



**KNUTSON, FLYNN & DEANS, P.A.**

1155 Centre Pointe Drive, Suite 10

Mendota Heights, MN 55120

651.222.2811 fax 651.225.0600

[www.kfdmn.com](http://www.kfdmn.com)

June 7, 2018

Sarah Mittelstadt  
Executive Director  
Southern Plains Education Cooperative  
201 E. Third Street  
Fairmont, MN 56031

Dear Executive Director Mittelstadt:

The Internal Revenue Service has issued a Treasury Regulation which affects all government body bonds or tax-exempt leases issued after June 30, 1993. This regulation relates to the use of bond or lease proceeds for the reimbursement of expenditures made prior to the date of issuance of the bonds or lease. We have attached a copy of the regulation and the IRS explanation for your reference and future guidance.

Under this regulation, a Cooperative is required to establish procedures for approval of expenditures for which it intends to reimburse itself subsequently from a future bond issue or borrowing. If the Cooperative does not follow these procedures, any bond proceeds used for those reimbursements will be treated as having not been expended, which could have serious consequences under the federal arbitrage regulations. Those proceeds will remain subject to rebate, arbitrage and other rules until they are ultimately spent.

We have enclosed a proposed resolution to be adopted by the board to establish procedures that will govern the reimbursements of these expenditures. The resolution spells out the major provisions of the regulation and the requirements thereunder. While the language is difficult, we believe it clearly summarizes the regulation and establishes the procedures required thereunder. Attached to the resolution is a proposed form of the Official Intent Declaration which would need to be completed by the authorized official prior to paying any covered expenditure which is to be later reimbursed. We have tried to make the Declaration as self-explanatory and easy to complete as possible. These Declarations must be maintained by the Cooperative, be available for public inspection, and be provided to bond counsel for the bond issue or borrowing from which the reimbursements are to be made.

It is important to note that the regulations only apply to certain expenditures that are being reimbursed. They do not apply to the following:

1. Expenditures made from bond or lease proceeds which are used to make payments for project costs on or after the actual bond or lease closing date;
2. Preliminary expenditures that are reimbursed with proceeds of a bond or lease that finances all or a portion of the property, project or program with respect to which the preliminary expenditures were incurred. The term "preliminary expenditures" includes architectural, engineering, soil testing, bond issuance, and similar costs incurred prior to the commencement of the project. The term does not include land acquisition, site preparation and similar costs incident to commencement of construction. Preliminary expenditures may not exceed 20% of the issue price of the portion of the bond issue that finances the project.

With most bond issues or leases, the expenditures to be reimbursed will be preliminary expenditures of the type defined above. Those expenditures will not require Official Intent Declarations. However, if a project includes items such as site acquisition that the Cooperative wishes to finance initially from the capital expenditure fund and to reimburse itself for later from bond proceeds, a Declaration will be necessary. If there are questions, please contact your attorney or bond counsel before you pay for the expenditure in that an Official Interest Declaration must be executed for covered expenditures before those expenditures are paid.

It is important that the responsible individual carefully review these Declarations and make them only for expenditures that the Cooperative actually intends to reimburse. There is a reasonable intent standard that prohibits blanket declarations that would preserve the right of the cooperative subsequently to reimburse all expenditures. In reviewing questioned items, the IRS would look at the Cooperative's past history of actually reimbursing itself from future borrowings in cases where it had declared an intent to do so. A pattern of failing to reimburse is one factor indicating that an expectation was not reasonable.

We understand that this is another mandate that requires time and effort from Cooperative staff. However, it is necessary to comply with these regulations. Please have your board adopt the proposed resolution immediately and begin compliance as soon as possible.

**PLEASE NOTE THAT THIS REQUIREMENT WILL BE ONGOING SO PROPER PROCEDURES MUST BE ESTABLISHED AND MAINTAINED.**

If you have any questions on this matter, we shall be available at your convenience.

Sincerely yours,  
*/s/ Michelle D. Kenney*  
Thomas S. Deans  
Michelle D. Kenney

Enclosure