

**Tax Exempt Bonds Questionnaire Project:
Final Report on Governmental and Charitable Financings**

July 1, 2011

**IV - Summary of Reported Data: Charitable Financings
Questionnaire Project**

This part summarizes the data derived from the charitable financing compliance questionnaire responses regarding the post-issuance bond compliance and record retention practices of § 501(c)(3) organizations borrowing the proceeds of qualified 501(c)(3) bond issues.

The charitable financing questionnaire was sent to 207 identified organizations. There were 203 responses received. The 4 non-respondents were referred for classification to determine the appropriateness of opening an examination of a specific bond issue for which they are the beneficiary or for other follow-up. There were 11 respondents whose responses indicated that they did not have bonds or that their bonds were not qualified 501(c)(3) bonds. One responder was a foreign charity. Four responding organizations indicated that they were on-behalf-of issuers of tax-exempt bonds.¹ One respondent indicated it was an entity that had transferred its bonds to another entity. Three respondents were student loan issuers. In addition, 4 respondents were entities selected in error. After adjusting for the above, data from 192 entities was analyzed.

Additionally, 2 responses were received from organizations not mailed a questionnaire.²

This data is also shown in a schedule (Appendix C) showing the types and number of responses.

¹ An entity that fails to qualify as a political subdivision which issues tax-exempt bonds "on behalf of" a political subdivision as a "constituted authority" or as a "63-20 corporation". See Rev. Rul. 63-20, 1963-1 C.B. 24, and Rev. Proc. 82-26, 1982-1 C.B. 114.

² These organizations indicated that they received a copy of the questionnaire from one of the selected organizations. They submitted unsolicited questionnaires. These questionnaires were not included in the data summary or analysis.

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Reconciliation of Questionnaires to Responses

# of Questionnaires sent out	207	100%
Non-Respondents	(4)	(2%)
Additional Respondents	2	-
Total Respondents	205	-
On-behalf of Issuers	4	2%
Foreign Entity	1	<1%
Transfer Bonds	1	<1%
Student Loan Bonds	3	1%
Selected in Error	4	2%
Number of Qualified Respondents	192	93%

Key Points of Analysis

After TEB's initial review of the questionnaires and the responses thereto, the key points analyzed were whether, and in what form, post-issuance compliance procedures were present. TEB reviewed the responses to questions concerning the written procedures or guidelines.³ From this analysis, compliance issues and trends were observed that will serve as a basis for future compliance initiatives and outreach programs.

As part of the analysis TEB reviewed the Yes/No and narrative responses to the identified key questions and noted compliance issues and trends.

Part I, Post-Issuance Compliance – General

The purpose of this part of the questionnaire was to determine the general post-issuance compliance of issuers of qualified 501(c)(3) bonds. Organizations were queried on the following items: (1) actual procedures; (2) individuals assigned to monitor these procedures; (3) training of individuals assigned to monitor post-issuance compliance; and (4) awareness of remedial actions available to prevent bonds from becoming taxable.

Question 1, Written Procedures or Guidelines:

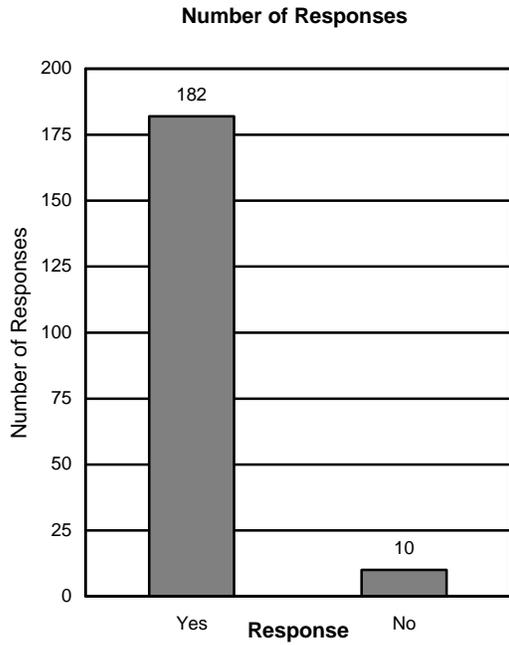
The purpose of this question was to ascertain whether § 501(c)(3) organizations maintained written procedures or guidelines to ensure that qualified bond financings remain in compliance with federal tax law requirements after the bonds are issued.

The question focused on three areas: use of proceeds and property, arbitrage, and other filings and general requirements. The following charts show the Yes/No responses to whether the § 501(c)(3) organization maintained written post-issuance procedures or guidelines to ensure that their tax-exempt bond financings remained in compliance with applicable federal tax requirements.

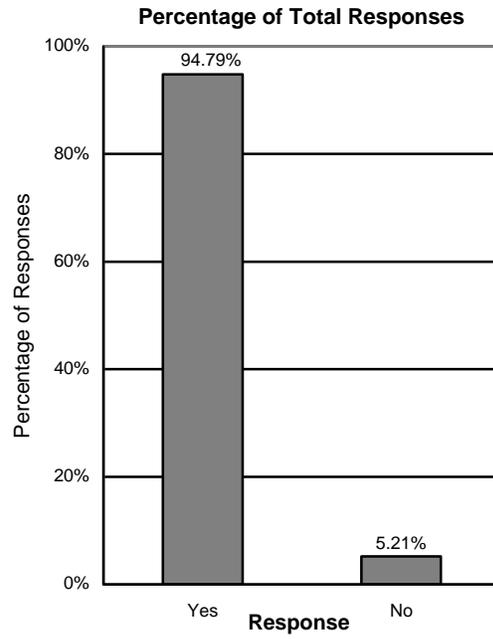
³ Questions 1, 3, 13, and 14 of Form 13907, *Tax-Exempt Bond Financings Compliance Check Questionnaire*.

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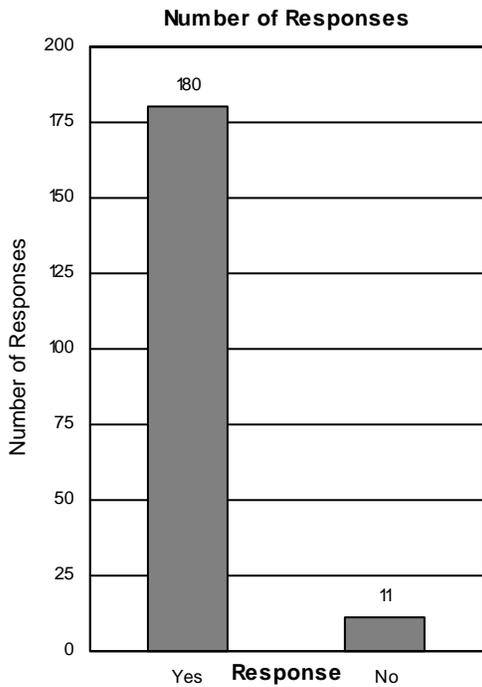
**Written Procedures or Guidelines
Q1a - Proper and Timely Use of Bond
Proceeds and Bond Financed Property**



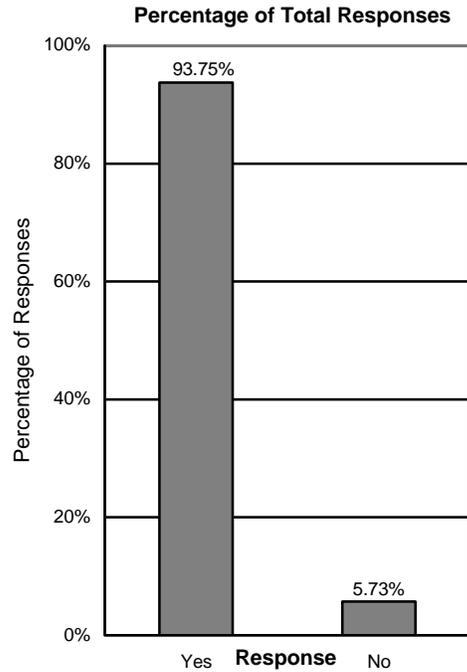
**Written Procedures or Guidelines
Q1a - Proper and Timely Use of Bond
Proceeds and Bond Financed Property**



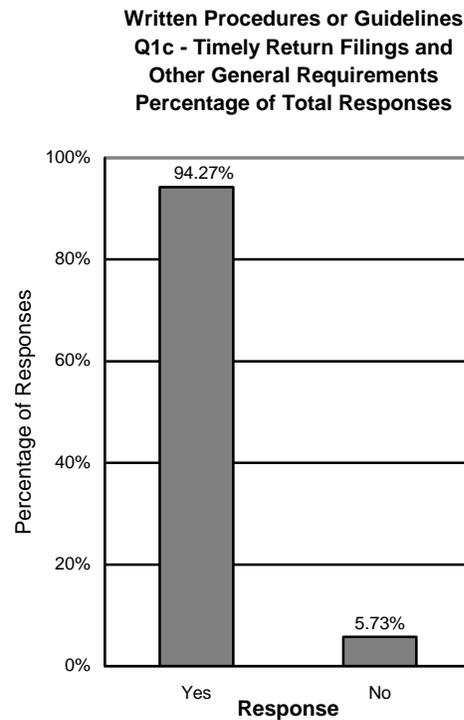
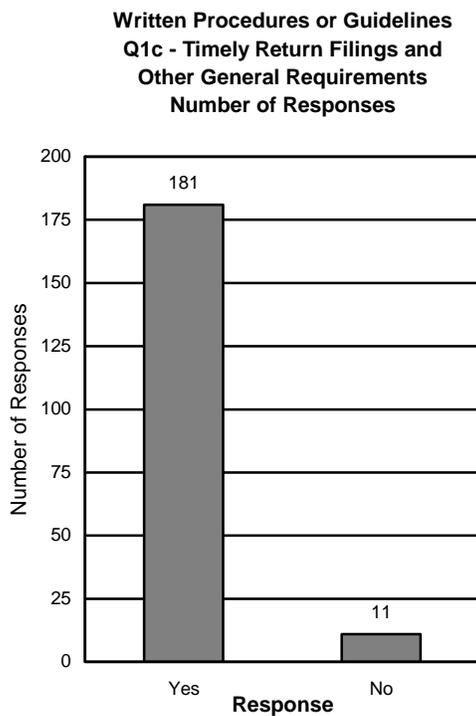
**Written Procedures or Guidelines
Q1b - Arbitrage Yield Restriction
and Rebate**



**Written Procedures or Guidelines
Q1b - Arbitrage Yield Restriction
and Rebate**



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At first glance, the responses indicate a significantly positive trend in the implementation of post-issuance practices and procedures.

Overall, 182 (94.79%) of the respondents reported that they have written procedures or guidelines to ensure that their tax-exempt bond financings remained in compliance with requirements relating to the proper and timely use of bond proceeds and bond-financed property. Moreover, 180 (93.75%) reported that they have arbitrage yield restriction and rebate written procedures.⁴ Additionally, 181 (94.27%) reported having procedures to ensure timely filings and other general requirements. These responses to the Yes/No questions appear to indicate that most of the § 501(c)(3) organizations have written procedures or guidelines to ensure post-issuance compliance.

However, Question 1 also asked each respondent to describe its procedures or guidelines regarding each of the three separate compliance issues (use of proceeds or property, arbitrage, or other filings and general requirements). We conducted a thorough review of the narrative responses to this question to further study the respondents' procedures and practices in these areas. Based on these narrative responses of the 192 respondents, we were able to identify if the organization:

1. provided a copy of their procedures or indicated conclusively in their narrative that they had written procedures;

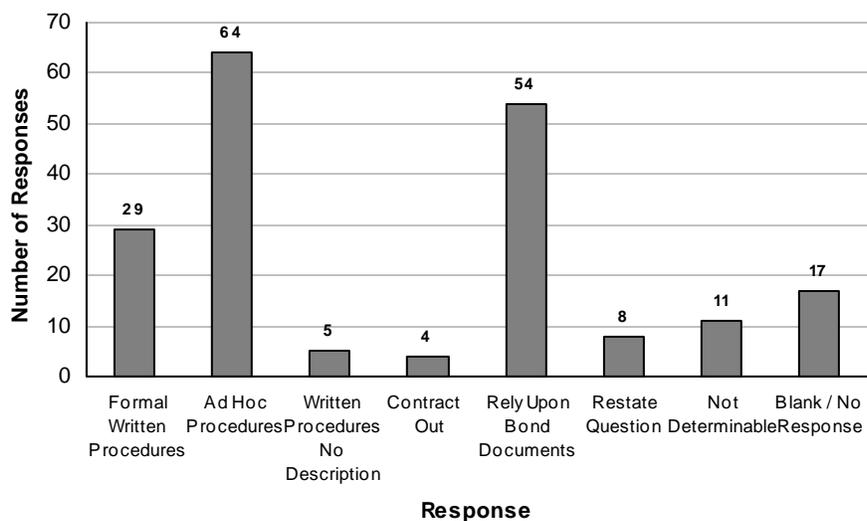
⁴ One respondent did not provide a response to the sub-part question concerning arbitrage yield restriction and rebate written procedures.

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2. indicated in their narrative that they had procedures (and described these procedures in sufficient detail) but did not indicate that they had written procedures – such were identified as having “ad hoc” procedures. An “ad hoc” procedure was identified as maintaining records, approving expenditures, recognizing general arbitrage yield restriction and rebate requirements, and adherence to reporting requirements and due dates, but with no formal written procedures;
3. indicated that they had written procedures but provided no description of their procedures in their narrative;
4. indicated in their narrative that they contracted out their post-issuance compliance responsibilities;
5. indicated in their narrative that they relied upon the requirements contained in the bond documents as their guidelines for post-issuance compliance;
6. provided a narrative that restated the content of the question, instead of describing their procedures or guidelines;
7. provided a non-responsive statement; or
8. provided no response.

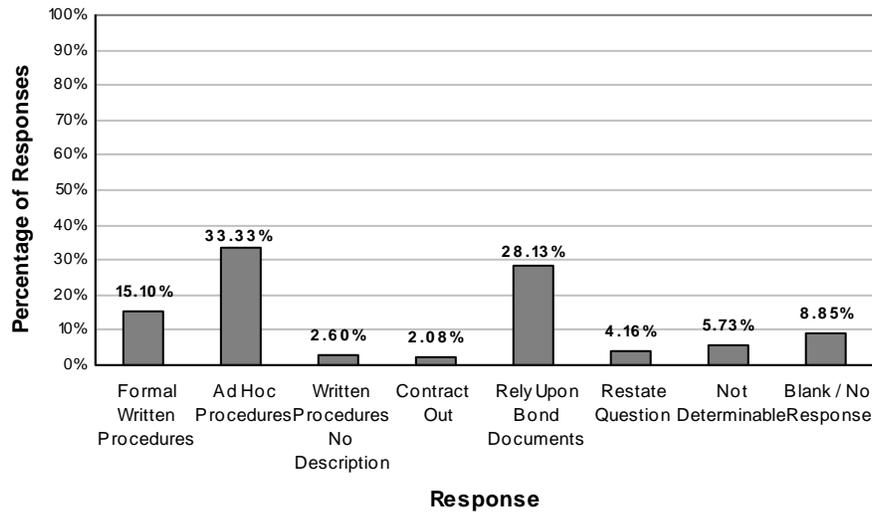
The following charts show the analyzed responses after the narratives were reviewed:

**Written Procedures or Guidelines
Number of Responses After Narrative Analysis**



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**Written Procedures or Guidelines
Percentage of Total Responses**



Of the 192 respondents: 29 (15.1%) demonstrated conclusively that they had formal written procedures; and 64 (33.33%) indicated that they performed, on an “ad hoc” basis, procedures necessary to ensure post-issuance bond compliance. Five respondents (2.6%) indicated that they had written procedures but their narrative failed to describe them adequately. Four (2.08%) of the 192 respondents indicated that they contract out or engage specialists to monitor and maintain post-issuance compliance of their bond-financed activities and facilities.

Of those respondents that reported they have written procedures, our analysis of the narrative responses and supplemental information found that 54 (28.13%) relied solely on the requirements stated in the tax certificates or other descriptive bond documents as their means to comply with their post-issuance requirements. Finally, 8 (4.17%), 11 (5.73%), and 17 (8.85%), respectively, of the respondents either, restated the question in their narrative, provided a non-responsive description in their narrative, or provided no narrative at all.

Ninety-eight (51%) of the 192 respondents to this question referred to or appeared to be using the 2007 ACT Report recommendations in their narrative responses. The 29 respondents who submitted proof of formal, written procedures in their narrative responses showed that their procedures generally followed the recommendations of the 2007 ACT Report dated June 13, 2007. Moreover, the 64 respondents who indicated “ad hoc” procedures, and the 5 who did not adequately describe their procedures, generally indicated in their narratives that they also followed the 2007 ACT Report recommendations.

To summarize, at least 94% of the respondents answered Yes to the questions asking whether they had formal written policies or procedures to assure post-issuance compliance in three key areas (use of proceeds and property, arbitrage, and other filings and general requirements). However, when asked to describe their

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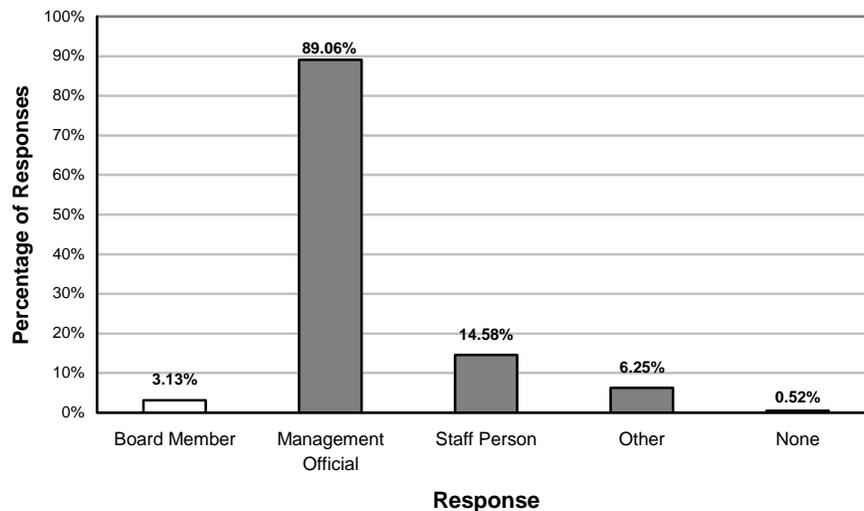
written policies and practices, only 15% of the respondents provided a description or other information that clearly demonstrated that they had such formal written policies or procedures.

Greater percentages of respondents indicated, based on the descriptions and supplemental information, that they either performed ad hoc procedures (33%) or relied solely on bond documents (28%) to comply with post-issuance compliance requirements. Certain respondents (19%) provided no meaningful information to describe their policies or procedures, and 2% reported they contracted out the process to others.

Question 2, Primary Person Responsible for Monitoring Compliance:

The purpose of this question was to ascertain the individual(s) primarily responsible for monitoring post-issuance compliance of bond financings in order to assess, in part, the level of importance assigned by § 501(c)(3) organizations to their post-issuance tax compliance requirements.

Primary Person Responsible for Monitoring Compliance

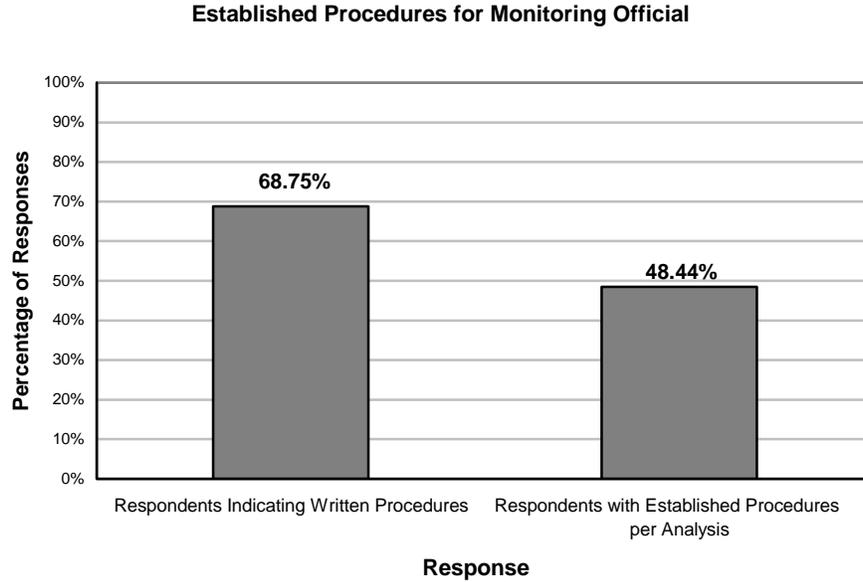


Of the 192 respondents, 6 (3.13%) and 171 (89.06%), respectively, reported they had as their primary responsible person a board member or management official. Twenty-eight (14.58%) and 12 (6.25%), respectively, reported that either a staff or other person held this responsibility. One of the organizations reported that they had no one responsible for monitoring compliance. Several respondents indicated multiple individuals were responsible for monitoring their post-issuance compliance requirements.

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Question 3, Written Procedures When More Than One Individual is Responsible:

The purpose of this question was to ascertain if § 501(c)(3) organizations, generally, have written procedures or guidelines for individuals to follow when more than one individual is responsible for maintaining post-issuance tax compliance of bond financings.



Of the 192 respondents, 132 (68.75%) reported having written procedures or guidelines to coordinate post-issuance compliance when more than one individual shares this responsibility. However, as described with respect to question 1, our analysis of the supplemental responses found that only 93 of the 192 respondents (48.44%)⁵ actually had either formal written, “ad hoc,” or some other form of established procedures with respect to compliance generally.

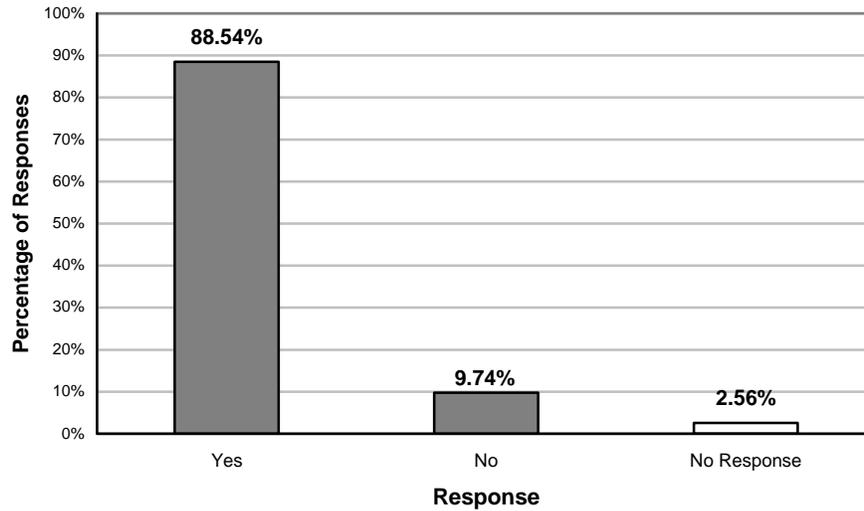
Question 4, Training or Education:

The purpose of this question was to ascertain whether or not § 501(c)(3) organizations provided specific training or educational resources to the personnel responsible for ensuring post-issuance tax compliance.

⁵ Formal written procedures	29 respondents
Ad Hoc procedures	64 respondents
Total	93 respondents
Total respondents	192
% of Total Respondents	48.44%

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Organizations Providing Training or Education



Of the 192 respondents, 170 (88.54%) reported that they provide educational or training resources to the individuals responsible for ensuring post-issuance compliance.

Question 5, Tax-Exempt Status:

The purpose of this question was to ascertain whether the responding tax-exempt organizations had their 501(c)(3) determinations revoked or were reclassified under a different tax-exempt subsection of the Code.

None of the 192 respondents reported that they were revoked or reclassified. However, 1 did not respond to the revocation question and 3 did not respond to the reclassification question.

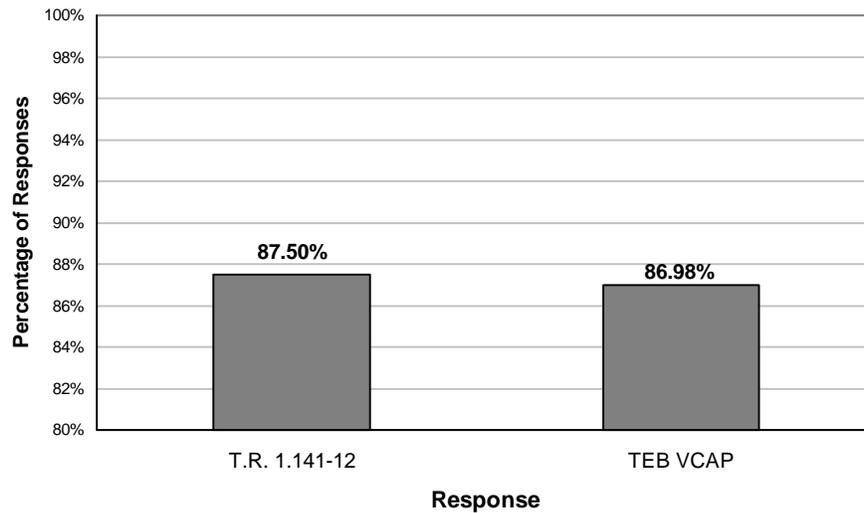
Question 6, Awareness of Remedial Actions and VCAP:

The purpose of this question was to ascertain the awareness of § 501(c)(3) organizations of either the self-correction remedial action provisions available under the Treasury Regulations or voluntary compliance options available under TEB VCAP.⁶

⁶ Tax Exempt Bonds Voluntary Closing Agreement Program (see Part II – Post-Issuance Compliance for Tax-Exempt Bonds, footnote 32).

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Voluntary Compliance Awareness



Of the 192 respondents, 168 (87.50%) and 167 (86.98%) reported that they are aware of the remedial action provisions described under Treas. Reg. § 1.141-12⁷ and TEB VCAP, respectively.

Part II, General Recordkeeping

The purpose of this part of the questionnaire was to ascertain the retention practices for tax-exempt bond related records and what specific records (both organizational and bond related) are being maintained by § 501(c)(3) organizations.

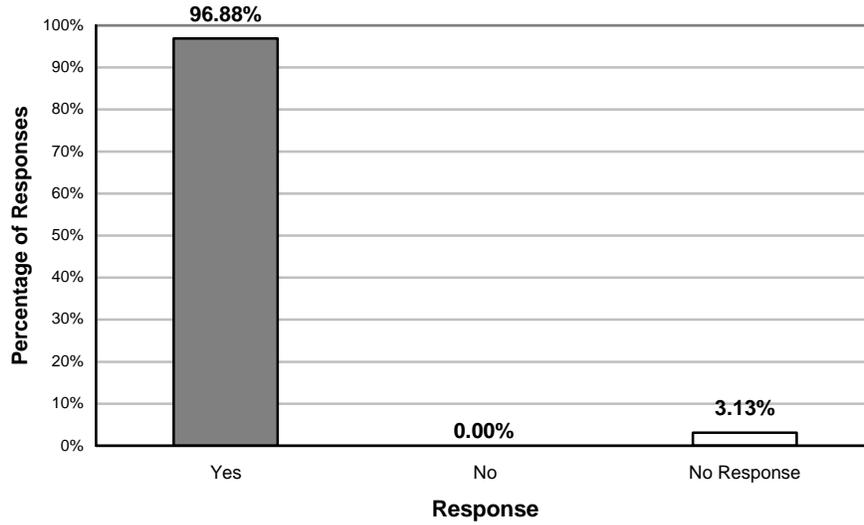
Question 7, Tax-Exempt Bond Records:

The primary purpose of this question was to ascertain whether tax-exempt organizations maintained records pertaining to their tax-exempt bonds. Secondly, the question also sought to determine how long organizations maintained such records.

⁷ As provided by Treas. Reg. § 1.145-2.

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Organizations Maintaining Records

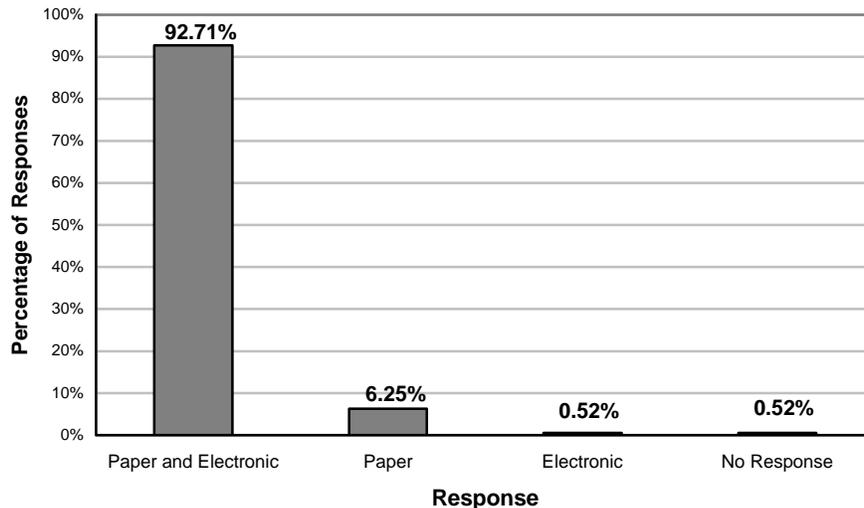


Almost all of the respondents (186 (96.88%)) reported that they maintain records pertaining to their tax-exempt bonds. However, six exempt organizations did not answer the question. In addition, 188 (97.92%) reported that they retain these records for at least the life of the bonds.

Question 8, Record Medium:

The purpose of this question was to determine what media § 501(c)(3) organizations typically use to maintain their bond-related records.

Medium for Maintaining Records



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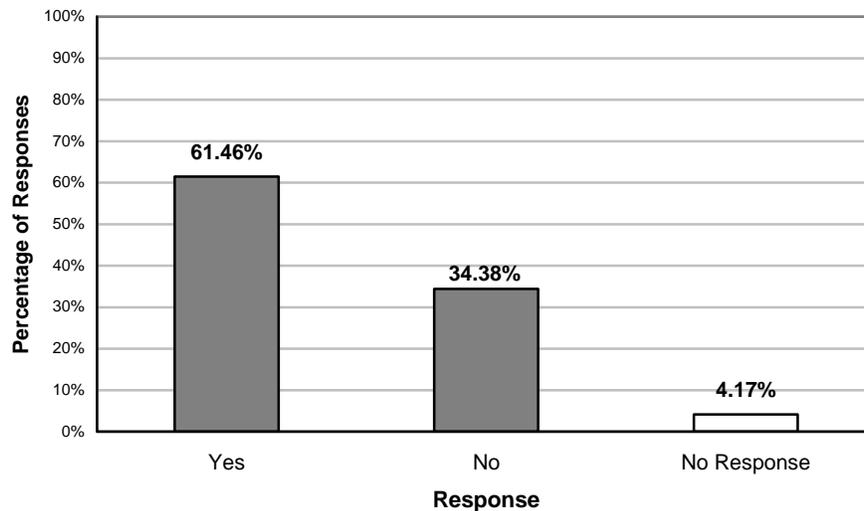
Of the 192 respondents, 178 (92.71%) reported that they used both paper and electronic media to maintain their records. Twelve (6.25%) reported that they used only paper media. One (0.52%) reported that it used only electronic media. One respondent (0.52%) did not provide an answer.

Question 9 (parts a through q), Retention of Copies of Records:

The purpose of this question was to determine what records the § 501(c)(3) organization maintains. The questions included record retention for general records required to be maintained by § 501(c)(3) organizations as well as records pertaining to the organization's tax-exempt bond financings.

The responses to the different parts of this question varied. Certain responding organizations indicated that some parts of the question were not applicable to them (e.g., parts c, e, k, l, m, n, p, and q), but only parts m, o, and q specifically provided for a not applicable ("N/A") response. It is presumed that some of these responding organizations may have either not responded to these parts due to the absence of an N/A option or responded with a No response. Because of the lack of an N/A response to these questions, they are not further commented on in this report.

Maintain Copy of Form 1023



Only 118 (61.46%) of the respondents reported, for part a, that they maintained a copy of their IRS Form 1023, *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*. Sixty-six (34.38%) reported that they did not maintain a copy of this form and 8 (4.17%) did not respond. Section 6104(d)(1)(a)(i) of the Code requires that a § 501(c)(3) organization provide, if requested, a copy of the application form for inspection by the public.

Almost all (190 or more respondents) indicated that they maintained copies of the following records:

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1. Most recently filed Form 990 (part f);
2. Audited financial statements (part g); and
3. Bond transcripts, official statements and other offering documents of their bond financings (part h).

Part III, Investments and Arbitrage Compliance

The purpose of this part of the questionnaire was twofold. One question sought to determine the retention level of specific records relating to investments and arbitrage compliance. The second question sought to identify the procedures or guidelines § 501(c)(3) organizations have implemented to monitor compliance with arbitrage yield restriction and rebate requirements.

Question 10, Maintenance of Allocations of Investments and Investment Earnings:

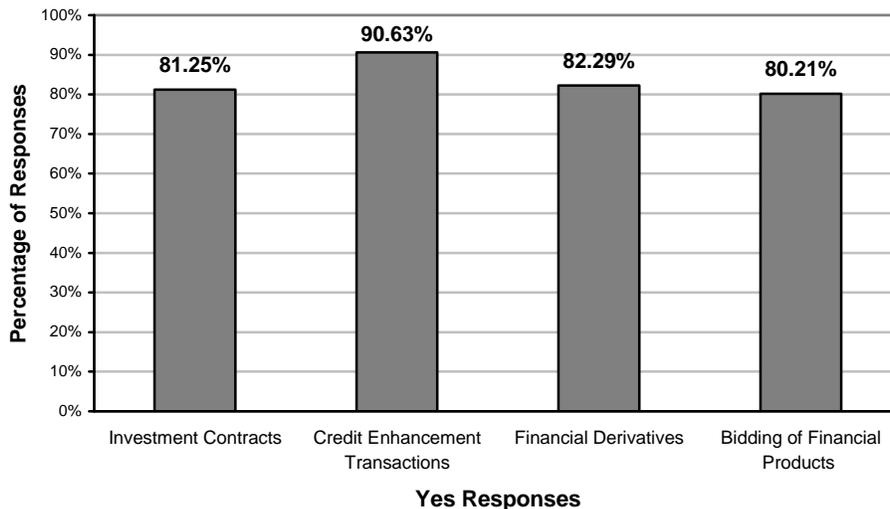
The purpose of this question was to ascertain the extent to which § 501(c)(3) organizations maintained records of their allocations of investments and investment earnings to their bond financings. These records are integral for investment and arbitrage compliance.

All 192 of the respondents reported that they maintained these records.

Question 11 (parts a through d), Records of Investments of Bond Proceeds:

The purpose of this question was to determine whether § 501(c)(3) organizations were maintaining specific records relating to the investment of their bond proceeds and matters relating to the bond yield. These records are integral in determining whether a bond issue meets the yield restriction and rebate requirements or is in jeopardy of being viewed as an arbitrage bond.

Maintenance of Records of Investments of Bond Proceeds

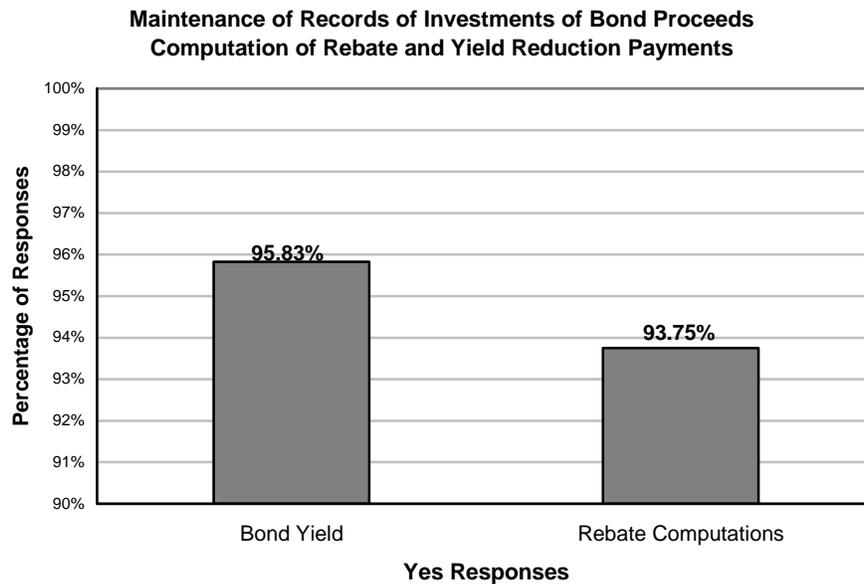


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At least 154 (80.21%) of the respondents reported that they maintained these records. However, a further review of the structure of the question indicates that some or all of the parts of the question may or may not be applicable to the responding organization. Some of the responding organizations may have not responded to these parts because an N/A option was not provided; or they may have responded with a Yes or No response when N/A would have been more appropriate. Because of the lack of an N/A option for this question, it is not further commented on in this report.

Question 12 (parts a through d), Maintenance of Arbitrage Related Records:

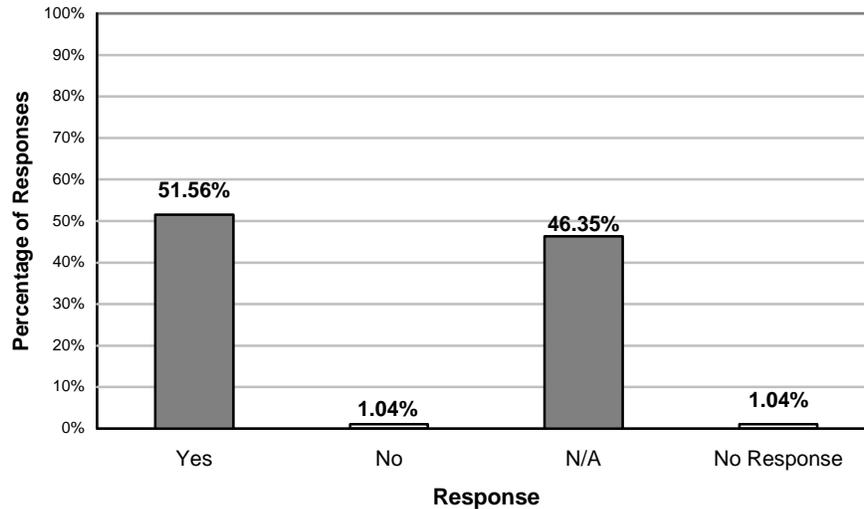
The purpose of this question was to determine whether organizations were maintaining specific records relating to the investment of proceeds of their bond issue. These records are integral in determining the amount of arbitrage realized as well as the timely submission of rebate or yield reduction payments.



Of the 192 respondents, 184 (95.83%) reported that they maintained records relating to their computations of bond yield (question 12a), and 180 (93.75%) reported that they maintained records relating to their computations of rebate and yield reduction payments (question 12b).

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**Maintenance of Records of Investments of Bond Proceeds
Form 8038-T**



Of the 192 respondents, 99 (51.56%) indicated that they retained Form 8038-T; 2 (1.04%) indicated that they did not retain this form; 89 (46.35%) indicated that this question was not applicable to them; and 2 (1.04%) did not respond.

Part d of the question relating to retention of Form 8038-R did not offer a N/A option. Some of the responding organizations may not have responded to this part because an N/A option was not provided; or they may have responded with a Yes or No response when N/A would have been more appropriate. Because of the lack of an N/A response to this part, it is not further commented on in this report.

Questions 13 and 14, Procedures Relating to Monitoring Arbitrage Activities:

The purpose of these questions was to determine whether § 501(c)(3) organizations had written procedures or guidelines for monitoring their compliance with applicable arbitrage yield restriction and rebate requirements. In order to ensure compliance with the arbitrage requirements under § 148 of the Code (including the requirement to rebate excessive arbitrage earnings to the U.S. Treasury), procedures should be instituted that monitor investment activities that may result in arbitrage noncompliance.

Eighty-nine respondents (46.35%) to question 13 reported that they have procedures to monitor compliance with applicable yield restriction requirements on subsequent reinvestment of bond proceeds in lower yielding investments. One hundred organizations (52.08%) reported that this was not applicable to them.

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The respondents to question 14 were not offered the N/A option. Therefore, some of the responding organizations may not have responded to this question because the N/A option was not provided; or they may have responded with a Yes or No response when N/A would have been more appropriate. Because of the lack of the N/A option to this question, it is not further commented on in this report.

Part IV, Expenditures and Assets

Questions 15 through 22, Expenditures and Assets Records:

The purpose of this part of the questionnaire was to determine the retention level of specific records relating to allocations of bond proceeds to expenditures, including whether § 501(c)(3) organizations were maintaining records of the expenditures made from bond proceeds; and whether they were maintaining records of assets purchased with bond proceeds.

Respondents to these questions, for the most part (96.88% to 100.00%), reported that they do maintain these records.

Part V, Private Business Use

The purpose of this part of the questionnaire was to determine the retention level of specific records relating to private business (unrelated trade or business) use of bond-financed facilities as well as the trade or business activities by third parties who utilize the bond-financed facilities. In addition, this part also attempted to ascertain what types of arrangements § 501(c)(3) organizations entered into with respect to their bond-financed property.

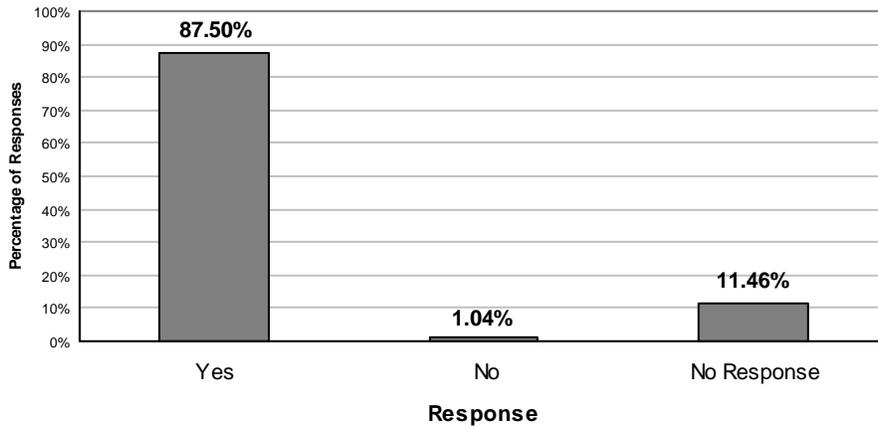
Question 23, Maintenance of Unrelated Trade or Business Activity Records:

The purpose of this question was to ascertain whether § 501(c)(3) organizations maintained records relating to the unrelated trade or business use of their bond-financed facilities. This question is integral in determining whether the bond issue remains in compliance with the modified private business tests,⁸ which limit to only 5% the amount of bond proceeds that may be used to finance unrelated trade or business use of bond-financed property.

⁸ §§ 145(a)(2) and 141(b).

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Maintenance of Unrelated Trade or Business Records



One hundred seventy of the 192 respondents (88.54%) responded to this question. Of the 192 respondents, 168 (87.50%) indicated that they keep these records. Twenty-two (11.46%) provided no response.

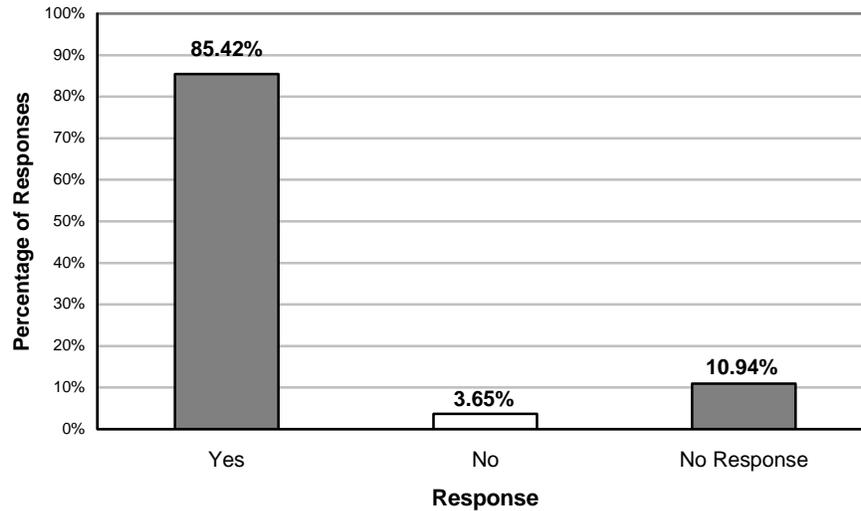
However, the respondents to question 23 were not offered an N/A option. As a result, some of the responding organizations may have not responded to this question because an N/A option was not provided.

Question 24, Maintenance of Trade or Business Use Activity Records of Bond-Financed Property by Third Parties:

The purpose of this question was to determine whether § 501(c)(3) organizations maintained records of the trade or business activities of third parties who had use of the bond-financed facilities. As with question 23, this is integral in determining whether the bond issue remains in compliance with the 5% threshold of the modified private business tests.

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**Maintenance of Records of Trade or
Business Activities of Third Parties**



One hundred seventy-one of the 192 respondents to the questionnaire (89.06%) responded to this question. Of the 192 respondents, 164 (85.42%) reported that they keep these records. Twenty-one (10.94%) provided no response.

However, the respondents to question 24 were not offered an N/A option. As a result, some of the responding organizations may have not responded to this question because an N/A option was not provided.

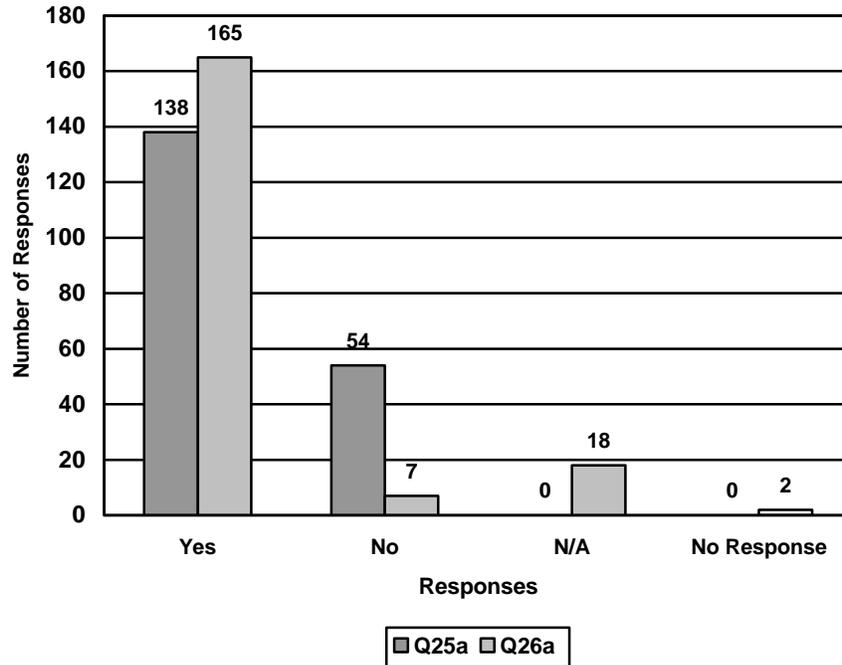
Questions 25 and 26, Arrangements for Bond-Financed Property:

The purpose of these questions was to determine what types of potentially nonqualified or “bad” use arrangements were entered into by § 501(c)(3) organizations and whether records were maintained with respect to these arrangements.

Question 25 asked whether the § 501(c)(3) organization entered into certain business arrangements that could potentially jeopardize the tax-exempt status of the bond issue if it relates to an unrelated trade or business activity, and whether the respondents maintained records for the arrangements. The following chart shows the responses to questions 25a and 26a regarding whether they entered into any management and other service agreements, and whether they maintained copies of these agreements.

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Questions 25a & 26a Management/Services Agreements



The respondents to questions 25a and 26a were not offered an N/A option. However, certain respondents to question 26a wrote “N/A” next to the Yes and No boxes on the returned questionnaire. Nonetheless, some of the responding organizations may not have responded to this question because an N/A option was not provided; or they may have responded with a Yes or No response when an N/A response would have been more appropriate.