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**Local Commissioners Memorandum**

<b>Transmittal:</b>	05-OCFS-LCM-18
<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office:</b>	Administration
<b>Date:</b>	December 2, 2005
<b>Subject:</b>	Capital Projects for Congregate Care Facilities Operated by Voluntary Agencies
<b>Contact Person(s):</b>	Catherine Korszun (518) 474-9732; or by e-mail through Outlook or Exchange; or through the Internet at <a href="mailto:Catherine.Korszun@dfa.state.ny.us">Catherine.Korszun@dfa.state.ny.us</a>
<b>Attachments:</b>	<b>Preliminary Certification</b> in Support of a Voluntary Agency's Initial Application for <b>Dormitory Authority Financing</b> <b>Final Certification</b> in Support of a Voluntary Agency's Comprehensive Application for <b>Dormitory Authority Financing</b> <b>Preliminary Certification</b> in Support of a Voluntary Agency's Application for a <b>Property Parameter Waiver</b> to Reimburse a Capital Project <b>Final Certification</b> in Support of a Voluntary Agency's Application for a <b>Property Parameter Waiver</b> to Reimburse a Capital Project <b>Overview of Tax Exempt Financing Process for DASNY Financing</b>
<b>Attachments Available On – Line:</b>	Yes

**I. Purpose**

The purpose of this memorandum is to implement Chapter 472 of the Laws of 2004, in which the State was authorized to approve capital financing through the Dormitory Authority of the State of New York (DASNY) to improve the health and safety of children cared for in residential institutions operated by voluntary agencies for which the Office of Children and

Family Services (OCFS) establishes a maintenance rate. The memorandum also provides an alternate method for congregate programs to apply for capital financing through a waiver in the property parameters of the programs' maximum State aid rates.

## **II. Background**

In accord with Chapter 472 of the Laws of 2004, OCFS is authorized to receive applications for capital improvement projects for residential institutions that serve 13 or more foster children and/or children placed by Committees on Special Education (CSEs). Under this law, DASNY may issue no more than \$30 million in bonds, which is to be utilized for capital projects to equip, renovate or replace existing residential institutions to improve the health and safety of children in care. The financing costs that are associated with approved projects will be in addition to the \$30 million authorization for capital construction costs.

In addition, as part of OCFS' maximum State aid rate package for the 2005-06 rate year, OCFS received approval to authorize congregate foster care programs to provide an alternative reimbursement mechanism for capital projects through waivers of the property parameters used in the existing rate structure.

## **III. Program Implications**

### **A. Application for DASNY Financing Mechanism**

OCFS has established an application process with two phases. The initial phase allows the applicant, with a minimal outlay of expenditures, to describe the purpose and scope of its project, to explain how its project meets the established criteria, to discuss its qualifications, and to estimate the project costs. The initial phase will facilitate the identification of proposals that best meet the established criteria and the identification of those proposals that have the greatest potential to successfully complete the comprehensive application process. Applicants are directed in this initial phase not to expend funds for various consulting services, and not to obtain or submit line drawings or blue prints.

Those agencies that best meet the necessary program and fiscal qualifications in the initial application phase, and are identified as having the greatest potential to successfully complete the next phase, will be invited to complete the comprehensive phase of the application process. The comprehensive phase will require an agency to expend the necessary funds to specify the details of the proposed capital project.

#### **1. Procedure for Submitting Initial Application for DASNY Financing**

- a) Eligible voluntary agencies have been notified of the DASNY financing opportunity specified in this LCM, and have been advised regarding the submission of an initial application. An agency that wishes to apply may submit its proposal to the applicable OCFS regional office or other governmental agency that licenses and monitors the residential program, as well as to the OCFS Rate Setting Unit. Directions regarding the submission of an initial application for DASNY financing are contained in the application packet, which can be obtained at the following Internet address: <http://www.ocfs.state.ny.us/main/rates/>

- b) The initial target date for submitting applications to OCFS for DASNY financing is **January 31, 2006**.
- c) As part of the application, voluntary agencies have been directed to obtain preliminary support of their proposed capital project from existing or prospective referral sources. Though there is no minimum standard, for existing programs, voluntary agencies have been strongly encouraged to obtain certifications (formats attached) from referral sources that represent at least 80 percent of the children served in the program that will be affected by the capital project. Support from referral sources will be an important consideration in the approval process for proposals.
- d) Attached is a format for a **Preliminary Certification** that an LDSS would use to document its support of an agency's initial application for DASNY financing.
- e) Attached also is a format for a **Final Certification** that an LDSS would use to document its support of an agency's comprehensive application for DASNY financing, should that agency be invited to complete such an application.

## **2. OCFS Criteria for Evaluating DASNY Proposals**

- a) The project must be necessary to address the health and safety needs of children at the institution, as follows:
  - i. Applications will be considered that propose to improve compliance with health and safety requirements that affect children in the residential program. For institutions that OCFS does not license, the need to improve compliance with health and safety requirements must be confirmed or verified in writing through letters or reports from the applicable governmental agency that licenses or monitors the program, from building inspectors, or from other professionals who have no vested interest in the agency.
  - ii. Applications also will be considered that focus on improving the health and safety of specialized groups of children being served in the institution by improving the ability of a residential program to provide required program services. Following are examples of such conditions:
    - 1. The existing physical plant may need to be improved or reconfigured to better serve specialized groups of children in the program (e.g., reconfiguring room space to better meet the needs of severely disturbed children or children with other specialized clinical needs; or changing the overall unit structure to improve supervision of children and reduce possible injuries to children). For institutions that OCFS does not license, specific documentation of the need for such changes must be provided in

the form of site visit citations, incidence reports, or other recommendations from the applicable governmental agency that licenses or monitors the residential program.

2. The existing physical plant may need to be modified to make it more accessible under the Americans with Disabilities Act (ADA), where there is no other reasonable accommodation that would address the accessibility issues. Documentation must be provided which states the nature of the accessibility issue and the alternatives considered by the agency. For institutions that OCFS does not license, specific documentation of the need for such changes must be provided from the applicable governmental agency that licenses or monitors the residential program.
- b) The following factors will also be considered by OCFS in determining which applicants will be invited to submit a Comprehensive Application:
- i. bed utilization in an existing program that demonstrates the ongoing demand for the program;
  - ii. relative need for the project compared to other applicants;
  - iii. appropriateness in the physical design of a reconfigured program to improve the health and safety of children in the program (e.g., by eliminating architectural barriers, by creating smaller units, or by providing for the importation of services to support a safer and more effective program);
  - iv. flexibility in the physical design of a reconfigured program to provide for better supervision and/or allow for changing staffing patterns or other creative structural arrangements (e.g., design strategies that allow for beds to be readily incorporated from one unit to an adjacent unit to more safely and flexibly accommodate gender, treatment or other specialized program needs);
  - v. preliminary certifications in support of the proposed project;
  - vi. financial strength and viability of the applicant agency, and the assessment of project costs as reasonable, necessary and cost effective; and
  - vii. OCFS decisions regarding statewide bed planning and development.
- c) In addition, DASNY staff will assess the likelihood of applicants to meet the tax exempt financing requirements.

### **3. The Comprehensive Phase of DASNY Application Process**

- a) Those agencies invited to complete the comprehensive phase of the application process will be advised regarding the necessary steps to complete the process.
- b) The following determinations will need to be made by the State regarding those agencies that are invited to complete the comprehensive phase and that submit their completed applications:
  - i. OCFS, the Division of the Budget, DASNY, and any other State agency that licenses the institution must approve the project plans and specifications as necessary to address the health and safety needs of the children in care at the institution.
  - ii. OCFS, the Division of the Budget, and DASNY must approve all aspects of the project, including the qualifications of the applicant agency, and including an assessment of the project costs as reasonable, necessary and cost effective.
  - iii. Referral sources must provide final certifications in support of the proposed project.

### **4. Security Interest Requirements for DASNY Financing**

- a) An agency that is approved for DASNY financing will be required to enter into a lease, sublease or other agreement with DASNY which will require the agency to:
  - i. establish an account with a bank or trust company and enter into contracts with all payors that provide for the deposit of all the funds it receives for providing residential care to children in the financed program, including all payments from social services districts and school districts;
  - ii. provide DASNY with a security interest in the account so that DASNY receives its required monthly payments from the account before the institution can access the funds;
  - iii. provide DASNY with a mortgage or other interest in the real property used by the institution to provide residential services; and
  - iv. continue to operate the program during the period of the agreement with DASNY; and where the program ceases operations during that time, that a qualified replacement not-for-profit entity could assume the responsibility for continuing to provide a residential institution for children on that site and assume the obligations under the agreement.

## **5. Rates and Reimbursement Mechanisms for DASNY Financing**

- a) For those programs approved for DASNY financing under this new law, OCFS will establish a capital financing add-on rate to cover the approved capital costs associated with any foster children and Committee on Special Education (CSE) children placed in a financed program.
- b) Local social services districts (LDSS) or school districts responsible for the maintenance costs for a child being served in a program for which DASNY financing is approved will be required to pay the add-on rate calculated by OCFS to support the DASNY payments.
- c) For CSE placements for the September through June period, the LDSS would be responsible for paying the add-on rate. The LDSS would receive 40 percent reimbursement from the State and 20 percent reimbursement from the applicable school district for the add-on rate costs, in accordance with existing aid formulas for CSE maintenance. For CSE placements for July and August, the local school district would be responsible for paying the add-on rate, and the school district would receive reimbursement from the State and the county in accordance with the existing aid formulas for the CSE placements for the summer months.
- d) For foster children, the LDSS would be responsible for paying the add-on rate, and the State would reimburse the LDSS for 50 percent of the add-on rate, net of any available federal funding for those costs that exceed the LDSS' foster care block grant allocation.
- e) If the LDSS or school district fails to pay the add-on rate, the Office of the State Comptroller is authorized by Chapter 472 of the laws of 2004 to direct the intercept of State reimbursement to the non-compliant district. The intercept amount will be certified by OCFS or the State Education Department, as applicable, to cover the unpaid add-on rate to DASNY.

## **B. Alternative Application for Capital Financing Using Property Parameter Waiver**

DASNY financing may not be an appropriate mechanism for some projects currently seeking to improve the health and safety of children in care. This is because DASNY financing may not be the most cost-effective mechanism, or because the need for the capital project is time sensitive, or because the demand for DASNY financing may be greater than the \$30 million bonding authority. Therefore, effective July 1, 2005, an alternative mechanism was made available which provides a reimbursement mechanism for capital projects within the existing rate structure.

Similar to the procedure for DASNY financing, the application process for capital financing using the Property Parameter Waiver will involve a two-phased approach that requires an

initial application, followed by a comprehensive application for those agencies that are advised to complete the comprehensive phase.

### **1. Procedure for Submitting Initial Application for Property Parameter Financing**

- a) As with DASNY financing, eligible agencies have been notified of the Property Parameter Waiver financing opportunity specified in this LCM, and have been advised regarding the submission of an initial application. An agency that operates a congregate care program for which OCFS establishes a maximum State aid rate may submit its proposal for Property Parameter Waiver financing to the applicable OCFS regional office or other governmental agency that licenses or monitors the program, as well as to the OCFS Rate Setting Unit. Directions regarding the submission of the initial application are contained in the application packet for the Property Parameter Waiver, which can be obtained at the following Internet address: <http://www.ocfs.state.ny.us/main/rates/>
- b) A voluntary agency may apply for capital project financing within the existing rate structure, including a waiver of the fixed property parameter component of its program-specific State aid rate, where needed. This procedure provides for additional reimbursement within the existing maximum State aid rate for supporting a capital project to replace or reconfigure residences to improve the health and safety of the children in care. The health and safety criteria specified above in Section III. A., as the framework for submitting DASNY applications, will be applicable as well to applications for the Property Parameter Waiver.
- c) As part of the application, voluntary agencies have been directed to obtain preliminary support of their proposed capital project from existing or prospective referral sources. Though there is no minimum standard, voluntary agencies are encouraged to obtain certifications (formats attached) from referral sources that represent at least 80 percent of the children served in the program that will be affected by the capital project. Support from referral sources will be an important consideration in the approval process for such waiver proposals.
  - i. Attached is a format for a **Preliminary Certification** that an LDSS would use to document its support of an agency's initial application for Property Parameter financing.
  - ii. Attached also is a format for a **Final Certification** that an LDSS would use to document its support of an agency's comprehensive application for Property Parameter financing, should that agency be invited to complete such an application.
- d) When considering a decision to support funding for a capital project using the Property Parameter Waiver versus the DASNY mechanism, one should consider the Property Parameter Waiver for the following reasons:

- i. Certain projects may be more cost-effective under the Property Parameter Waiver, when considering the overall demands and requirements of the DASNY application process, including substantial financing fees that are assessed for each project. See the attached Overview of Tax Exempt Financing Process for further information on these requirements.
- ii. The Property Parameter Waiver may be a better mechanism for capital projects that are needed sooner rather than later. This is because the DASNY application and approval process may take substantial time based on the need to “pool” all DASNY proposals for the purpose of issuing one bond, and the need to have all projects begin at the same time.
- iii. The DASNY bonding authority for Chapter 472 capital projects in voluntary agencies is currently limited to \$30 million. Thus, there is currently a legislative funding limit on the number of proposals that can obtain DASNY financing.

## **2. The Comprehensive Phase of Property Parameter Waiver Process**

- a) Those agencies invited to complete the comprehensive phase of the application process will be advised regarding the necessary steps to complete the process.
- b) The following determinations will need to be made by the State regarding those agencies that are invited to complete the comprehensive phase and that submit their completed applications:
  - i. OCFS, the Division of the Budget, and any other State agency that licenses the institution must approve the project plans and specifications as necessary to address the health and safety needs of the children in care at the institution.
  - ii. OCFS, and the Division of the Budget, and any other State agency that licenses the institution must approve all aspects of the project, including the qualifications of the applicant agency, and including an assessment of the project costs as reasonable, necessary and cost effective.
  - iii. Referral sources must provide final certifications in support of the proposed project.

## **3. Reimbursement Mechanisms for Property Parameter versus DASNY Financing**

- a) For those programs approved for Property Parameter Financing, OCFS will intensify the existing maximum State aid rate to cover the approved capital costs



associated with any foster children and Committee on Special Education (CSE) children placed in a financed program.

- b) The following State reimbursement formulas will be applicable based on whether a capital project is financed through the Property Parameter Waiver or the DASNY mechanism:
- i. For foster care placements, reimbursement under the Property Parameter Waiver will be limited to the foster care block grant, net of any available federal funding; whereas, under the DASNY financing mechanism, the State would reimburse the LDSS for 50 percent of the DASNY add-on rate, net of any available federal funding for those costs that exceed the LDSS' foster care block grant allocation.
  - ii. For CSE placements, the existing formula for reimbursing CSE maintenance would be applicable to either the DASNY add-on rate mechanism or the Property Parameter Waiver. This means that for the regular school year, September through June, the LDSS would be responsible to pay the additional costs and would receive 40 percent reimbursement from the State and 20 percent reimbursement from the applicable school district. For July and August, the applicable school district would be responsible for payment of these additional costs, and the school district would receive reimbursement from the State Education Department and the county in accordance with the existing aid formulas for CSE placements during the summer.

#### **IV. Contact Information**

Any questions regarding the policies or procedures for the mechanisms specified in this LCM should be directed to:

Catherine Korszun (518) 474-9732; or by e-mail through Outlook or Exchange; or through the Internet at [Catherine.Korszun@dfa.state.ny.us](mailto:Catherine.Korszun@dfa.state.ny.us)

*/s/ Susan A. Costello*

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**Issued By:**

Name: Susan A. Costello

Title: Deputy Commissioner

Division/Office: Administration

**Preliminary Certification in Support of an Agency's  
Initial Application for DASNY Financing**

This **preliminary certification** is being submitted in support of the below named agency's initial application for a capital improvement project using the **DASNY financing mechanism** authorized by Chapter 472 of the Laws of 2004. I understand that in submitting this certification, I am registering my district's preliminary support for the ongoing public need of the program identified by the below named agency as well as for the capital project that the agency is proposing to the State for the purpose of improving the health and safety of children in its residential program.

I understand that the State will permit certain applicants to complete a comprehensive application, if so qualified. I understand further that as part of that process, the below named agency would develop detailed project plans and costs, and that those documents would be made available to me in the event that I am requested to complete a final certification in support of the agency's application for DASNY financing. In signing this **preliminary certification**, I am recognizing the potential increase in the cost of said program should it be approved by the State for DASNY financing.

I further understand that if this capital project is approved, OCFS would establish an annual capital financing add-on rate that is over and above the established maximum State aid rate; that said add-on rate would cover the approved capital costs associated with any foster children and Committee on Special Education (CSE) children placed in the applicable program; that said add-on rate would be effective for the term of the bond that is issued to support the financing of the project; that for foster care placements, the State would reimburse each referring social services district at 50 percent of the DASNY add-on rate, net of any available federal funding for those costs that exceed the social services district's foster care block grant allocation; and that for CSE placements, the existing formulas for reimbursing CSE maintenance would apply to the DASNY add-on rate.

I \_\_\_\_\_ hereby certify that \_\_\_\_\_  
**Commissioner or Other Official (print)** **Name of District (print)**

supports the \_\_\_\_\_ in its **initial** application for approval of a capital  
**Name of Voluntary Agency (print)**

project for the program referenced by said agency in its attached letter of \_\_\_\_\_.  
**Date of Letter**

**I further certify that I am not aware of any ongoing investigations by governmental or non-governmental entities regarding concerns about the program or fiscal operations of the agency referenced above.**

\_\_\_\_\_  
**Commissioner or Other Official's Signature**

\_\_\_\_\_  
**Date Signed**

**Final Certification in Support of an Agency's  
Comprehensive Application for DASNY Financing**

This **final certification** is being submitted in support of the below named agency's comprehensive application for a capital improvement project using the **DASNY financing mechanism** authorized by Chapter 472 of the Laws of 2004. I understand that in submitting this certification, I am registering my district's final support for the public need of the program identified by the below named agency, as well as for the capital project that the agency is proposing to the State for the purpose of improving its residential program.

In signing this **final certification**, I further understand that if this capital project is approved, OCFS would establish an annual capital financing add-on rate that is over and above the established maximum State aid rate; that said add-on rate would cover the approved capital costs associated with any foster children and Committee on Special Education (CSE) children placed in the applicable program; that said add-on rate would be effective for the term of the bond that is issued to support the financing of the project; that for foster care placements, the State would reimburse each referring social services district at 50 percent of the DASNY add-on rate, net of any available federal funding for those costs that exceed the social services district's foster care block grant allocation; and that for CSE placements, the existing formulas for reimbursing CSE maintenance would be applicable to the DASNY add-on rate.

I \_\_\_\_\_ hereby certify that \_\_\_\_\_  
Commissioner or Other Official (print) Name of District (print)

supports the \_\_\_\_\_ in its **final** application for approval of a capital  
Name of Voluntary Agency (print)

project for the program referenced by said agency in its attached letter of \_\_\_\_\_.  
Date of Letter

**I further certify that I am not aware of any ongoing investigations by governmental or non-governmental entities regarding concerns about the program or fiscal operations of the agency referenced above.**

\_\_\_\_\_  
Commissioner or Other Official's Signature

\_\_\_\_\_  
Date Signed

**Preliminary Certification in Support of an Agency’s Initial Application for Property Parameter Waiver to Reimburse a Capital Project**

This **preliminary certification** is being submitted in support of the below named agency’s application for a capital improvement project using the **Property Parameter Waiver** mechanism. I understand that in submitting this certification, I am registering my district’s support for the public need of the program identified by the below named agency as well as my support for the capital project that the agency is proposing to the State for the purpose of improving its residential program.

I understand that the State will permit certain applicants to complete a comprehensive application, if so qualified. I understand further that as part of that process, the below named agency would develop detailed project plans and costs, and that those documents would be made available to me in the event that I am requested to complete a final certification in support of the agency’s application for Property Parameter Waiver financing. In signing this **preliminary certification**, I am recognizing the potential increase in the cost of said program should it be approved by the State.

I further understand that if this capital project is approved, OCFS would include the annual cost to support the capital project as part of an intensified maximum State aid rate established for the applicable program; that the property intensification component of the rate would cover the approved capital costs associated with any foster children and Committee on Special Education (CSE) children placed in the applicable program; that the intensified rate would be effective for the term of the financing arrangement approved to support the project; and that for foster care placements, reimbursement of the intensified rate under the Property Parameter Waiver will be limited to the social services district’s foster care block grant, net of any available federal funding; and that for CSE placements, the existing formulas for reimbursing CSE maintenance would be applicable to the intensified rate.

I \_\_\_\_\_ hereby certify that \_\_\_\_\_  
Commissioner or Other Official (print) Name of District (print)

supports the \_\_\_\_\_ in its **initial** application for approval of a capital  
Name of Voluntary Agency (print)

project for the program referenced by said agency in its attached letter of \_\_\_\_\_.  
Date of Letter

**I further certify that I am not aware of any ongoing investigations by governmental or non-governmental entities regarding concerns about the program or fiscal operations of the agency referenced above.**

\_\_\_\_\_  
Commissioner or Other Official’s Signature

\_\_\_\_\_  
Date Signed

**Final Certification in Support of an Agency’s Comprehensive Application for Property Parameter Waiver to Reimburse a Capital Project**

This **final certification** is being submitted in support of the below named agency’s application for a capital improvement project using the **Property Parameter Waiver** mechanism. I understand that in submitting this certification, I am registering my district’s support for the public need of the program identified by the below named agency as well as my support for the capital project that the agency is proposing to the State for the purpose of improving its residential program.

In signing this **final certification**, I understand that if this capital project is approved, OCFS would include the annual cost to support the capital project as part of an intensified maximum State aid rate established for the applicable program; that the property intensification component of the rate would cover the approved capital costs associated with any foster children and Committee on Special Education (CSE) children placed in the applicable program; that the intensified rate would be effective for the term of the financing arrangement approved to support the project; and that for foster care placements, reimbursement of the intensified rate under the Property Parameter Waiver will be limited to the social services district’s foster care block grant, net of any available federal funding; and that for CSE placements, the existing formulas for reimbursing CSE maintenance would be applicable to the intensified rate.

I \_\_\_\_\_ hereby certify that \_\_\_\_\_  
Commissioner or Other Official (print) Name of District (print)

supports the \_\_\_\_\_ in its **final** application for approval of a capital  
Name of Voluntary Agency (print)

project for the program referenced by said agency in its attached letter of \_\_\_\_\_.  
Date of Letter

**I further certify that I am not aware of any ongoing investigations by governmental or non-governmental entities regarding concerns about the program or fiscal operations of the agency referenced above.**

\_\_\_\_\_  
Commissioner or Other Official’s Signature

\_\_\_\_\_  
Date Signed

## **CHAPTER 472 OF THE LAWS OF 2004 OVERVIEW OF TAX EXEMPT FINANCING PROCESS**

Chapter 472 of the Laws of 2004 of the State of New York (“Chapter 472”) authorizes the Dormitory Authority of the State of New York (“Authority”), to issue a total of up to \$30,000,000 in bonds for the purpose of financing the renovation, equipping or replacement of existing residential facilities for children. The purpose of this summary is to provide potential applicants (referred to as “borrowers”) with a general overview of the debt issuance process and the specific requirements of Chapter 472 related to the issuance of debt.

Tax-exempt financing is subject to the requirements of state law, as well as both federal tax and securities law, and as a result can be extremely complex for those not familiar with the process. Even though these requirements will not apply to the initial application process, your agency will be required to comply with them if it is determined to be eligible for financing under this program. Therefore, we thought it would helpful to give you a brief overview of these requirements.

### Official Intent Requirement

Federal tax law provides that a recipient of tax-exempt bond proceeds may not use the proceeds of the bonds to reimburse itself for expenditures incurred prior to the issuance of the bonds unless certain requirements are satisfied. One of these requirements is that a borrower declare its “official intent” to reimburse itself from bond proceeds before the expenditures are made. A declaration of official intent typically takes the form of a resolution of the board of directors of a borrower and need only contain a general functional description of the applicable project.

It is strongly recommended that any agency interested in applying for a loan under Chapter 472 not incur any significant expenditures until it has first adopted a declaration of official intent. For those agencies that have already incurred expenditures for which they expect to be reimbursed, it will be necessary for the Authority’s bond counsel to review your agency’s resolution (or other evidence of intent) and supporting data to determine whether the requirements of federal tax law are satisfied.

### Tax Questionnaire

The Authority’s bonds will be issued as tax-exempt “qualified 501(c)(3) bonds” under federal tax law. Therefore, bond counsel must conclude that each borrower is a 501(c)(3) organization and that the project costs are “qualifying” costs under the Internal Revenue Code. To confirm that the requirements of tax law are satisfied, bond counsel will require each borrower to complete a “tax questionnaire.” Among other things, this questionnaire will elicit information and supporting documentation from the borrowers regarding their corporate formation and governance as well as the character and use of its facilities (including any contracts or other agreements that permit their use by third parties).

## SEQRA

The authorization of bonds by the Authority to fund projects of the borrowers constitutes an “action” under the State Environmental Quality Review Act (“SEQRA”). Therefore, the Authority must comply with requirements of SEQRA before its board adopts financing documents.

In order for the Authority to initiate the SEQRA review, each borrower must complete an environmental assessment form (“EAF”) for each project to be financed. The review process for minor renovations is generally quite simple and requires the completion of a Short EAF. For new construction projects, or where otherwise deemed appropriate by the Authority, the completion of a Long EAF is required. It may be possible to simplify the SEQRA review process if another governmental agency, such as a local planning or zoning board, will also be required to conduct a SEQRA review in connection with the project and that agency and the Authority coordinate their respective reviews.

## Official Statement / Due Diligence

In order to enable the Underwriter to market bonds to potential investors, the Authority is required to prepare an Official Statement. The Official Statement will include a description of the bonds and the purposes for which they are being issued.

The preparation of the Official Statement is the responsibility of the Authority. The borrowers, however, will have responsibility for providing certain information required to be included in this document. Specifically, the borrowers must provide the Authority with a short description of their programs, sources of funding, and certain financial information. Each borrower will also be required to disclose any litigation, investigation, or other proceeding that could materially adversely affect its operations. Each borrower must provide the Authority with its most recent audited financial statements and its auditor’s consent to publish the audited financial statements in the Official Statement. Also, depending on the nature of the financial information included in the Official Statement, the borrower, working with the underwriter’s counsel, may be required to obtain a “procedures letter” from its auditor regarding the auditor’s review of the borrower’s financial information in the Official Statement.

The Underwriter’s counsel will also request various documents from the borrowers (some of which will also be requested in the tax questionnaire) as part of its “due diligence” process. The Underwriter and its counsel will also meet with the borrowers, either by phone or in person, to conduct due diligence interviews.

## TEFRA Hearing

A portion of the Internal Revenue Code, known as the “Tax Equity and Fiscal Responsibility Act” or “TEFRA,” requires the Authority to conduct a public hearing prior to the issuance of qualified 501(c)(3) bonds. Pursuant to the Code, a notice must be published in one or more newspapers at least 14 days prior to the date of the hearing.

The preparation of this “TEFRA notice” requires each borrower to properly identify, by street address (or other description sufficient under federal tax law), each project to be financed or

refinanced with bond proceeds. Under federal tax law, proceeds of the bonds may only be expended for projects identified in the TEFRA notice.

### Dormitory Authority Board Action

The Dormitory Authority may issue its bonds only upon receiving authorization from its 11-member board. Generally, obtaining this approval involves a two-step process. At the first board meeting, the board adopts a resolution authorizing staff to proceed with the transaction and engage the necessary professionals, such as bond counsel, to prepare the financing documents. At the second meeting, the board adopts the resolutions authorizing the issuance of the bonds. These board meetings are held on a monthly basis.

The Authority may adopt the financing documents only if there has been compliance with the requirements of SEQRA and TEFRA as discussed above. In addition, because the State's Public Authorities Control Board ("PACB") must approve all bonds issued by the Authority, the Authority will not adopt any financing documents unless the approval of PACB has been obtained. The PACB, which meets on a monthly basis, is comprised of representatives of the Division of Budget, the State Senate and the State Assembly.

In addition to the declaration of intent discussed above, the Authority also requires that each borrower adopt its own board resolution authorizing the borrowing of money from the Authority as a condition to the Authority's approval of the financing documents.

The financing documents approved by the Authority will include bond resolutions authorizing the issuance of the bonds and the form of loan agreement and other agreements to be entered into by the Authority and the borrowers. The borrowers and their counsel will need to thoroughly review drafts of the resolutions and loan agreement prior to action by the Authority board.

### Bond Sale and Closing

After a preliminary version of the Official Statement has been distributed to potential investors, the Authority will sell the bonds to the Underwriter for re-sale to investors. The loans to the borrowers will be made with the proceeds from the sale of the bonds. The bonds will be sold in accordance with a Bond Purchase Agreement, in reliance upon a Letter of Representation from each borrower. The Letter of Representation, in effect, is the borrower's assurance that the information contained in the Official Statement relative to the borrower is accurate and complete. The Letter of Representation also recites that the borrower will defend and indemnify the Authority and the Underwriter from any losses sustained by them as a result of claims based upon inaccurate or incomplete information provided by the borrower.

The Authority will thereafter issue the bonds and the "closing" will take place. At that time, the borrower will be required to sign and deliver numerous documents, including the Loan Agreement, various security documents and agreements requiring the borrower to comply with disclosure obligations under federal securities laws as well as requirements imposed by federal tax laws. Counsel to each borrower will be required to deliver an opinion covering such things as corporate existence and authorization, 501(c)(3) status, enforceability of the financing documents, and compliance with governmental requirements. As the financing progresses, the



borrowers and their counsel will be expected to thoroughly review drafts of these documents and collaborate in their preparation.

### Financial Covenants

It is expected that the Authority's bonds will be secured by a municipal bond insurance policy. As a condition to the issuance of its insurance policy, the bond insurer may impose conditions on participation (*e.g.*, historical achievement of specified financial benchmarks) as well as ongoing financial covenants. These covenants may also restrict the ability of the borrower to issue debt in the future unless certain financial tests are satisfied

### Lock-Box and Revenue Pledge

Chapter 472 requires that each borrower establish an account with a bank or trust company acceptable to the Authority into which the borrower must deposit all amounts received from any school district, social service district or any other payor on account of the residential services provided by the borrower ("Lock Box Account"). Each borrower is further required by Chapter 472 to grant the Authority a security interest in the Account. It also provides that the moneys on deposit in the Lock Box Account shall be subject to withdrawal by the borrower only after payment of amounts then due to the Authority. As a practical matter, the borrower will be able to access funds in the Lock Box Account without action by the Authority or another party, provided that it has paid the amounts due under the Loan Agreement.

In addition, Chapter 472 provides that each borrower include in each of its respective contracts with a social service district, school district or any other payor, a provision requiring that the borrower deposit all of its "maintenance rate payments" from such social service district or school district or other payor into the Lock Box Account. In the event of a failure by the applicable social services district or school district to make a "maintenance rate payment" to the borrower, the State Comptroller is required to withhold state reimbursement to the applicable social services district or school district in an amount equal to the unpaid obligation for the "capital financing add on rate" and pay over such sum to the Authority or the Bond Trustee upon certification of the Commissioner of the Office of Children and Family Services or the State Education Department, as applicable.

### Loan Documentation, Prior Pledges and Payoff Letters

Borrowers and their counsel will need to carefully review any existing loan documents for loans currently outstanding in order to ensure that they obtain any required consents or waivers from their existing lenders to borrow funds in this program. The borrowers and their counsel will likewise be required to identify any prior pledges of the borrowers' revenues and provide a comprehensive list of existing liens. Each borrower's counsel will eventually need to provide searches of county and state records, which will identify any outstanding liens or restrictions.

### Mortgage

Chapter 472 requires each borrower to grant to the Authority either a mortgage on the real property used by the borrower to provide residential services or such other interest in real property as is acceptable to the Authority. In connection with the granting of a mortgage to the

Authority, a policy of title insurance and a current survey of the mortgaged property may be required.

### Costs of Issuance

There are various costs associated with the issuance of tax-exempt bonds in general and an Authority bond issue in particular. These costs include such items as Authority fees, Trustee fees, the Underwriter's discount, a bond insurance premium, bond issuance fees, rating agency fees, Bond Counsel fees, and printing and publication costs. If a series of bonds is issued for the benefit of more than one borrower, these costs will be allocated among the borrowers on a pro-rata or other equitable basis. Each borrower will be required to pay or finance its own costs of obtaining title insurance and surveys in connection with the granting of its mortgage and to pay the fees of its counsel and financial advisor (if any).

Most if not all of the costs of issuance described above may be financed with bond proceeds. However, where the bonds to be issued are "qualified 501(c)(3) bonds," the Internal Revenue Code prohibits the financing of costs of issuance in excess of two percent of the proceeds of tax-exempt bonds. Therefore, to the extent that the costs of issuance exceed this limit, the borrowers will need to arrange for their payment from their own funds or from the proceeds of taxable bonds.