

Tennessee State Funding Board Interim Guidelines

Debt Reporting by Industrial Development Corporations

I. Background

Title 7, Chapter 53 of the Tennessee Code Annotated (“T.C.A.”) authorizes the formation of industrial development corporations (“IDC”) for the purpose of maintaining and increasing employment opportunities, agricultural commodities, and available housing, as well as addressing environmental pollution. Public Chapter 529, Acts of 2018 (“Act”) creates transparency related to IDC debt by adding to T.C.A. § 7-53-304 a requirement that each IDC maintain an aggregate listing of its current debt, including conduit debt, in accordance with guidelines approved by the Tennessee State Funding Board (“SFB”). Annually each IDC must file with the SFB the list and any information required by the SFB. Additionally, each IDC is required to file with the SFB a notice within fifteen (15) days of an event of default on any of its debt obligations.

The SFB requested feedback about proposed guidelines and received various comments. Some commenters indicated that compliance with the Act in the first fiscal year may be burdensome. In order to implement the Act while not unduly burdening IDCs, the SFB adopted these Interim Guidelines for Debt Reporting by IDCs for fiscal year 2018.

II. Reporting

A. Annual Report on Outstanding Debt

For fiscal year 2018, IDCs have one hundred twenty (120) days from the close of the fiscal year or until January 31, 2019, whichever is later, to submit the 2018 Annual Report on Outstanding Debt using the reporting format prescribed in Appendix A.

B. Notice of Default

The IDC shall file a notice of default within fifteen (15) days either of default (as defined below) or of receipt by the IDC of a notice of an event of default. The reporting format is prescribed in Appendix B.

III. Defined Terms

- A. “Authorized Representative” shall mean the individual the IDC has authorized to compile and submit information pursuant to the Act and these Guidelines.
- B. “Debt” shall mean any bond, note, loan agreement, or other evidence of a debt obligation, including leases. “Debt” does not include credit and liquidity facilities and standby or drawdown loan agreements that have not been drawn on or utilized. “Debt” includes both IDC and conduit debt obligations as described below.
 - 1. “IDC Debt Obligation” is debt in which the IDC incurs a definite and absolute obligation to the payment of the principal of and interest on the debt obligation.

2. "Conduit Debt Obligation" is debt issued by the IDC to provide capital financing for a public, private, or nonprofit entity other than the IDC.
- C. "Default" shall mean (1) a failure to pay principal of or interest on a debt when it is due; or (2) a failure to comply with a covenant, promise, or duty imposed by the debt documents upon any required passage of time or giving of notice; or both, but does not include situations where such failure has been waived.
 - D. "Industrial Development Corporation" or "IDC" shall mean any corporation organized pursuant to Title 7, Chapter 53 of the T.C.A.
 - E. "Report on Debt Obligation" shall mean State Form CT-0253 as prescribed in T.C.A. § 9-21-151.
 - F. "Report on Outstanding Debt" shall mean the annual listing of debt to be submitted by the Authorized Representative, using the reporting format as prescribed in Appendix A.

Appendix A

Industrial Development Corporations (“IDC”)

Report on Outstanding Debt

Format

The IDC must prepare a listing of its currently-outstanding debt. The information indicated below is required to be included in the listing. In order to prepare the listing, IDCs should locate and review annual financial reports, closing transcripts, and board minutes. If the IDC is unable to obtain the required information, the Authorized Representative must furnish a statement of the efforts undertaken to obtain the information, the problems encountered in obtaining the information, and the efforts to be undertaken to subsequently obtain the information. IDCs are also encouraged but not required to collect the recommended information for each debt issue.

I. Required Information

A. IDC information to provide:

1. Name of IDC as listed in the certificate of incorporation.
2. County or Counties in which the IDC is located.
3. List of the current IDC Board Members and the Authorized Representative, including their name, title, company/government, physical and email addresses, and phone number.
4. As applicable, identify the IDC Counsel and Financial Advisor, including their name, title, company, physical and email addresses, and phone number.

B. Listing of Currently-Outstanding Debt – For each issue of debt, provide:

1. The name of the debt and date it was issued.
2. The date of the final maturity or final principal payment on the debt.
3. The original dollar amount of the debt.
4. The name of the project financed or a description of the purpose for the debt, indicating whether the debt is an IDC or a Conduit Debt Obligation.
5. The date the Report on Debt Obligation (Form CT-0253) was filed with the Office of State and Local Finance.

II. Recommended Additional Information for Each Issue of Debt

- A. The dollar amount of the principal outstanding as of the end of fiscal year 2018.
- B. The federal tax status (taxable or tax-exempt).
- C. The type of issuance (publicly sold, direct placement, or loan).
- D. As applicable, the name and contact information for the trustee, paying agent, or debt holder.
- E. If applicable, information on the balloon debt structure, derivatives, and original debt (if a refunding).

Appendix B

Industrial Development Corporations

Notice of Default Form

The Industrial Development Corporation (“IDC”) must give notice to the State Funding Board (“SFB”) of default on any IDC or Conduit Debt Obligations within fifteen (15) days of the event or of receipt of notice of default. A copy of any notice of default received by the IDC must be included with the Notice of Default to the SFB. Also, a copy of the official statement, offering memorandum, or loan document, as applicable, related to the debt should be included as part of the notice if not previously provided to the Comptroller of the Treasury with a Report on Debt Obligation filing. If a notice of default received by the IDC contains the required information and is attached to the IDC’s submission to the SFB, the IDC does not have to restate such information. If the IDC is unable to obtain all the required information, the IDC should furnish a statement of the efforts undertaken to obtain the required information, the problems encountered in obtaining the information and the efforts to be undertaken to subsequently obtain the information.

The following items should be included on the Notice of Default:

- A. **Name of IDC** as listed in its certificate of incorporation.
- B. **Contact Information**, including the name, title, company/government, phone number, and email address for the IDC President or Chair, IDC Counsel, Financial Advisor (if applicable), Obligor (if applicable), and Authorized Representative.
- C. **Name of Defaulted Debt Issue** as reported on the official statement or offering memorandum or other loan document (for example: “Tax Increment Revenue Bonds (ABC Project), Series 2014”).
- D. **Description of Debt**, including sources of revenue pledged to repay the debt.
- E. **Type of Default** (monetary or technical).
- F. **Date of Default:** Either the date the IDC defaulted on debt or discovered an event of technical default or the date on which the IDC received notice of default.
- G. **Date Default Reported on EMMA:** If applicable, the date the defaulted principal and/or interest payment was reported to the MSRB’s Electronic Municipal Market Access (EMMA) system.
- H. **Reason for Default and Plans to Cure:** Describe the events leading to default and plans to cure it.
- I. **Additional Comments:** Include any comments pertinent to the defaulted debt issue that are not otherwise addressed within the notice.

- J. **Signature:** The Authorized Representative should date and submit the notice within fifteen (15) days of the event of default or of receipt of the notice of default given to the IDC.