

## **Investment – Capital Project Fund**

This administrative regulation establishes the requirements and procedures for ensuring compliance with federal laws relating to the issuance and post-issuance monitoring of tax-exempt bonds and taxable Direct Pay Bonds.

### **Responsibilities**

This statement represents the objectives of the Forest Grove School District No. 15, Washington County, Oregon (the “district”) and will be adhered to by all employees, officials and financial representatives affiliated with the district. The district shall comply with all federal tax laws related to tax-exempt bonds, Direct Pay bonds and bond financed facilities prior to and after issuance. The district shall have procedures in place to ensure compliance with this policy including the retention of relevant documents. The director of business and support services is assigned the primary responsibility to monitor compliance with federal tax requirements for the district’s bond programs. The director of business and support services may assign staff responsibility for certain components of this policy.

### **Guidelines**

#### 1. Bond Issuances

With respect to all bond issues, the director of business and support services shall monitor and control the receipt, investment, expenditure and use of all bond proceeds and will take or omit to take any actions to cause interest on tax-exempt bonds to remain excludable from the gross income of bondholders. (United States Internal Revenue Code (the “Code”), Section (§)103 and 141 through 150)

#### 2. Direct Pay Bond Issuances

As part of the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”), Congress added §54AA and 6431 to the Code, which permits the district to obtain certain tax advantages when issuing taxable obligations for capital projects that meet certain requirements of the Code and Treasury regulations. Such bonds are referred to as “Direct Pay Bonds” (DPB’s).

- a. DPB’s election – upon issuance, the director of business and support services will make the irrevocable election to have the special rule for qualified bonds apply. Interest on qualified DPB’s is included in bond holder’s gross income for federal income tax purposes and owners of the bonds will not receive any tax credits as a result of ownership.
- b. Investor information – representatives of the district, including its financial advisors, if any, will not make statements to investors or other interested parties that imply any tax credits or income exclusions will apply.

- c. Available Project Proceeds – 100 percent of available project proceeds must be used only for capital expenditures. Available project proceeds are the proceeds the district receives from the bonds minus proceeds it is allowed to spend on costs of issuance, minus proceeds allowed to fund a reasonably required reserve (up to 10 percent), if allowed under the Code and Treasury regulations, plus earnings from investments.
- d. Two percent Cost of Issuance limitation – the district, through our financial advisors, will ensure the financed portion of costs to issue the bonds do not exceed 2 percent of the proceeds of the sale.
- e. De minimis premium – the district, with the guidance of financial advisors and underwriters, will ensure that no maturities are issued with more than the de minimis amount of premium as required by §54AA(d)(2)(C).
- f. Secondary market trading – the district, through our financial advisors, will review secondary market trading activity for Direct Pay bonds for the period between the sale date and the delivery date (date of issue) to determine if any of the bonds traded at a price greater than the issue price.
- g. Timely expenditure – in the case of Qualified School Construction Bonds (“QSCB”), the director of business and support services shall ensure that 100 percent of the QSCB proceeds are spent within three years of the issue date. Any unspent QSCB proceeds remaining after three years from the issue date shall be used to redeem the corresponding amount of QSCBs within 90 days of the end of the three year period. If the failure to spend the QSCB proceeds within three years is due to reasonable cause, the director of business and support services may request an extension of the three year period from the IRS.
- h. Timely expenditure – expenditure of bond proceeds shall be reviewed by the district no less than annually, to ensure: (a) proceeds are spent for the purpose stated in the authorizing resolution and as described in the tax documents; and (b) proceeds, together with investment earnings on such proceeds, are spent within the timeframes described in the Tax Documents.

### 3. Private Activity Limitation

Section 141 of the Code sets forth private activity tests for the purpose of limiting the volume of tax-exempt bonds that finance activities of persons other than state and local governmental entities. These tests serve to identify arrangements that actually or reasonably expect to transfer the benefits of tax-exempt financing to non-governmental persons, including the federal government. Following the issuance of bonds for the financing of property, the director of business and support services shall provide to the users of the property a copy of this Compliance Policy and other appropriate written guidance advising that:

- a. “Private business use” means use by any person other than the district, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond finance property;
- b. No more that 10 percent of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5

- percent of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use – that is, generally, a private business use that is not functionally related to the government’s purposes of the bonds; and no more than the lesser of \$5,000,000 or 5 percent of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;
- c. Before entering into any special use arrangement with a non-governmental person that involves the use of bond financed property, the user must consult with the director of business and support services, provide the director of business and support services with a description of the proposed non-governmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond financed property;
  - d. In connection with the evaluation of any proposed non-governmental use arrangement, the director of business and support services will consult with bond counsel to obtain federal tax advice in whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond financed property, and, if not, whether any “remedial action” permitted under §141 of the Code may be taken as means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds.

#### 4. Information Filing and Monitoring

At the time of issuance and throughout the bond life, issuers of governmental bonds must comply with certain information filing requirements under §149(e) of the Code:

- a. Tax-exempt bonds: IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) must be filed by the 15th day of the second calendar month following the quarter in which the bonds were issued. For example, the due date of Form 8038-G for bonds issued on February 15th is May 15th.
- b. Direct Pay (DPB’s) bonds: IRS Form 8038-B (Information Return for Build America Bonds) or Form 8038-TC (Information Return for Tax Credit Bonds), as applicable, must be filed by the 15th day of the second calendar month following the quarter in which the bonds were issued.
- c. The director of business and support services works with the district’s bond counsel to complete and file each applicable Form 8038-G, 8038-B or 8038-TC by the required due date after each bond issue.
- d. Refundable Credit on Direct Pay bonds (DPB’s): IRS Form 8038-CP (Return for Credit Payment for Qualified Bonds) must be filed no later than 45 days before the related interest payment date, but no earlier than 90 days before the payment date. The director of business and support services will verify bond interest payable semiannually 90 days before debt service payments are due and determine the refundable credit allowed for the interest portion of the payment. Federal rebates are payable only to the district and will be credited to the related debt service fund.
- e. IRS Form 8038-T (Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate) must be filed within 60 days after each five year period reporting deadline or within 60 days after the debt is retired, if arbitrage rebate applies (See Section 5).

## 5. Arbitrage Rebate

Tax-exempt obligations and DPBs provide a less expensive means of financing than other conventional approaches, resulting in a significant interest savings benefit. The federal government has imposed a variety of rules to restrict the use of tax-exempt financing and DPBs to prevent potential abuse. It is the district's policy to minimize the cost of arbitrage rebate and yield restriction while strictly complying with the law.

- a. Definition of "arbitrage" – the ability to obtain tax-exempt and DPB proceeds and invest those funds in higher yielding securities, resulting in a profit to the issuer. Arbitrage is the difference (profit) earned.
- b. Timeline – an arbitrage rebate installment payment is required to be paid no later than 60 days after the end of every fifth bond year throughout the term of a bond issue and within 60 days of retirement of the bonds.
- c. Exceptions – there are exceptions to the general rebate requirements applicable to government bond proceeds: the most common being the small issuer exception and spending exceptions. The director of business and support services shall consult with the district's bond counsel to determine if any exceptions to rebate apply.
- d. Monitoring – the director of business and support services will monitor ongoing compliance with regards to arbitrage liabilities and will monitor expenditures prior to semi-annual target dates for 6-, 18- or 24-month spending exceptions.
- e. "Bona fide" debt service funds – when possible, debt service funds will be accounted for and funded to achieve a proper matching of revenues with principal and interest payments within each bond year so the earnings are exempt from arbitrage.
- f. Schedule – the director of business and support services will maintain a schedule of each bond issue and the fifth bond year. The director of business and support services reviews the schedule no less than annually to determine when a fifth bond year is approaching. Arbitrage rebate calculations on outstanding bond issues may be performed as often as annually or in alternating years, but never longer than the fifth year.
- g. Calculations – the district has the option to perform arbitrage calculations internally or to contract with a third party provider for arbitrage rebate calculations and preparation of IRS Form 8038-T (Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate). Third party providers shall be requested to maintain a list of our bond issues and scheduled fifth anniversary bond years.
- h. Procedures – the district will either complete the calculations internally or provide a third party provider with copies of all applicable records 30 to 60 days before the reporting deadline for the third party provider to prepare the arbitrage calculations and submit a report and IRS Form 8038-T, if applicable, to the district.
- i. Yield Restriction – The director of business and support services will monitor ongoing compliance with regards to yield restriction. Interim arbitrage calculations will be used to evaluate investment strategies or optional elections that may reduce future rebate liabilities.
- j. Payment – if positive arbitrage exists at the end of a fifth year bond period, the district will prepare payment to submit with IRS Form 8038-T. Payment must equal at least 90 percent of the amount due as of the end of that fifth bond year.
- k. Redemption – upon redemption of a bond issue, a payment of 100 percent of the amount due must be paid no later than 60 days after the discharge date.

1. Advance Refunding Escrows – State and Local Government Securities (SLGs) are commonly used for refunding escrows to yield restrict the investments. The district works with its financial advisor to ensure SLGS for a refunding escrow account meet the yield restriction requirement.

## 6. Records Retention

- a. This policy supersedes any other general document retention policy with respect to the retention of documents related to bonds and bond financed facilities.
- b. The district shall maintain all material records and information necessary to support a municipal bond issue's compliance with §103 of the Code.
- c. All records should be kept in a manner that ensures their complete access for so long as they are material. Electronic media is the preferred method for storage of all documents required under this policy directive.
- d. Except as stated in E. below, material records should generally be kept for as long as the bonds are outstanding, plus three years after the final redemption date of the bonds.
- e. For certain federal tax purposes, a refunding bond issue is treated as replacing the original new money issue. To this end, the tax-exempt status of a refunding issue is dependent upon the tax-exempt status of the refunded bonds. Thus, certain material records relating to the original new money issue and all material records relating to the refunding issue should be maintained until three years after the final redemption of both bond issues.
- f. State record retention policies should also be considered, but in the event of a discrepancy, the guidelines established by the IRS shall prevail.
- g. Although the required records to be retained depend on the transaction and the requirements imposed by the Code and the regulations, records common to most transactions include:
  - (1) Basic records relating to the bond transaction (including the Official Statement, Board minutes and resolutions authorizing issuance, trustee statements, and bond counsel opinion);
  - (2) Documentation directing, authorizing and showing expenditure of bond proceeds, including purchase contracts, construction contracts, progress payments, invoices, cancelled checks, and payment of bond issuance costs;
  - (3) Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts);
  - (4) Documentation evidencing all sources of payment or security for the bonds;
  - (5) Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received, the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- h. Information, records and calculations showing that, with respect to each bond issue, the Issuer was eligible for the "small issuer" exception or one of the spending exceptions to the arbitrage rebate requirements.
- i. All tax returns and other communication related to the bonds such as IRS Forms 8038-G, 8038-T 8038-TC and 8038-R.
- j. Any other documentation that is material to the bonds or the bond financed facilities based on particular facts.

The list above is general and only highlights the basic records that are typically material to many types of tax-exempt bond financings. Each transaction is unique and may, accordingly, have other records that are material to the requirements applicable to that financing. The decision as to whether any particular record is material must be made on a case-by-case basis and could take into account a number of factors, including, for instance, the various expenditure exceptions.

7. Reimbursement Resolutions

The director of business and support services is responsible for ensuring that Reimbursement Resolutions are prepared in accordance with §1.150-2 of the U.S. Treasury regulations for projects the district intends to finance with bonds.

8. Bond Proceed Expenditures

Expenditures from bond proceeds will be in accordance with the district's prevailing expenditure and delegation of district policies.

9. Bond Proceed Investments

Bond proceeds will be invested in accordance with the district's prevailing Investment Policy.

10. Education and Training

The director of business and support services and his or her designated staff are responsible for staying current with any changes in the rules for tax-exempt and Direct Pay bonds. The district recognizes that such education and training is vital as a means of helping to ensure compliance with federal tax requirements in respect of its bonds. The director of business and support services may rely upon outside advisors for assistance and guidance with these matters.

11. Material Event Disclosure (SEC, MSRB)

The district will comply with all continuing disclosure requirements under SEC Rule 15c2-12. The Rule prohibits any broker, dealer, or municipal securities dealer from acting as an underwriter in a primary offering of municipal securities unless the issuer promises in writing to provide certain ongoing information. The annual financial information is to be sent to the MSRB as designated by the SEC. The director of business and support services will make notification in a timely manner, of any events described in the Continuing Disclosure Certificate entered into in connection with a series of bonds.

12. Due Diligence and Remedial Actions

In all activities related to bonds issued by or on behalf of the district, staff will exercise due diligence to comply with IRS Code governing tax-exempt and Direct Pay Bonds. The issuer is aware of: (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the Internal Revenue Service which allows issuers to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements; and (b) the remedial actions available under

§1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the bonds were issued.

13. Periodic Review

The director of business and support services will monitor compliance with the guidelines contained in this policy as well as any other covenants not specifically included herein.