



**A Report to the
Audit Committee**

Mayor
Megan Barry

Chief Operating Officer
Richard Riebeling

**Health and Educational
Facilities Board Chairman**
Stephen L. Meyer

Audit Committee Members
David Briley
John Cooper
Charles Frasier
Talia Lomax-O'dneal
Bob Mendes
Brackney Reed

Metropolitan
Nashville
Office of
Internal Audit

Audit of Health and Educational Facilities Board

Issue Date: January 31, 2018

EXECUTIVE SUMMARY

January 31, 2018



Why We Did This Audit

The internal audit was performed to determine if the Health and Educational Facilities Board exposes the Metropolitan Nashville Government to unnecessary risk or financial loss through the issuance of conduit debt.

What We Recommend

There are no recommendations.

Audit of Health and Educational Facilities Board

BACKGROUND

The Health and Educational Facilities Board's mission is to encourage and promote the improvement and maintenance of health, educational, and living conditions through private projects in Davidson County and the surrounding area. The Health and Educational Facilities Board is authorized and chartered to issue private activity revenue bonds and loan the proceeds to finance the acquisition, construction, development, rehabilitation, and improvement of health, educational, and multifamily housing facilities.

In addition, the Health and Educational Facilities Board is empowered to enter into a payment in lieu of tax agreement with lessees after approval is received from the Metropolitan Nashville Council.

Since 2012, \$1.3 billion in conduit debt has been issued by the Health and Educational Facilities Board to facilitate private projects to improve health, educational, and living conditions in Tennessee.

OBJECTIVES AND SCOPE

The audit objective is to identify activities of the Health and Educational Facilities Board that could expose the Metropolitan Nashville Government to unnecessary risk or financial loss.

This audit covered conduit debts issued by the Health and Educational Facilities Board between July 1, 2012, and October 31, 2017.

WHAT WE FOUND

The Metropolitan Nashville Government is not, in any event, liable for the debt service payments for bonds issued by the Health and Educational Facilities Board, as explicitly provided by Tennessee Code Annotated § 48-101-313.

The Metropolitan Nashville Government may be exposed to additional risks when it requests the Health and Educational Facilities Board to enter into a payment in lieu of taxes agreement with third-party lessees. However, all such agreements are subject to Metropolitan Nashville Council approval.

GOVERNANCE

The Health and Educational Facilities Board is a public-benefit nonprofit corporation established by Metropolitan Nashville Government Council Resolution No. 74-946 pursuant to Tennessee Code Annotated § 48-101-3. The Health and Educational Facilities Board is comprised of seven Davidson County resident volunteers who are nominated and elected by the Metropolitan Nashville Council.

The Health and Educational Facilities Board files, for each issuance of its conduit debt, a *Tennessee Report on Debt Obligation* (Form CT-0253) to the Office of State and Local Finance, Comptroller of the Treasury for the State of Tennessee and an *Information Return for Tax-Exempt Private Activity Bond Issues* (Form 8038) to the Internal Revenue Service, if applicable.

The Health and Educational Facilities Board is empowered by Tennessee Code Annotated § 48-101-308 and § 48-101-312 to acquire property in the state of Tennessee to lease as tax-exempted property and to negotiate and execute agreements for payments in lieu of taxes with lessees. At the request of Metropolitan Nashville Government, the Health and Educational Facilities Board amended its Certificate of Incorporation in 1995 to permit payment in lieu of taxes agreements, but only if and when approved by the Metropolitan Nashville Council.

FISCAL MATTERS

The Metropolitan Nashville Government Department of Finance has determined that the Health and Educational Facilities Board is not a component unit of the Metropolitan Nashville Government for financial reporting. Governmental Accounting Standards Statement 14 states a component unit is an organization for which the primary government is financially accountable or exclusion of which may cause the reporting entity's financial statements to be misleading or incomplete. Statement 39 provides certain organizations for which the primary government is not financially accountable should be reported as component units based on the nature and significance of their relationship with the primary government. The Health and Educational Facilities Board does not satisfy these criteria.

The conduit debt aggregated amount issued by the Health and Educational Facilities Board is reported in the Metropolitan Nashville Government's *Comprehensive Annual Financial Report* notes to the financial statements solely to follow accounting conservatism.

The Health and Educational Facilities Board does not own any assets or incur expenses. All board members are volunteers. Adams and Reese LLP, a law firm, provides administrative time and expense, including public records management on a voluntary basis. Each borrower is responsible for issuance fees and expenses in connection with its bond financing, including Health and Educational Facilities Board legal counsel fees and expenses.

OBJECTIVES AND CONCLUSIONS

Do the activities of the Health and Educational Facilities Board expose the Metropolitan Nashville Government to unnecessary risk or financial loss?

No. The Metropolitan Nashville Government is not, in any event, liable for the debt service payments for bonds issued by the Health and Educational Facilities Board, as explicitly provided by Tennessee Code Annotated § 48-101-313. The Health and Educational Facilities Board's issuance process ensures it will not be liable for the issued debt. At the closing of bond issuance, the Health and Educational Facilities Board issues debt solely supported by the revenue pledged by the conduit borrower and assigns its right to receive loan payment and interest to the lender. (See Appendix A for a description of the debt issuance process).

The Metropolitan Nashville Government may be exposed to additional risks when it requests the Health and Educational Facilities Board to enter into a payment in lieu of taxes agreement with a third-party lessee. The Health and Educational Facilities Board only acts to negotiate and enter into a payment in lieu of taxes agreement upon requests approved by the Metropolitan Nashville Government.

Only one time in its history, the Health and Educational Facilities Board entered into a payment in lieu of taxes agreement with a health institution that resulted in a payment dispute between the Metropolitan Nashville Government (not the Health and Educational Facilities Board) and the health institution. The payment calculation dispute was resolved by a settlement between the health institution and the Metropolitan Nashville Government (Metropolitan Nashville Government Resolution Number RS2002-1117).

GOVERNMENT AUDITING STANDARDS COMPLIANCE

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives.

METHODOLOGY

To accomplish our audit objectives, we performed the following steps:

- Interviewed key personnel within:
 - Health and Educational Facilities Board
 - Health and Educational Facilities Board Legal Counsel
 - Metropolitan Nashville Government Department of Finance
 - Office of State and Local Finance in the State Comptroller’s Office
- Reviewed and analyzed documentation for compliance with the Tennessee Code Annotated, other applicable laws, regulations, and policies.
- Consulted Metro Nashville Government Department of Law.
- Evaluated internal controls currently in place.
- Reviewed sample selections to determine the effectiveness of internal controls.
- Considered risk of fraud, waste, and abuse.

AUDIT TEAM

Nan Wen, CPA, In-Charge Auditor

Qian Yuan, CISA, CIA, ACDA, CMFO, Quality Assurance

Mark Swann, CPA, CIA, CISA, ACDA, CMFO, Metropolitan Auditor

APPENDIX A - HEALTH & EDUCATIONAL FACILITIES BOARD DEBT ISSUANCE PROCESS

Certain steps vary depending on the type of borrower, the type of project, and the plan of finance. The Board acts as a conduit issuer under its State authorizing statute and its debt management policy to carry out the purposes for which it was legally created.

Potential borrower and/or counsel requests placement on next Board meeting agenda:

Inquiry 1: is this an eligible borrower under Board's State authorizing statute

Inquiry 2: is this an eligible project under Board's State authorizing statute

Inquiry 3: is this borrower familiar with the Board's Debt Management Policy

Inquiry 4: has this borrower provided sufficient information to include as an agenda item in publication of Board's meeting notice

Inquiry 5: has this borrower provided sufficient information to include in Board members' meeting package mailing in advance of the meeting

All Board meetings:

Board meeting scheduled

Public Notice published in Tennessean

Board Agenda posted on Metro website

Board members' meeting packages mailed

Initial Board meeting:

Presentation by borrower of preliminary debt issuance request to Board

Board confirms eligibility of borrower and project under Board's authorizing State statute

Board discussion

Board conducts public hearing

Board considers preliminary resolution

Board votes

Next steps:

Board minutes prepared

Board minutes submitted to Metro Legal Department

Request for Mayor's Approval Letter of debt issuance submitted to Metro Legal Department

Debt issuance professional team selected by borrower

Debt issuance plan of finance selected by borrower

Debt issuance professional team prepares debt issuance documents

Borrower and/or counsel requests placement on next Board meeting agenda:

Inquiry 1: do debt issuance documents reflect Board's obligations and protections (i.e., limited liability, immunity, indemnification, notices, consents, assignments, monitoring, etc.)

Inquiry 2: do debt issuance documents reflect the plan of finance

APPENDIX A - HEALTH & EDUCATIONAL FACILITIES BOARD DEBT ISSUANCE PROCESS

Inquiry 3: do debt issuance documents reflect the roles and responsibilities of the parties

Inquiry 4: do debt issuance documents comply with Board's authorizing State statute and applicable federal laws and regulations

Inquiry 5: are post-issuance controls and procedures in place

Subsequent Board Meeting:

Presentation by borrower of final debt issuance request to Board

Board discussion

Board considers final resolution

Board votes

Final Steps:

Execution and delivery of documents

Debt issuance consummated

Confirmation of IRS information filing

Confirmation of State information filing

Receipt of transcript of proceedings for Board's public records

The Health and Educational Facilities Board of
The Metropolitan Government of
Nashville and Davidson County, Tennessee
c/o Adams and Reese LLP
424 Church Street, Suite 2700
Nashville, Tennessee 37219

January 30, 2018

Mr. Mark Swann, Metropolitan Auditor
Office of Internal Audit
404 James Robertson Parkway, Suite 190
Nashville, Tennessee 37219

Re: Audit of The Health and Educational Facilities Board of The Metropolitan
Government of Nashville and Davidson County, Tennessee

Dear Mr. Swann,

This letter acknowledges receipt of your office's audit of The Health and Educational
Facilities Board of The Metropolitan Government of Nashville and Davidson County,
Tennessee. On behalf of the Board, thank you for your office's professional, diligent and
thorough work performing this audit.

Please contact me if the Board may be of any further assistance.

Sincerely,



Stephen L. Meyer
Chairman

The Health and Educational Facilities Board
of The Metropolitan Government of
Nashville and Davidson County, Tennessee

cc: Cynthia M. Barnett, Esq.