

Louisiana Legislative Auditor

BEST PRACTICES – DEBT SERVICE

The Louisiana Legislative Auditor (LLA) is providing the following best practices to help local government entities create their own written policies and procedures. Because this document may not include all legal provisions applicable to different types of local government entities, entities should consult with legal counsel when developing written policies and procedures. Also, many of the legal provisions referenced in this document may not apply to quasi-public organizations, such as non-profits. Quasi-public organizations should refer to the LLA's legal FAQs for additional guidance.

Sources:

Louisiana Legislative Auditor FAQs – <https://www.lla.la.gov/legal-faqs/>
Louisiana Constitution of 1974, Article VII, Section 8
Reporting to Legislative Auditor – R.S. 39:569.1
Reporting to State Bond Commission - R.S. 39:1410.62
Continuing disclosure requirements – R.S. 39:1438
State Bond Commission – <https://www.treasury.state.la.us/state-bond-commission/>
Municipal Securities Rulemaking Board (MSRB) – <http://www.msrb.org>
SEC Rule 15c2-12 – <http://www.msrb.org/msrb1/pdfs/SECRule15c2-12.pdf>
Electronic Municipal Market Access (EMMA) – <https://emma.msrb.org/>

Written policies and procedures over debt service should include **debt issuance approval, debt reserve requirements, debt service requirements, and continuing disclosure requirements.**

Debt Issuance Approval:

1. The entity must receive State Bond Commission (SBC) approval when seeking to issue debt. The entity submits an application to the SBC requesting the authority to incur debt or levy related taxes. SBC staff review the application for compliance with applicable laws and feasibility, including the ability to repay the debt. If the application is in order, SBC staff place the entity's application on the agenda for consideration by the SBC at a regular or special meeting, at which the SBC can approve, reject, or defer action on the application.
2. If approved by the SBC, the entity's governing body should formally approve any external financings (e.g., bonds, notes, leases) or refinancing arrangements, including the selection and use of legal, accounting, and any other professional service providers that are needed.

Louisiana Legislative Auditor

BEST PRACTICES – DEBT SERVICE

Debt Reserve Requirements:

1. The entity must meet all debt reserve requirements, including establishing sinking fund accounts, reserve accounts, and/or contingency accounts, if required by the debt instrument. If the entity does not meet its debt reserve requirements, the chief executive must notify the SBC, in writing. A failure to meet debt reserve requirements would likely require a disclosure under *Continuing Disclosure Requirements* below, based on the terms of the debt instrument.

Debt Service Requirements:

1. The entity must meet all debt service requirements, including principal, interest, premiums, or other payments. If the entity does not meet its debt service requirements, the chief executive must notify the SBC, in writing. The chief executive must also notify the Legislative Auditor, in writing, either on or before 120 days before the due date of such payment, or as soon as the officers of the governing authority know, or have good reason to know, that such failure is reasonably likely to occur, whichever occurs last. A failure to meet debt service requirements would likely require a disclosure under *Continuing Disclosure Requirements* below, based on the terms of the debt instrument.
2. If debt service is funded by a tax millage, the entity should not collect more in taxes than is reasonable for debt service. As a best practice, the LLA suggests no more than one year of excess collections before the entity should reduce its millage to a more reasonable level. If the related debt has been paid off, the entity must stop collecting the millage and the over-collected amount may need to be refunded to taxpayers.

Continuing Disclosure Requirements:

1. For non-municipal securities, such as private placement bond issues (i.e., those sold in a private sale to one or a few investors, such as a bank) and other types of debt instruments, the entity must comply with all continuing disclosure requirements included in the specific debt instrument (e.g., requirement for annual audit report to be submitted to the bank).
2. For municipal securities, defined as any securities issued by a public entity that are subject to continuing disclosure requirements under the Securities and Exchange Commission (SEC) Rule 15c2-12 (together with all corresponding rules, updates, notices, and interpretations of the SEC and the Municipal Securities Rulemaking Board, or MSRB), the entity must comply with both federal and state law. The requirements of the SEC Rule generally apply to all

Louisiana Legislative Auditor

BEST PRACTICES – DEBT SERVICE

publicly offered bond issues (i.e. those sold to the public via an underwriter using an official statement), generally excluding issuers who offer municipal securities with an aggregate principal amount of \$1 million or less.

The continuing disclosure requirements apply to “obligated persons” as defined in the SEC Rule. An obligated person is generally an entity which is responsible for the repayment of the bonds or has pledged its own revenues or assets to the repayment of the bonds. The obligated person may or may not be the issuer of the bonds (e.g. a conduit issuer which issues bonds on behalf of another entity). Therefore, entities other than the bond issuer may be an obligated person subject to continuing disclosure requirements.

The MSRB’s Electronic Municipal Market Access (EMMA) website publicly displays continuing disclosures that are provided by municipal issuers, obligated persons, and other parties. The official statement for a bond issue usually includes an appendix (“Form of Continuing Disclosure Agreement”) which sets forth the specific continuing disclosure reporting obligations for the particular bond issue. The official statement for a bond issue may be obtained either through EMMA or the bond issue transcript on file with the public entity. An executed copy of the continuing disclosure agreement may also be found in the bond issue transcript.

R.S. 39:1438(C) requires that public entities continuously maintain (1) a list of all Louisiana municipal securities for which the public entity is the issuer or an obligated person; (2) a copy of all continuing disclosure agreements to which the public entity is a party; and (3) if pursuant to a continuing disclosure agreement to which the public entity is a party, the public entity is responsible for filing notices of changes in bond ratings and a list of current ratings for such securities, if any.

All records required by R.S. 39:1438(C) are subject to inspection by the public entity’s auditor, whether the Legislative Auditor or CPA.

R.S. 39:1438(D) requires the public entity’s auditor to (1) review the public entity’s compliance with the recordkeeping requirements of R.S. 39:1438(C), and (2) review a sample of the public entity’s filings on EMMA to determine if such filings are in compliance with the continuing disclosure agreements to which the public entity is a party.