

Policy

Draft 01/27/2017

No.: _____

FISCAL MANAGEMENT

TAX EXEMPT BONDS – POST ISSUANCE COMPLIANCE

I. Statement of Policy

From time to time, the District finances its capital projects or operation by issuing tax-exempt Bonds, as defined more fully in Section II of this Policy. It is the Policy of the District to comply fully with the legal requirements for maintaining the tax-exempt status of the bonds and the interest paid on Bond proceeds after the issuance of the Bonds. The purpose of this Policy is to establish standards of conduct that maximize the likelihood that District-issued Bonds will retain their tax-exempt or tax-advantaged status under the applicable federal law and rules, including the Internal Revenue Code of 1986 and applicable regulations.

II. Definitions

“Applicable Federal Law” means the Code and related Treasury Regulations.

“Arbitrage” means earnings from the investment of Bond proceeds in excess of the amount that would have been earned had the funds been invested at the Bond yield, adjusted for certain expenses.

“Bond” or “Bonds” means all bonds, notes, installment purchase agreements, and other tax-exempt or tax-advantaged debt obligations that are issued by or on behalf of the District.

“Code” means the Internal Revenue Code of 1986.

“Issuer” means the District.

“Private Business Use” has the meaning given in the Code, including but not limited to the use of Bond-financed assets by third parties pursuant to leases, management or service agreements that do not meet compliance requirements, any “naming rights” agreement, any “public-private partnership” arrangement, and any other arrangement that allows a third party to use or otherwise benefit from Bond-financed property.

“Tax Certificate” means the arbitrage and tax compliance certificate signed by the District at the closing of a Bond issuance in which the District makes representations, warranties, and covenants relating to the expected use of Bond proceeds and the tax eligibility of the financed projects.

“Treasury Regulations” means the regulations applicable to tax-exempt bonds promulgated by the Internal Revenue Service pursuant to the Code.

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III. Assignment of Responsibility

- A. The Board has the final responsibility for monitoring whether the District is in compliance with post-issuance requirements for the District's tax-exempt Bonds. However, the District's ~~xxx~~, under the supervision of the Superintendent, ("the Bond Compliance Monitor") shall have the primary operating responsibility to monitor the District's compliance with those requirements and to recommend to the Board actions necessary to comply with this Policy and applicable laws and regulations.
- B. The Bond Compliance Monitor shall insure that this Policy is communicated to all District officers and staff with responsibility or control over any aspect of the issuance by the District of tax-exempt Bonds, the investment or expenditure of Bond proceeds, or the use of Bond-financed assets, including those who manage, direct, or influence the following:
1. the pre-issuance process and decision-making, including identification of eligible projects;
 2. the expenditure of Bond proceeds and District funds for project costs;
 3. the investment of Bond proceeds and other District funds;
 4. the use of all facilities and other assets financed or refinanced by Bonds, including use by the District or third parties pursuant to leases, management agreements, service agreements, fee-for-use, or other arrangements;
 5. the sale or other disposition of any facilities or other assets financed or refinanced by Bonds;
 6. the creation and retention of documentation relating to expenditure of Bond proceeds, the use and disposition of Bond-financed assets, Arbitrage and tax return filings; and
 7. the recording and reporting of financial transactions related to Bonds.
- C. The Bond Compliance Monitor and other responsible staff of the District should receive education and training regarding the tax compliance

Business Manager

Comment [A1]: This would typically be the Assistant Superintendent for Business or the School Business Official. It could be the Treasurer. Alternatively, it could be the Superintendent, in consultation with the business position.

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requirements relating to tax-exempt Bonds and are authorized to attend relevant educational seminars or programs, with the prior approval of the Superintendent. A record shall be kept of all such education or training received by the Bond Compliance Monitor and other responsible District staff, and this information shall be reported to the Board at least annually.

IV. Expenditure and Use of Bond Proceeds

A. Expenditure of Bond Proceeds

1. Bond proceeds, including investment earnings thereon, shall be disbursed only for project costs, capitalized interest (i.e., interest payments during project construction), Bond issuance costs and other purposes expressly allowed under the Bond documents and authorizing bond ordinances. All Bond-financed property must be owned by the District.
2. If the District intends to reimburse itself from Bond proceeds for project costs paid prior to issuance of the Bonds, the District shall adopt a declaration of official intent to reimburse project costs that meets the requirements of Applicable Federal Law after consultation with nationally recognized bond counsel.

B. Final Allocation of Bond Proceeds

Promptly after the final expenditure of Bond proceeds, the Bond Compliance Monitor shall prepare a written report documenting the allocation of Bond proceeds (including interest earnings thereon) and other District funds to project expenditures (the "Final Allocation"). In all cases, the Final Allocation shall be completed within 18 months after the later of the date Bond proceeds are expended or the date the project is placed in service, but not later than 5 years after the Bonds were issued. The Bond Compliance Monitor is authorized to consult with nationally recognized bond counsel in connection with the Final Allocation of Bond proceeds.

C. Private Business Use of Bond-Financed Property

1. No more than ten percent (10%) of Bond proceeds may be used for Private Business Use and such use may occur only in accordance with the Tax Certificate and Applicable Federal Law.
2. Prior approval of the Bond Compliance Monitor is required for the following uses of Bond-financed property: use by third parties for

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trade or business activities, including leases, licenses, fee-for-use permits under Policy ~~xx~~, or other arrangements; management or service contracts under which the compensation of the manager or service provider is based on income from operation of the facility; and any other use that could potentially be considered Private Business Use under Applicable Federal Law.

Comment [A2]: Insert number of Policy on Community Use of School Facilities.

3. The Bond Compliance Monitor shall annually review all uses of Bond financed property and determine the percentage of Private Business Use of Bond-financed property, and shall report this percentage to the Board.
4. The Bond Compliance Monitor shall maintain a record of all Bond financed property, including the amount of Bond proceeds allocated to each asset, which shall be based on the Final Allocation of Bond proceeds described above. The Bond Compliance Monitor shall maintain records of all Private Business Use, if any, of Bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that any Private Business Use is within permissible limits under Applicable Federal Law.

D. Change of Use of Bond-Financed Property

Any significant change in the use of Bond-financed property must be reported to the Bond Compliance Monitor prior to implementation. The Bond Compliance Monitor shall determine whether the proposed new use may constitute Private Business Use. If the use may be Private Business Use, the Bond Compliance Monitor shall consult with counsel for tax advice on whether that use or arrangement, if put into effect, will be consistent with the restrictions on Private Business Use and, if not, whether any "remedial action" permitted under the Code may be taken by the District as a means of enabling that use.

E. Sale or Disposition of Bond-Financed Property

Any sale or other disposition of Bond-financed property must be reported to the Bond Compliance Monitor prior to execution of any agreement of sale or other agreement of disposition. The Bond Compliance Monitor shall determine whether the Bond-financed property has any remaining useful life in accordance with the Tax Certificate and Applicable Federal Law, and if so, consult with nationally recognized bond counsel as to the requirements of Applicable Federal Law applicable to the sale or other disposition and the

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appropriate "remedial action" permitted by the Code that must be undertaken by the District as a result of the potential sale or other disposition of the Bond-financed property.

V. Investment, Arbitrage and Rebate

A. Investment

Prior to expenditure for project costs, Bond proceeds shall be invested in compliance with the Local Finance Law, Applicable Federal Law and the Tax Certificate, and the District's Investment Policy (Policy No. ~~xxx~~). The District will invest Bond proceeds at a yield in excess of the Bond yield only during the applicable "temporary period" (as defined in the Code and the Treasury Regulations), and shall provide for yield restriction on the investment of such proceeds after the applicable temporary period. The District shall ensure that investments acquired with proceeds of an issue are purchased at "fair market value," as defined in Treasury Regulations.

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Comment [A3]: Insert the number of the District's Investment Policy. The Investment Policy is required by the General Municipal Law and Education Law.

B. Arbitrage and Rebate

The Bond Compliance Monitor shall determine whether the Bonds are eligible for an Arbitrage rebate exception. If the Bonds are not exempt from Arbitrage rebate, the Bond Compliance Monitor shall compute the amount of Arbitrage earnings, and make all required rebate payments to the IRS, on each computation date required by Applicable Federal Law. The Bond Compliance Monitor is authorized to retain an arbitrage rebate service provider to prepare arbitrage rebate calculations.

VI. Reissuance

Before modifying any Bond terms, the District shall consult with nationally recognized bond counsel to determine whether the proposed modification could potentially be treated as a "reissuance" of those Bonds for federal income tax purposes.

VII. Continuing Disclosure

If the District is subject to one or more Continuing Disclosure Undertakings as set forth in a bond resolution or separate continuing disclosure agreement, in order to comply with Rule 15c2-12 of the Securities and Exchange Commission, the Bond Compliance Monitor shall maintain records that includes a copy of each such Continuing Disclosure Undertaking and shall ensure that the information required to be disclosed is disclosed in a timely fashion.

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VIII. Filing of Returns

The District will work with nationally recognized bond counsel to prepare and file any returns with the IRS relating to Arbitrage rebate in a timely manner. The District will confirm with bond counsel that the information report required to be filed upon issuance of Bonds (e.g., Form 8038) was filed with the IRS on a timely basis.

IX. Corrective Actions

Upon discovering any violation of Applicable Federal Law including, but not limited to, excess Private Business Use, violation of Arbitrage restrictions or sale of Bond-financed assets, the Bond Compliance Monitor shall promptly consult with legal counsel to determine appropriate remedial action to correct such violation. If remedial action is not available, the District will undertake to remedy the violation through the IRS Voluntary Closing Agreement Program (VCAP).

X. Record Retention

The Bond Compliance Monitor is responsible for insuring that written records (which may be in electronic form) are maintained with respect to each Bond issue for as long as those Bonds (and any Bonds issued to refinance those Bonds) remain outstanding, plus three years. The records maintained shall include:

- basic records relating to the Bond issuance including the official transcript of proceedings;
- documentation evidencing expenditure of Bond proceeds including, but not limited to, purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of Bond issuance costs, and records of "allocations" of Bond proceeds to reimburse the District for project expenditures made before the Bonds were actually issued;
- records showing the specific assets financed with Bond proceeds (including assets to which Bond proceeds are allocated pursuant to the Final Allocation described above);
- information, records and calculations showing that, with respect to each Bond issue, the District was eligible for one of the Arbitrage rebate spending exceptions or, if not, that the Arbitrage rebate amount, if any, was calculated and timely paid to the IRS;
- documentation evidencing use of Bond-financed property by public and private entities (including copies of leases and management contracts);
- records showing that special use arrangements, if any, affecting Bond-financed property made by the District with third parties, if any, are consistent with

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applicable restrictions on Private Business Use of property financed with proceeds of tax-exempt Bonds;

- records of any sale or disposition of Bond-financed property, including terms of sale, and documentation of any "remedial action" undertaken as a result of the sale or other disposition; and
- documentation pertaining to any investment of proceeds of the issue, including the purchase and sale of securities, calculations for each class of investments and actual investment income received and Arbitrage rebate calculations.

DISTRICT

Adopted: _____