

# PRIVATE ACTIVITY BONDS GUIDANCE

**The Environmental Improvement and Energy Resources Authority (the “Authority”), in cooperation with the Missouri Department of Economic Development (“DED”), issues private activity bonds for qualifying environmental and energy projects. Tax-exempt bond financing offers governmental and quasi-governmental entities, private companies, and not-for-profit corporations the ability to raise low-cost capital for revenue-generating projects that benefit the public.**

**Since 1972, EIERA has issued over \$3.3 billion in bonds on behalf of governmental and quasi-governmental entities, private entities, and not-for-profit corporations in Missouri.**

## **PROGRAM DETAILS**

### **Eligible project types**

The Authority is authorized pursuant to Sections 260.005 to 260.125 of the Revised Statutes of Missouri (“RSMo.”) to issue revenue bonds to finance certain types of projects, while the Internal Revenue Code of 1986, as amended (the “Code”), and the applicable regulations, rulings, notices and decisions issued by the U.S. Treasury Department provide the types of borrowers and projects that are eligible for tax-exempt financing. State and federal law generally allow the Authority to issue tax-exempt private activity bonds for capital expenditures related to the following types of projects:

- Facilities for the furnishing of water for domestic, industrial, irrigation or other purposes
- Sewage facilities
- Solid waste disposal facilities, including, landfills and transfer stations
- Facilities for the local furnishing of electric energy or gas
- Environmental enhancements of hydroelectric generating facilities
- Certain hazardous waste facilities
- Certain carbon dioxide capture facilities

An entity considering this type of financing should consult with its bond counsel to verify the project’s eligibility for tax-exempt bond financing pursuant to the Code.

### **Eligible borrowers**

- Governmental and quasi-governmental entities

- Not-for-profit corporations, including water and sewer utilities, rural electric cooperatives, etc.
- For-profit business entities, including water, sewer or electric utilities, solid waste management corporations, etc.

### **Issuance amounts**

No minimum or maximum issuance amount is stipulated by the Authority.

Most categories of tax-exempt private activity bonds are subject to a federal volume cap requirement which restricts the amount of certain tax-exempt private activity bonds that can be issued in any one state. Missouri's allocation of the volume cap is administered by DED. Application for an allocation of the volume cap is made to DED by the Authority on behalf of the entity seeking financing. DED is solely responsible for determining whether volume cap will be allocated to the entity. Allocations of volume cap are valid for sixty days unless bonds have been issued or the allocation is extended.

### **Financing Structure**

The Authority is a governmental issuer and serves as a conduit for the ultimate borrower of the bond proceeds. The Authority sells the bonds to one or more bond purchasers and loans the proceeds to the borrower. The borrower uses the proceeds to finance its project and is then obligated to make principal and interest payments to the Authority (or the paying agent/bond trustee) from its general revenues or revenues of the financed facility. In turn, the Authority (or the paying agent/bond trustee) will use the payments received from the borrower to pay the bond purchaser. In most transactions, the transaction is similar to a private bank loan, with the project to be financed frequently serving as additional security for repayment of the debt.

There are several parties to the transaction including qualified bond counsel, bond purchaser/underwriter and paying agent/bond trustee. The Authority and the borrower may also retain appropriate legal representation and financial advisors. Other professional services may also be necessary. The borrower is responsible for the engagement of its own professional service providers.

## **APPLICATION**

### **Application Process**

The following steps summarize the actions necessary to obtain tax exempt bond financing through the Authority:

- The Authority accepts applications on a rolling basis. A complete application consists of:
  - A signed application that includes project purpose and details, the amount needed, and appropriate financial information (such as a pro forma financial statement and audited financial statements, if available), and

- An application fee of up to \$2,500 due when the application is filed (see the Application Fee section for more information). Any Applicant/Borrower interested in discussing its project with the Authority prior to formal application may submit project information or a draft application without a fee to initiate discussions about project financing and next steps.
- Authority staff and counsel review the project's eligibility for tax-exempt conduit bond financing. The Authority reserves the right to require the Applicant/Borrower to submit further information or documentation that it may require prior to the approval of any financing.
- The Authority staff, the Applicant/Borrower and the appropriate professional service providers finalize the structure of the financing and bond counsel begins to prepare the financing documents.
- For certain Applicants/Borrowers, the Authority must post notice of and hold a public hearing as required by federal Tax Equity and Fiscal Responsibility Act (TEFRA) regarding the proposed plan of finance, project, and initial owner or operator. The TEFRA hearing is intended to provide the public an opportunity to comment on the bond issuance.
- The Authority requests a private activity bond volume cap allocation from DED. Once that allocation is approved, the Authority must submit a Certificate of Approval to the Governor's Office.
- Financing documents are reviewed, finalized and approved by all parties to the transaction.
- Authority staff present an issuance resolution to the Authority's Board of Directors for approval. Representatives of the Applicant/Borrower may be required to participate in the board meeting.
- Once all approvals are obtained, the Authority, the Applicant/Borrower, the bond purchaser/underwriter and counsel close on the financing. See the Financing Costs section for details related to fees and costs due at this time.
- The Authority reports the details of the sale to the DED and bond counsel files the appropriate forms with the Internal Revenue Service.

## **FINANCING COSTS**

### **Application Fee**

An application fee of up to \$2,500 is due when the application is filed with the Authority. The application fee is established pursuant to the Missouri Code of State Regulations (10 CSR 130-1.020). The fee is one-tenth of one percent (1/10 of 1%) of the amount which the Applicant/Borrower proposes to be financed by the Authority, with a minimum fee of \$100 and a maximum fee of \$2,500. The fee is non-refundable, and should be paid by a bank draft, money order, or check made payable to the "State Environmental Improvement and Energy Resources Authority."

### **Professional Service Costs**

The Applicant/Borrower will be required to pay all fees and expenses related to the transaction including, but not limited to, the fees and expenses of the Authority's counsel.

## Issuance Fee

An issuance fee is due at the time the bonds are issued. The issuance fee schedule is established pursuant to the Missouri Code of State Regulations (10 CSR 130-1.020). For all loans, bonds or notes issued by the Authority (except loans, bonds or notes which are being issued to refund or refinance loans, bonds or notes previously issued by the Authority (see Refinancing Fee below)), an issuance fee shall be payable to the Authority at the time of closing, computed as follows:

Rate	Amount of Bonds/Notes Issued
.00625 (5/8 of 1%) on the 1 <sup>st</sup>	\$2,500,000
.005 (1/2 of 1%) on the next	2,500,000
.00375 (3/8 of 1%) on the next	5,000,000
.0025 (1/4 of 1%) on the next	15,000,000
.00125 (1/8 of 1%) on all over	25,000,000

*All fees are non-refundable.*

## Refinancing Fee

For all loans, bonds or notes issued for refinancing or refunding previously issued loans, bonds or notes previously issued by the Authority, a refinancing fee shall be payable to the Authority at the time of closing, calculated as follows:

- (i) within two years after the issuance of the loan, bonds or notes being refinanced, 1/10 of the issuance fee as calculated above;
- (ii) after two years and within five years after the issuance of the loan, bonds or notes being refinanced, 1/5 of the issuance fee as calculated above;
- (iii) after five years and within ten years after the issuance of the loan, bonds or notes being refinanced, 1/3 of the issuance fee as calculated above;
- (iv) after ten years and within fifteen years after the issuance of the loan, bonds or notes being refinanced, 1/2 of the issuance fee as calculated above; or
- (v) after fifteen years, same as issuance fee; but in no event shall the refinancing fee be less than the lesser of (a) \$10,000 or (b) the issuance fee as calculated above.

*All fees are non-refundable.*

## COMPLIANCE

### Ongoing compliance requirements

Financing with tax-exempt bonds requires strict compliance with a series of requirements and limitations established by the Code. These requirements focus on the investment, use and expenditure of proceeds of the tax-exempt bonds and related funds as well as restrictions on the use of the financed project. Compliance details are outlined in the financing documents and

referenced in the Authority's [Private Activity Bond Tax-Exempt Financing Compliance Procedure](#). Additionally, helpful information is contained within the [U.S. Internal Revenue Service's publication Tax-Exempt Private Activity Bonds](#).

For more information:

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