19 led to fewer total audits
- 2023 – 2024: IRS enforcement staff growing given new increased funding and more audits
- 2025: Major cuts to TEGE workforce (down 31% as of March)
 - On track to lose more via second round of the deferred resignation program

IRS Oversight Update

- Agents assigned will not specialize in sectors and may need "hands on" training, lengthening duration of audit
- Expect use of AI in selection and review of submissions
- Audits are technical and time consuming – outside expertise is practically required

IRM Provisions Regarding TEB Audits Have Been Updated

- Provide more specificity regarding records to reviewed in audits
- Emphasis placed on detailed records of both expenditures and investments
 - Records that substantiate how bond proceeds were spent – copies of checks, wire transfers, invoices, receipts, etc.
 - Records pertaining to the investment of gross proceeds of an issue
- Inconsistent approach among agents

General Selection of Bond for Examination

- Random or targeted
- Referrals from outside the IRS
- Rebate refund and credit payment claims
- Late rebate payments – important in the current interest rate and positive arbitrage environment

Sample List of Items to be Provided in an Audit

- Rebate reports
- Trustee statements
- Schedule of interest paid
- General ledger or other detailed schedule of use of proceeds – final allocation of bond proceeds
- Construction vouchers and requisitions
- Management / Service Contracts; Leases
- Research Agreements
- Calculation of annual average private use %s since the bonds were issued

**Poll
Question
#3**

Statement: I will see you in October, either virtually or in-person, at the Post-Issuance Compliance Workshop --

A1: True

A2: False

**Additional
BLX
Educational
Resources**

BLX & COMPLIANCE

A monthly video series compliance topic relevant to public finance and tax-exempt bonds

THE BLX INSTITUTE

Curated educational content supporting post-issuance compliance in the municipal and non-profit sectors

Contact Information

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