



NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

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Memorandum # 2017-09

TO: All Local Governments, Public Authorities and Their Independent Auditors
FROM: Tim Romocki, Director, Debt Management Section
SUBJECT: Iran Divestment Act Implications for Local Government Debt in North Carolina
DATE: October 31, 2016

In Memo #2016-10 dated Feb. 17, 2016, the North Carolina Department of State Treasurer provided guidance to Local Government Units concerning new certifications required for contracts. This memo further explains how these requirements, created by the Iran Divestment Act of 2015 (Session Law 2015-118), apply to new financing contracts and debt obligations. Local Government Units should be aware that effective February 26, 2016, this law imposed additional requirements for a variety of financing documents, including (but not limited to) Bond Purchase Agreements, Installment Finance Agreements, Trust Indentures, Remarketing Agreements, Notices of Sale for competitively sold General Obligation bonds, Escrow Agreements and engagement letters with bond counsel.

FAQs

(1) Q: Are financial institutions required to provide the certification themselves, or is it the North Carolina entity's obligation to request it?

A: The unit of government must require the certification from the contractor, i.e. financing institution. (G.S. 143C-6A-5 (a))

(2) Q: If financial institutions responded to an RFP and provided the certification in the response, is certification required again at closing of the financing contract with the winning bidder?

A: No, although an updated certification may be required if the Final Divestment List as published on the State Treasurer's website (<https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>) has been updated since the time of the initial certification.

(3) Q: In the underwriting context, does this requirement apply to both competitive and negotiated underwritings?

A: Yes, it is required of all financing contracts, both competitively sold and negotiated.

(4) Q: Does this requirement apply to both oral and written contracts, or was this meant only to contemplate written contracts?

A: Yes, it is required of all local government contracts.

(5) Q: In what other situations does this requirement apply other than in RFP responses and underwriting municipal bonds? (i.e. does the requirement apply to asset management contracts for a municipality?)

A: The requirement applies to all financial contracts – debt obligations, investments, escrow and trust agreements, etc.

What to Look For

Units of government and their legal counsel should verify that all financing documents that take the form of a contract include a provision for the Iran divestiture certification, similar to the samples below.

(Negotiated Sale - Bond Purchase Agreement)

“ _____, as representative of the Underwriters, hereby represents that, as of the date hereof, none of the Underwriters is listed on the Final Divestment List created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015, Article 6E as amended, of Chapter 147 of the General Statutes of North Carolina. The Underwriters will not utilize any subcontractor that is listed on such Final Divestment List in connection with the transactions contemplated by this Agreement.”

(Competitive Sale – Notice of Sale)

“The submission of a bid constitutes the bidder’s certification to the State Treasurer that, as of *Month Date*, 20XX, it is not listed on the Final Divestment List created and maintained by the North Carolina Department of State Treasurer (the “*Treasurer’s Office*”) pursuant to the Iran Divestment Act of 2015, Chapter 147-Article 6E of the

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General Statutes of North Carolina (the “*Iran Divestment Act*”). The Final Divestment List is attached to this Notice of Sale.”

(Competitive Sale – Bid Sheet)

“The Bidder acknowledges that the submission of this bid constitutes the Bidder’s certification to the State Treasurer that, as of *Month Date*, 20XX, it is not listed on the Final Divestment List created and maintained by the North Carolina Department of State Treasurer (the “*Treasurer’s Office*”) pursuant to the Iran Divestment Act of 2015, Chapter 147 Article 6E of the General Statutes of North Carolina (the “*Iran Divestment Act*”).”

(Advance Refunding - Escrow Agreement)

“Iran Divestment Certification. The Escrow Agent acknowledges that the execution and delivery of this Agreement constitutes the Escrow Agent’s certification to the North Carolina State Treasurer that, as of the date of execution and delivery, the Escrow Agent is not listed on the Final Divestment List created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015, Chapter 147, Article 6E of the General Statutes of North Carolina (the “Iran Divestment Act”).”

If you have questions about the Department of State Treasurer’s Iran Divestment Policy and how it applies to financing contracts, please contact Tim Romocki at tim.romocki@nctreasurer.com or 919 814 4273. If you have questions about the Iran Divestment Act and how it applies to other types of contracts, please see Memorandum #2016-10 located on the State and Local Government Finance Division website or contact Sharon Edmundson at Sharon.edmundson@nctreasurer.com or (919) 814-4289.