

Governmental Bonds: Post Issuance Compliance

This policy is intended to guide West Valley School District No. 208, Yakima County, Washington in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed securities of the District. This policy addresses obligations of the District that arise and will continue following the issuance of securities. These obligations may arise as a result of federal tax law (with respect to tax-exempt securities) and securities laws (with respect to ongoing disclosure) or as a result of contractual commitments made by the District. This policy outlines obligations that may be applicable to each issue of securities and identifies the party to be responsible for monitoring compliance. In the District, the Superintendent, or designee will be responsible for ensuring that the policy is followed and checklists and records maintained. The Superintendent, or designee 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 policy with responsibilities for post-issuance compliance in order to facilitate their performance of these obligations.

A. Transcripts.

1. The District's bond counsel shall provide the District with two copies of a full transcript related to the issuance of securities (for each issue). The transcript shall be delivered in the following forms: one bound paper copy and one USB key (thumb drive) and transcripts shall be delivered to the District within six months following the date of issuance of securities. It is expected that the transcript will include a full record of the proceedings related to the issuance of securities, including proof of filing an 8038-G or 8038-GC, if applicable.

2. Bond transcripts will be retained by the following parties and in the following locations within the District: Superintendent, or designee in the District Office.

B. Federal Tax Law Requirements (Applicable only if the securities are issued as "tax-exempt" securities).

1. *Use of Proceeds.*

a. If the project(s) to be financed with the proceeds of the securities will be funded with multiple sources of funds, the District will adopt an accounting methodology that:

- ◆ maintains each source of funding separately and monitors the actual expenditure of proceeds of the securities;

- ◆ commingles the proceeds and monitors the expenditures on a first in, first out basis; or
- ◆ provides 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 securities will be maintained by the Superintendent, or designee.

c. Records of investments and interest earnings on the proceeds of securities will be maintained by the Superintendent, or designee. Such 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 the proceeds of the securities 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 reserve funds maintained for the securities.

2. *Arbitrage Rebate.* The Superintendent, or designee of the District ("Rebate Monitor") will monitor compliance with the arbitrage rebate obligations of the District for each issue ("issue") of securities which are described in further detail in the tax certificate if any, executed by the District for each issue and included in the transcript for the issue. If the District did not execute a tax certificate in connection with an issue, the Rebate Monitor should consult with the District's bond counsel regarding arbitrage rebate requirements. The District will provide educational opportunities (opportunities to attend educational programs/seminars on the topic) for the Superintendent, or designee in order to facilitate his/her 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 by or on behalf of the District and subordinate entities 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 for the issue, 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 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 school 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, if any, in the transcript in order to determine whether the District is expected to comply with a spending exception that would permit the District to avoid having to pay arbitrage rebate. If the tax certificate identifies this spending exception (referred to as the six-month exception, the 18 month exception or the 2-year 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). If the District did not execute a tax certificate in connection with an issue, the Rebate Monitor should consult with bond counsel regarding the potential applicability of spending exceptions.

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:

x. review the investment earnings records retained as described in B.1 above. If the investment earnings records clearly and definitively demonstrate that the rate of return on investments of all proceeds of the issue were lower than the yield on the issue (see the tax certificate in the transcript), then the District may opt not to follow the steps described in the following paragraph.

y. retain the services of an arbitrage rebate consultant in order to calculate any potential arbitrage rebate liability. The rebate consultant shall 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 securities issues of the District. The Rebate Monitor will obtain the names of at least three qualified consultants and request that the consultants submit proposals for consideration prior to being selected as the District's rebate consultant. The selected rebate consultant shall provide a written report to the District with respect to the issue and with respect to any arbitrage rebate owed if any.

z. 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 Superintendent, or designee 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 resolution) and if no provision is otherwise made for the use of unspent proceeds, to the redemption or defeasance of outstanding securities of the issue.

4. *Use of the Facilities Financed with Proceeds.* In order to maintain tax-exemption of securities issued on a tax-exempt basis, the financed facilities (projects) are required to be used for governmental purposes during the life of the issue. The Superintendent, or designee of the District will monitor and maintain records regarding any private use of the projects financed with tax-exempt proceeds. The IRS Treasury Regulations prohibit private business use (use by private parties (including nonprofit organizations and the federal government)) of tax-exempt financed facilities beyond permitted *de minimus* amounts unless cured by a prescribed remedial action. 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, e.g., hosting of cell phone towers);
- c. Management contracts (in which the District authorizes a third party to operate a facility (e.g., cafeteria);
- d. Preference arrangements (in which the District grants a third party preference of the facilities, e.g., preference parking in a public parking lot).

If the Superintendent, or designee identifies private use of tax-exempt debt financed facilities, the Superintendent, or designee 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 securities issue (and any issue that refunds the securities 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 the District should continue to maintain those records in accordance with this policy);

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

(vi) Copies of all leases, user agreements for use of the 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 (e.g., use of the roof of the 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 securities. 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 Superintendent, or designee of the District will monitor compliance by the District with its undertakings.

- Publicly Offered Securities. For each publicly offered security (bonds), the Rule requires that the District is obligated to enter into a continuing disclosure undertaking (“CDA”). The CDAs each require that the District post certain financial and operating information on the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Marketplace Access system (“EMMA”).
 - Annual Filings. Each CDA requires that the District file audited financial statements. The financial statements are required to be filed within nine months of the end of the District’s fiscal year (May 31). If audited financial statements are not available in time, then unaudited statements should be filed and the audited statements filed when they become available.
 - In addition, the District is required to file the following data (unless it is included in the audited financial statements or unless the District has a final official statement within the filing period that includes the information):
 - The assessed valuation of taxable property in the District;
- Ad valorem taxes due and percentage of taxes collected;
- Property tax levy rates per \$1,000 of assessed valuation; and
- Outstanding general obligation debt of the District.
 - b. Additional Filings. In addition to the annual filings referred to in (a) above, the District is required to make certain additional filings upon the occurrence of the follow events (“Listed Events”). The District is required to provide notice of the following Listed Events **no later than ten business days after the occurrence of the event:**

- Principal and interest payment delinquencies;
 - Nonpayment related defaults, if material;
 - Unscheduled draws on debt service reserves reflecting financial difficulties;
 - Unscheduled draws on credit enhancements reflecting financial difficulties;
 - Substitution of credit or liquidity providers, or their failure to perform;
 - Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
 - Modifications to the rights of Bond holders, if material;
 - Bond calls, if material, and tender offers;
 - Defeasances;
 - Release, substitution or sale of property securing repayment of the Bonds, if material;
 - Rating changes;
 - Bankruptcy, insolvency, receivership or similar event of the District;
 - The consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the District, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
 - Appointment of a successor or additional trustee or the change of name of a trustee, if material;
 - Incurrence of a financial obligation of the District, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the District, any of which affect security holders, if material; and
 - Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the District, any of which reflect financial difficulties.
- Items numbered (15) and (16) are required only for publicly offered Bonds that are issued after February 27, 2019. The Rule provides that the term “financial obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “financial obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

- Bank loans;
 - For purposes of compliance with Item number (15), the following obligations shall be deemed “financial obligations” of the District:
 - (ii) Loans issued through the State as part of the LOCAL program
 - (iii) Long term leases or installment purchases, however designated, that provide for the acquisition of property (real property or personal property) over a term. For these obligations, the District will establish a materiality threshold. Initially the materiality threshold will be for contracts in excess of [\$1,000,000] which is less than 5% of the District’s annual general fund budget.
 - The Superintendent, or designee will maintain records of these contracts in order to confirm future compliance with this policy.
 - For purposes of compliance with Item number (16), the Superintendent, or designee will monitor amendments identified in (i) through (iii) above in order to confirm that the amendment was made for commercial purposes (in the ordinary course of business) or whether the amendment reflected financial difficulties. In addition, the Superintendent, or designee, in course of his/her role in the financial affairs of the District will be aware of circumstances that reflect financial difficulties and make determinations as necessary whether disclosure is required under CDAs.
 - 2. Bank Loans. The Board borrowing resolution will include its own set of annual disclosure requirements for each Bank loan. The Superintendent, or designee will monitor compliance with those filing requirements by filing the required information with the respective bank.

Legal References: IRS Form 8038-G

Adoption Date: 12.19