POST ISSUANCE COMPLIANCE

The procedures set forth in this regulation are intended to guide the District in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed bonds of the District. This regulation addresses obligations of the District that arise and will continue following the issuance of bonds. These obligations may arise as a result of federal tax law (with respect to tax-exempt bonds) and bonds laws (with respect to ongoing disclosure) or as a result of contractual commitments made by the District to buyers of its bonds.

This regulation outlines obligations that may be applicable to each issue of bonds and identifies the party to be responsible for monitoring compliance. In the District, the Chief Financial Officer, Business Support Services (“CFO”), will be responsible for ensuring that the regulation is followed and checklists and records maintained. The CFO may delegate responsibility to employees and outside agents for developing records, maintaining records and checklists. The District will provide educational opportunities (opportunities to attend educational programs/seminars on the topic) for the parties identified in this regulation with responsibilities for post-issuance compliance in order to facilitate their performance of these obligations.

A. **Transcripts.**

   1. The District’s bond counsel will provide the District with two copies of a full transcript related to the issuance of bonds (for each issue). The transcript will typically be delivered in the following form: one soft cover bound transcript and one in digital format. It is expected that the transcript will include a full record of the proceedings related to the issuance of bonds, including proof of filing an 8038-G, 8038-GC, 8038-B or 8038-TC, if applicable.

   2. Bond transcripts will be retained by the following parties and in the following locations within the District: the CFO and the Finance Department.

B. **Federal Tax Law Requirements** - Will be applicable only if bonds are issued as “tax-exempt” or other tax-benefited bonds.

   1. **Use of Proceeds.**

      a. If the projects to be financed with the proceeds of the bonds will be funded with multiple sources of funds, the District may adopt any of the following accounting methodologies:

         - Maintain each source of funding separately and monitor the actual expenditure of proceeds of the bonds;

         - Commingle the proceeds and monitor the expenditures on a first in, first out basis; or
• Provide for the expenditure of funds received from multiple sources on a proportionate basis.

b. Records of expenditures (timing of expenditure and object code) of the proceeds of bonds will be maintained by the Finance Department.

c. Records of investments and interest earnings on the proceeds of bonds will be maintained by the Finance Department. These records should include the amount of each investment, the date each investment is made, the date each investment matures and if sold prior to maturity, its sale date, and its interest rate and/or yield. Interest earnings on proceeds will be deposited in the fund in which proceeds of the bonds were deposited (if not, then the plan for use of interest earnings will be discussed with the District’s bond counsel).

d. Records of interest earnings on debt service reserve funds maintained for the bonds, if any. (The District is unlikely to establish debt service reserve funds for its general obligation bonds.)

2. Arbitrage Rebate. The CFO or her or his designee will act as rebate monitor for District bonds (the “Rebate Monitor”), i.e., to monitor compliance with the arbitrage rebate obligations of the District for each issue of bonds that are described in further detail in the Federal Tax Certificate executed by the District for each issue and included in the transcript for the issue. The CFO may delegate responsibility to employees and outside contractors for developing records, maintaining records and checklists. The District may provide or will support the use of professional development funds for educational opportunities (opportunities to attend educational programs/seminars on the topic) for the members of the Finance Department, including the CFO to facilitate the performance of these obligations.

a. If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the District issued or incurred by the District during the calendar year, including the issue, will not be greater than $5,000,000, plus such additional amount not in excess of $10,000,000 as is to be spent for the construction of public school facilities, the Rebate Monitor will not be required to monitor arbitrage rebate compliance, except to monitor expenditures and the use of proceeds after completion of the project (see #3 below). For purposes of this paragraph, tax-exempt governmental obligations issued to currently refund a prior tax-exempt governmental obligation will only be taken into account to the extent they exceed the outstanding amount of the refunded bonds.

b. If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the District issued or incurred during any calendar year is greater than $5,000,000, plus such additional amount not in excess of $10,000,000 as is to be spent for the construction of public facilities, the Rebate Monitor will monitor rebate
compliance for each issue of tax-exempt governmental obligations issued during that calendar year.

i. **Rebate Exceptions.** The Rebate Monitor will review the tax certificate in the transcript to determine whether the District expected to comply with a spending exception that would permit the District to avoid having to pay arbitrage rebate. If the tax certificate identifies a spending exception (referred to as the six-month exception, the 18-month exception or the 24-month spend-down exception), then the Rebate Monitor will monitor the records of expenditures (see B.1 above) to determine whether the District met the spending exception (and thereby avoid having to pay any arbitrage rebate to the federal government).

ii. **Rebate Compliance.** If the District does not meet or does not expect to meet any of the spending exceptions described in (i) above, the District will:

   a. review the investment earnings records retained as described in B.1 above and determine whether the District should obtain the services of an arbitrage rebate consultant.

   b. as appropriate, retain the services of an arbitrage rebate consultant to calculate any potential arbitrage rebate liability. The rebate consultant will be selected no later than the completion of the project to be financed with the proceeds of the issue. A rebate consultant may be selected on an issue by issue basis or for all bonds issues of the District. The Rebate Monitor will select the rebate consultant in accordance with the District’s applicable procurement policies for professional services. The selected rebate consultant will provide a written report to the District with respect to the issue and with respect to any arbitrage rebate owed if any.

   c. based on the report of the rebate consultant, file reports with and make any required payments to the Internal Revenue Service, no later than the fifth anniversary of the date of each issue (plus 60 days), and every five years thereafter, with the final installment due no later than 60 days following the retirement of the last obligation of the issue.

   c. **Yield Reduction Payments.** If the District fails to expend all amounts required to be spent as of the close of any temporary period specified in the Tax Certificate (generally 3 years for proceeds of a new money issue and 13 months for amounts held in a debt service fund), the District will follow the procedures described in B.2.b.ii above to determine and pay any required yield reduction payment.

3. **Unused Proceeds Following Completion of the Project.** Following completion of the project(s) financed with the issue proceeds, the CFO will:
a. review the expenditure records to determine whether the proceeds have been allocated to the project(s) intended (and if any questions arise, consult with bond counsel in order to determine the method of re-allocation of proceeds); and

b. direct the use of remaining unspent proceeds (in accordance with the limitations set forth in the authorizing proceedings (i.e., bond ordinance) and if no provision is otherwise made for the use of unspent proceeds, to the redemption or defeasance of outstanding bonds of the issue.

4. Use of Facilities Financed with Bond Proceeds. To maintain the tax-exemption of District bonds issued on a tax-exempt basis, the bond-financed facilities (projects) are required to be used for governmental purposes during the life of the issue. The CFO, will monitor and maintain records regarding private use of the projects financed with tax-exempt bond proceeds. Except for permitted de minimis amounts, IRS Treasury Regulations prohibit private business use (use by private parties, including nonprofit organizations and the federal government) of tax-exempt financed facilities.

Private use beyond the de minimis amounts may be “cured” by a prescribed remedial action. The permitted de minimis amount of private use is usually approximately 10% of all project facilities financed by a single bond issue, but determining the correct analysis of private activity and the options for remedial action, if necessary, are complex questions that should be discussed with bond counsel.

Private use may arise as a result of:

a. Sale of the facilities;

b. Lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, hosting of cell phone towers, for example);

c. Management contracts (in which the District authorizes a third party to operate a facility, a cafeteria, for example);

d. Preference arrangements (in which the District permits a third party preference for use of a bond-financed facility, parking in a public parking lot, for example).

If the CFO identifies private use of tax-exempt debt financed facilities, the CFO, will consult with the District’s bond counsel to determine whether private use will adversely affect the tax-exempt status of the issue and if so, what remedial action is appropriate.

5. Records Retention.

a. Records with respect to matters described in this Subsection B will be retained by the District for the life of the bonds issue (and any issue that refunds the bonds issue) and for a period of three years thereafter.
b. Records to be retained:

(i) The transcript;

(ii) Arbitrage rebate reports prepared by outside consultants;

(iii) Work papers that were provided to the rebate consultants;

(iv) Records of expenditures and investment receipts (showing timing of expenditure and the object code of the expenditure and in the case of investment, timing of receipt of interest earnings). Maintenance of underlying invoices should not be required provided the records include the date of the expenditure, payee name, payment amount and object code; however, if those documents are maintained as a matter of policy in electronic form, then continue to maintain those records in accordance with this policy.

(v) Copies of all certificates and returns filed with the IRS (for example, payment of arbitrage rebate).

(vi) Copies of all leases and user agreements for use of bond-financed property (agreements that provide for use of the property for periods longer than 30 days), whether or not the use was within the four walls (for example, use of the roof of a facility for a cell phone tower).

C. **Ongoing Disclosure.** Under the provisions of SEC Rule 15c2-12 (the “Rule”), underwriters are required to obtain an agreement for ongoing disclosure in connection with the public offering of bonds. Unless the District is exempt from compliance with the Rule as a result of certain permitted exemptions, the transcript for each issue will include an undertaking by the District to comply with the Rule. The undertaking may be included in the Board resolution that authorized issuance of bonds.

The CFO will monitor compliance by the District with its undertakings. These undertakings may include the requirement for an annual filing of operating and financial information and will include a requirement to file notices of certain listed events. Filings currently must be made on the web-based “Electronic Municipal Market Access” system (known as EMMA) established by the Municipal Bonds Rulemaking Board. For some listed events (early bond calls), the State’s fiscal agent has undertaken the responsibility for filing notice of the event.

The District’s currently applicable undertakings require the District to file on EMMA annual financial information and operating data no later than May 31 each year for the fiscal year that ended on the preceding August 31. The district will be responsible for following appropriate guidelines of filing on EMMA based on the type of undertaking.
D. **Other Notice Requirements.** In some instances, the proceedings authorizing the issuance of bonds will require the District to file information periodically with other parties, e.g., bond insurers, bank lenders, rating agencies. The types of information required to be filed may include (1) budgets, (2) annual financial reports, (3) issuance of additional debt obligations, and (4) amendments to financing documents. The CFO, will maintain a listing of those requirements and monitor compliance by the District.

Legal References:
WAC 392-123 Finance--School District Budgeting
39.44 Bonds--Forms, Terms of sale, Payment, etc.
Securities and Exchange Commission amended rule 15c2-12
Government Accounting Standards Board (GASB) Statements 34 and 38

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