# NOTICE OF POST-ISSUANCE TAX COMPLIANCE POLICY FOR CONDUIT BORROWERS

Notice is hereby given that on December 13, 2019, the Board of Commissioners (the "Board") of Idaho Housing and Finance Association ("IHFA") adopted Resolution No. 19-12-8 approving IHFA's Post-Issuance Tax Compliance Policy for Conduit Borrowers attached hereto as Exhibit A ("PITCP for Conduit Borrowers") on an interim basis. Written comments to the PITCP for Conduit Borrowers may be submitted to IHFA at PO Box 7899, Boise, Idaho 83707-1899 or at 565 West Myrtle Street, Boise, Idaho 83702, (208) 331-4725, Fax: (208) 331-4804 Attn: Cory Phelps, Vice President of Project Finance of the IHFA, no later than 5:00 p.m. Mountain Time, January 15, 2020. If no adverse comments are received, the PITCP for Conduit Borrowers shall become final.

EXHIBIT A

(attached)

**IDAHO HOUSING AND FINANCE ASSOCIATION**
# POST-ISSUANCE TAX COMPLIANCE POLICY FOR CONDUIT BORROWERS

Idaho Housing and Finance Authority ("IHFA") acts as a conduit issuer for nonprofit, economic development, and multifamily bond finance transactions in order to secure tax-exempt financing for conduit borrowers in accordance with its mission. This Post-Issuance Tax Compliance Policy for Conduit Borrowers (this "Policy") establishes internal policy in connection with tax-exempt conduit bonds issued by IHFA and supplements IHFA's Post Issuance and Tax Compliance Policy and Procedures for nonprofit, economic development, and multifamily housing conduit finances each respectively dated December 1, 2011. Except as may be provided in IHFA multifamily Regulatory Agreements, to the extent IHFA is a conduit issuer, IHFA does not directly monitor compliance with federal tax requirements as the information concerning and control of those activities lies exclusively with the conduit borrower. IHFA's policy in connection with conduit financings is to require that bond documents in such conduit financings impose on the conduit borrower responsibility to monitor compliance with arbitrage and other applicable federal tax requirements to preserve the tax-exempt status of the bonds and to take necessary action if remediation is required. To the extent this Policy describes conduit borrower responsibilities, it is for information purposes only.

With respect to multifamily conduit transactions, this Policy is not inclusive of all requirements under Low-income Housing Tax Credit Regulatory Agreements, nor under IHFA Regulatory Agreements, which impose additional compliance requirements. Similarly, with respect to nonprofit, economic development, and multifamily conduit transactions, this Policy is not inclusive of all requirements under the respective Loan Agreements, which may impose additional compliance requirements.

## POLICY GUIDELINES

**Execution and Delivery of Tax Certificate and Agreement**.

At issuance of IHFA obligations ("Bonds"), the conduit borrower executes a tax certificate and agreement (a "Tax Certificate"). The Tax Certificate: 1) establishes reasonable expectations as to the use and investment of Bond proceeds; 2) evidences compliance with the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and tax regulations thereunder; 3) sets forth procedures which are designed to assist the conduit borrower in complying with such provisions of the Code and the tax regulations; and 4) establishes covenants of the conduit borrower that must be observed in order to maintain the tax-exempt status of the Bonds. The reasonable expectations and covenants contained in the Tax Certificate are relied upon by IHFA in joining as a party to the Tax Certificate related to the conduit issuance.

**Compliance and Monitoring**.

It is solely the conduit borrower's responsibility to ensure bond proceeds are invested and used as set forth in the Tax Certificate signed by the conduit borrower. In order to remind the conduit borrower of such responsibility, IHFA sends the conduit borrower on an annual basis a Post-Issuance Tax Compliance Checklist substantially in the form attached here for conduit nonprofit facilities financings, conduit multifamily financings, and conduit economic development facilities financings, as applicable.

**Arbitrage and Yield Compliance.**

The Tax Certificate contains the written procedures for the conduit borrower to comply with the arbitrage rebate requirements of Section 148 of the Code. The Tax Certificate also contains other requirements for complying with Section 148 of the Code, including compliance with temporary period requirements and yield restrictions. The conduit borrower, in the Tax Certificate, must agree to comply in all respects with the arbitrage rebate and yield restriction requirements of the federal tax rules. The conduit borrower is responsible for complying with such arbitrage rebate and yield restriction requirements of the federal tax rules and for taking necessary action if remediation is required.

**Remediation**.

If a violation occurs of the tax covenants of the Tax Certificate requiring correction, it is the responsibility of the conduit borrower to notify IHFA and, in connection with consulting bond counsel, take one of the actions permitted by the Code and associated tax regulations including undertaking a closing agreement through the Tax-Exempt Bond Voluntary Closing Agreement Program of the Internal Revenue Service ("VCAP").

If IHFA is made aware of any event of non-compliance with arbitrage or other applicable federal tax requirements, the Vice President, Public Finance will consult with the conduit borrower and bond counsel as to the appropriate action to take in order to remedy the non-compliance, including use of VCAP.

Any actions with respect to a Bond issue under VCAP must be coordinated with the bond counsel to ensure proper certifications and representations concerning the subject of VCAP (and indemnifications by the conduit borrower) are received from the conduit borrower.

**Recordkeeping and Retention**.

Pursuant to the Tax Certificate, IHFA and the conduit borrower are required to keep and maintain all records relating to the Bonds and required by the Code for the life of the Bonds, and any bonds that refund the Bonds, plus 3years. The purpose of the foregoing record retention is to enable IHFA to readily demonstrate to the IRS upon an audit of any tax-exempt bond issue that IHFA has fully complied with all federal tax requirements that must be satisfied after the issue date of the Bonds such that the Bonds continue to be eligible for tax exemption under the Internal Revenue Code.

**Non-Tax Related Compliance**.

The conduit borrower is responsible for complying with any continuing disclosure agreements ("CDAs") entered into in connection with the conduit transaction and for completing any routine continuing disclosures and making other postings to the Electronic Municipal Market Access ("EMMA") website as required under the terms of such CDAs. Additionally, with respect to nonprofit conduit transactions, the conduit borrower is also responsible for complying with any constitutional prohibitions on the use of bond-financed property for religious uses.

**Costs Payable by Conduit Borrower**.

The conduit borrower is obligated to pay fees, charges, costs, advances, indemnities and other expenses to IHFA in accordance with the terms of the financing documents, all in respect of the tax and non-tax compliance matters undertaken by IHFA under this Policy or in connection with any examination or audit initiated by the IRS. The Project Finance Department and the Accounting Department monitor and collect payment of any such fees or other amounts due to IHFA. In the event of non-payment of fees or other amounts due to IHFA on a conduit transaction, the appropriate business unit responsible for monitoring such conduit transaction is notified.

**Responsible Department**.

The Project Finance Department and the Accounting Department are responsible for maintaining this Policy. All affected Departments are responsible for carrying out the functions of this Policy and maintaining procedures as applicable.

**Exhibit A**

**IDAHO HOUSING AND FINANCE ASSOCIATION**
**501(C)(3) ORGANIZATION**
**TAX EXEMPT BOND ISSUE**
**POST ISSUANCE TAX COMPLIANCE CHECKLIST**

Idaho Housing and Finance Association, Nonprofit Facilities Revenue Bonds
(______________ Project), Series 20__

**General:**

☐ Has the Borrower's 501(c)(3) determination letter been modified, limited or revoked? If yes, please discuss with bond counsel.

☐ Has the Borrower timely filed all required federal, state and local tax returns and reports for each year since the Closing Date, as defined in the Tax Certificate and Agreement (the "Tax Certificate") attached hereto as Exhibit A, including any and all filings required to maintain its tax-exempt status? If no, please discuss with bond counsel.

☐ Has Borrower received any correspondence from IRS questioning its 990 filings or its 501(c)(3) status? If yes, please discuss with bond counsel.

☐ Is the Borrower retaining records as provided in the Tax Certificate? If not, please discuss with bond counsel.

**Uses of Bond-Financed Facilities:**

The following questions relate to all properties, equipment, facilities or furnishings financed with bond proceeds (collectively, the "Project"):

☐ Since the Closing Date, is any portion of the Project managed by an outside organization? If yes, provide any such contracts to bond counsel for review.

☐ Since the Closing Date, has the Borrower entered any agreements granting temporary use (e.g., incidental uses or daily leases) of the Project to outside persons that are not a unit of state or local government, or 501(c)(3) whose exempt purposes are substantially similar to the Borrower's? If yes, provide any such contracts to bond counsel for review.

☐ Since the Closing Date, has the Borrower entered any agreements granting non-exclusive uses of the Project to outside persons that are not a unit of state or local government, or 501(c)(3) whose exempt purposes are substantially similar to the Borrower's? For example, agreements allowing private business facilities such as vending machines, cafes, kiosks, etc. If yes, provide any such contracts to bond counsel for review.

☐ Since the Closing Date, does any party other than a state or local governmental entity, or 501(c)(3) whose exempt purposes are substantially similar to the Borrower's, have beneficial use or rights with respect to the Project (e.g., naming rights or the right to use a bond-financed parking lot)? If yes, please discuss with bond counsel.

**Expenditure of Proceeds (Applicable if any bond-financed projects are under construction):**

☐ Within six months of the Closing Date, has the Borrower incurred a substantially binding obligation for at least 5% at least 5% of Bond proceeds. If not, please discuss with bond counsel.

☐ Within the first year of the Closing Date, has the Borrower expended at least 10% of the Net Sale Proceeds (as defined in the Tax Certificate) for items as permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Within two years of the Closing Date, has the Borrower expended at least 30% of the Net Sale Proceeds for items permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Within three years of the Closing Date, has the borrower expended at least 85% of the Net Sale Proceeds for items permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Are there any remaining bond proceeds after completion of the Project? If yes, direct the borrower to deposit them into the debt service fund or otherwise as provided in the Tax Certificate.

☐ At the completion of the Project, did the Borrower expend at least 95% of the Sale Proceeds on the Project? If not, please discuss with bond counsel.

☐ Has the Borrower expended more than 2% of the lesser of (i) the par amount of the Bonds or (ii) the par amount of the Bonds less the original issue discount, on costs of issuance of the Bonds? If yes, please discuss with bond counsel.

☐ Has any portion of the proceeds of the Bonds been spent on "prohibited facilities" as described in Section 2.5 of the Tax Certificate? If yes, please discuss with bond counsel.

☐ If other funds, aside from bond proceeds, were contributed to the Project, check to make sure final allocations of bond proceeds and the other funds have been made to the project. Allocations need to be made in writing within 18 months after project is placed in service.

**Rebate:**

☐ At least 90 days prior to each fifth anniversary of the Closing Date, confirm with the Borrower that it has retained a Rebate Service Provider to ensure that appropriate rebate amounts, if any, are being calculated by the Rebate Service Provider.

☐ Promptly following each fifth anniversary of the Closing Date, confirm with Borrower that appropriate rebate amounts, if any, have been remitted to the IRS.

**Bond Pay-Off:**

☐ Check payment and redemption dates of bond issues and upon final payment, confirm with borrower that the Rebate Service Provider has made a final rebate computation no later than 60 days following the bond payment or redemption date.

**Other (Upon Occurrence):**

☐ Any time the use or ownership of the Project is changed from a nonprofit 501(c)(3) ownership or use to a nongovernmental use (e.g., by way of sale, or other conveyance), please notify bond counsel immediately for remedial action which must be taken within 90 days of change.

**EXHIBIT A**

Tax Certificate and Agreement
(Attached)

**Exhibit B**

**IDAHO HOUSING AND FINANCE ASSOCIATION**
**MULTIFAMILY HOUSING**
**TAX EXEMPT BOND ISSUE**
**POST ISSUANCE TAX COMPLIANCE CHECKLIST**

Idaho Housing and Finance Association, Multifamily Housing Revenue Bonds
(______________ ), Series 20__

**General:**

☐ Is the Borrower retaining records as provided in the Tax Certificate and Agreement (the "Tax Certificate") attached hereto as Exhibit A? If not, please discuss with bond counsel.

**Use of Qualified Residential Rental Project:**

☐ Since the completion and occupancy of the Project (as defined in the Tax Certificate), or on the Closing Date if the bonds are refinancing a prior tax exempt obligation, are at least 40% of the residential units of the Project occupied by individuals or families whose income is 60% or less of the area median gross income? [Assuming the 40%/60% test has been elected.] If not, please discuss with bond counsel.

**Expenditure of Proceeds**

The following questions relate to the capital costs of acquiring land and/or acquiring, constructing or rehabilitating property that constitutes the Project:

☐ Within six months of the Closing Date, has the Borrower incurred a substantially binding obligation for at least 5% of Net Sale Proceeds (as defined in the Tax Certificate) for items permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Within the first year of the Closing Date, has the Borrower expended at least 10% of the Net Sale Proceeds for items permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Within two years of the Closing Date, has the Borrower expended at least 30% of the Net Sale Proceeds for items permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Within three years of the Closing Date, has the borrower expended at least 85% of the Net Sale Proceeds for items permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Are there any remaining Sale Proceeds after completion of the Project? If yes, direct the borrower to deposit them into the debt service fund or otherwise as provided in the Tax Certificate.

☐ At the completion of the Project, did the Borrower expend at least 95% of the Sale Proceeds on qualifying capital costs of the Project? If not, please discuss with bond counsel.

☐ Has the Borrower expended more than 2% of the lesser of (i) the par amount of the bonds or (ii) the par amount of the bonds less the original issue discount, on costs of issuance of the bonds? If yes, please discuss with bond counsel.

☐ Has any portion of the proceeds of the bonds been spent on "prohibited facilities" as described in Section 2.5 of the Tax Certificate? If yes, please discuss with bond counsel.

☐ If other funds, aside from bond proceeds, were contributed to the Project, check to make sure final allocations of bond proceeds and the other funds have been made to the Project. Allocations need to be made in writing within 18 months after Project is placed in service.

**Rebate:**

☐ At least 90 days prior to each fifth anniversary of the Closing Date, confirm with the Borrower that it has retained a Rebate Service Provider to ensure that appropriate rebate amounts, if any, are being calculated by the Rebate Service Provider.

☐ Promptly following each fifth anniversary of the Closing Date, confirm with Borrower that appropriate rebate amounts, if any, have been remitted to the IRS.

**Bond Pay-Off:**

☐ Check payment and redemption dates of bond issues and upon final payment, confirm with borrower that the Rebate Service Provider has made a final rebate computation no later than 60 days following the bond payment or redemption date.

**Other (Upon Occurrence):**

☐ Any time the use of the Project is changed from a qualified residential rental project (e.g., by way of sale, or other conveyance), please notify bond counsel immediately for remedial action, if any, which must be taken within 90 days of change.

# EXHIBIT A

Tax Certificate and Agreement
(Attached)

## Exhibit C

**IDAHO HOUSING AND FINANCE ASSOCIATION**
**ECONOMIC DEVELOPMENT FACILITIES**
**TAX EXEMPT BOND ISSUE**
**POST ISSUANCE TAX COMPLIANCE CHECKLIST**

Idaho Housing and Finance Association, Economic Development Facilities Revenue Bonds (______________ Project), Series 20__

**General:**

☐ Is the Borrower retaining records as provided in the Tax Certificate? If not, please discuss with bond counsel.

**Expenditure of Proceeds (Applicable if any bond-financed projects are under construction):**

☐ Within six months of the Closing Date, has the Borrower incurred a substantially binding obligation for at least 5% of Bond proceeds? If not, please discuss with bond counsel.

☐ Within the first year of the Closing Date, has the Borrower expended at least 10% of the Net Sale Proceeds (as defined in the Tax Certificate) for items as permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Within two years of the Closing Date, has the Borrower expended at least 30% of the Net Sale Proceeds for items permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Within three years of the Closing Date, has the borrower expended at least 85% of the Net Sale Proceeds for items permitted in the Tax Certificate? If not, please discuss with bond counsel.

☐ Are there any remaining bond proceeds after completion of the Project? If yes, direct the borrower to deposit them into the debt service fund or otherwise as provided in the Tax Certificate.

☐ At the completion of the Project, did the Borrower expend at least 97% of the Sale Proceeds on the qualifying costs of the Project? If not, please discuss with bond counsel.

☐ Has the Borrower expended more than 2% of the lesser of (i) the par amount of the Bonds or (ii) the par amount of the Bonds less the original issue discount, on costs of issuance of the Bonds? If yes, please discuss with bond counsel.

☐ Has any portion of the proceeds of the Bonds been spent on "prohibited facilities" as described in Section 2.13 of the Tax Certificate? <u>If yes, please discuss with bond counsel.</u>

☐ If other funds, aside from bond proceeds, were contributed to the Project, check to make sure final allocations of bond proceeds and the other funds have been made to the project. Allocations need to be made in writing within 18 months after project is placed in service.

**<u>Uses of Bond-Financed Facilities</u>:**

The following questions relate to all properties, equipment, facilities or furnishings financed with bond proceeds (collectively, the "Project"):

☐ Since the Closing Date, is any portion of the Project owned or operated and managed by an outside organization, other than a Related Party (as defined in the Tax Certificate)? <u>If yes, please discuss with bond counsel.</u>

☐ Since the Closing Date, does any Product Purchaser (as defined in the Tax Certificate) of more than 10% of products to be manufactured at Borrower's facility have any capital expenditures with respect to any facilities or other property located within the City (as defined in the Tax Certificate)? <u>If yes, please discuss with bond counsel.</u>

☐ During the three-year period beginning on the later of the date the facilities comprising the Project are placed in service and the Closing Date, was the Borrower, any "principal user" (within the meaning of Section 144(a)(3) of the Code) of the Project or any Related Person to any of them the beneficiary of any outstanding tax-exempt governmental obligations allocated to such person in an amount which, together with the face amount of the Bonds allocated to such person, exceed $40,000,000? <u>If yes, please discuss with bond counsel.</u>

☐ Since the Closing Date, is the Borrower, or any Related Person to the Borrower, currently a "principal user" of any facility located within the City, other than the Entire Facility (as defined in Section 2.2.4 of the Tax Certificate)? <u>If yes, please discuss with bond counsel.</u>

☐ Since the Closing Date, is the Borrower or Related Person to the Borrower, a "principal user" of any facilities which (i) are located outside the limits of the City and (ii) would be considered "contiguous or integrated (within the meaning of Section 1.103-10(b)(2)(ii)(e) of the Treasury Regulations) with the Entire Facility? <u>If yes, please discuss with bond counsel.</u>

☐ Since the Closing Date, have the total of the following exceeded $20,000,000: the principal amount of the bonds, plus the aggregate amount of capital expenditures (other than those paid or reimbursed out of the proceeds of the bonds), including any capitalized interest paid or incurred during the six-year period which ends three years after the Closing Date, with respect to (i) the Project and (ii) any other property (A) located within the City (including property moved in from another location), or (B) a “principal user” of which has been (at any time during the six-year period ending three years after the Closing Date) the Borrower, any Product Purchaser or any related person? If yes, please discuss with bond counsel.

**Rebate:**

☐ At least 90 days prior to each fifth anniversary of the Closing Date, confirm with the Borrower that it has retained a Rebate Service Provider to ensure that appropriate rebate amounts, if any, are being calculated by the Rebate Service Provider.

☐ Promptly following each fifth anniversary of the Closing Date, confirm with Borrower that appropriate rebate amounts, if any, have been remitted to the IRS.

**Bond Pay-Off:**

☐ Check payment and redemption dates of bond issues and upon final payment, confirm with borrower that the Rebate Service Provider has made a final rebate computation no later than 60 days following the bond payment or redemption date.

**Other (Upon Occurrence):**

☐ Any time the use or ownership of the Project is changed from the expected use on the Closing Date or the Borrower has sold or intends to sell the Project to another entity, please notify bond counsel immediately for remedial action which must be taken within 90 days of change.

# EXHIBIT A

Tax Certificate and Agreement
(Attached)