

Post-Bond Issuance Requirements

1. Purpose. The purpose of these post-issuance compliance procedures (“Compliance Procedures”) for tax-exempt bonds, build America bonds, qualified school construction bonds and other bonds issued by Clover Park School District No. 400, Pierce County, Washington (the “District”) for which a federal tax advantage is provided by the Internal Revenue Code of 1986, as amended (the “Code”), is to ensure that the District will be in compliance with requirements of the Code that must be satisfied with respect to such bonds or other obligations (sometimes collectively referred to herein as “bonds” or “tax-advantaged bonds”) after the bonds are issued.
2. Responsibility for Monitoring Post-Issuance Tax Compliance. The Board of Directors of the District (the “Board”) has the overall, final responsibility for monitoring whether the District is in compliance with post-issuance federal tax requirements for the District’s tax-advantaged bonds. However, the Board assigned to the District’s Administrator of Business Services and Capital Projects (the “Administrator of Business Services”) the primary operating responsibility to monitor the District’s compliance with post-issuance federal tax requirements for the District’s bonds.
3. Arbitrage Yield Restriction and Rebate Requirements. The Administrator of Business Services shall maintain or cause to be maintained records of:
 - (a) purchases and sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code) and receipts of earnings on those investments;
 - (b) expenditures made with bond proceeds (including investment earnings on bond proceeds) in a timely and diligent manner for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;
 - (c) information showing, where applicable for a particular calendar year, that the District was eligible to be treated as a “small issuer” in respect of bonds issued in that calendar year because the District did not reasonably expect to issue more than (i) \$5,000,000 of tax-advantaged bonds in that calendar year or (ii) \$15,000,000, of which any amount in excess of \$5,000,000 will be attributable to the financing of capital expenditures made after December 31, 2001, for the construction of public school facilities;
 - (d) calculations that will be sufficient to demonstrate to the Internal Revenue Service (“IRS”) upon an audit of a bond issue that, where applicable, the District has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;
 - (e) calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement

was applicable, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and

- (f) information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

4. Restrictions on Private Business Use and Private Loans. The Administrator of Business Services shall adopt further procedures that are calculated to educate and inform the principal operating officials of those departments, including capital projects and facility departments, if any, of the District (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of tax-advantaged bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-advantaged bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the Administrator of Business Services shall provide to the users of the property a copy of these Compliance Procedures and other appropriate written guidance advising that:

- (a) “private business use” means use by any person other than a state or local government unit, 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), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;
- (b) under section 141 of the Code, no more than 10% of the proceeds of any tax-advantaged bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-advantaged 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 governmental purposes of the bonds; and no more than *the lesser* of \$5,000,000 or 5% of the proceeds of a tax-advantaged 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 nongovernmental person that involves the use of bond-financed property, the user must consult with the Administrator of Business Services, provide the Administrator of Business Services with a description of the proposed nongovernmental 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 nongovernmental use arrangement, the Administrator of Business Services should consult with nationally recognized bond counsel to the District as may be necessary to obtain federal tax advice on 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 section 141 of the Code may be taken by the District as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-advantaged status of the bonds that financed the property; and
- (e) the Administrator of Business Services and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-advantaged status of the bonds that financed the property.

5. Special Compliance Procedures for Build America Bonds and Qualified School Construction Bonds. This portion of the Compliance Procedures applies to build America bonds and qualified school construction bonds.

- (a) The District, in consultation with its bond counsel, financial advisor and underwriter, will structure the initial sale and issuance of any issue of build America bonds and qualified school construction bonds in a manner such that the following requirements will be met:
 - (i) No more than 2% of the sale proceeds of the issue will be used to pay costs of issuance of the issue.
 - (ii) The amount of sale proceeds of the issue used to fund a debt service reserve, if any, for the issue will not exceed the amount of a “reasonably required reserve fund” permitted by section 148 of the Code and also will not exceed 10% of sale proceeds of the issue.
 - (iii) The amount of original issue premium on any maturity of the issue will not exceed a *de minimis* amount equal to 0.25% of the principal amount of that maturity multiplied by the number of complete years to the earlier of the maturity date (the weighted average maturity date for term bonds subject to a mandatory redemption schedule) or first optional

redemption date (other than a “make-whole” or extraordinary redemption date) for that maturity. The District’s bond purchase contract (or official notice of sale for an issue that is sold competitively) will specify that the issue price of any maturity shall not include any original issue premium in excess the permitted *de minimis* amount. The underwriter (or winning bidder in a competitive sale) will be required to certify to the District on the issue date of the bonds the first price at which a substantial amount (at least 10%) of each maturity of the bonds were reasonably expected on the sale date to be sold to the general public, not including bond houses, brokers, or similar persons acting in the capacity of underwriters or wholesalers. If a substantial amount (at least 10%) of any maturity of the bonds was not actually sold to the general public at the reoffering price that was reasonably expected for that maturity on the sale date, the underwriter (or winning bidder in a competitive sale) will be required to explain the facts and circumstances that led to the nonconformity.

(iv) An IRS Form 8038-B (for an issue of build America bonds) or Form 8038-TC (for an issue of direct pay specified tax credit bonds, such as qualified school construction bonds) (the “applicable Information Return”) will be prepared (and signed as paid preparer) by bond counsel, signed by an authorized representative of the District, and timely filed on behalf of the District by bond counsel with the IRS. As required by the Instructions for the applicable Information Return, a complete debt service schedule, including the date and amount of each interest payment and the expected, associated federal credit payment, will be attached to the applicable Information Return that is filed for each fixed rate issue.

(b) After the issue date of the bonds, the District will prepare and sign, and the District (or the District’s designated paying agent for the bonds) will timely file IRS Form 8038-CP in order to receive the federal credit payment with respect to each interest payment as shown on the applicable Information Return. Form 8038-CP will be filed no earlier than (but promptly following) the 90th day prior to each interest payment date and no later than the 45th day prior to each interest payment date for the bonds. The District will provide on Form 8038-CP the information required for the federal credit payments to be made by direct deposit to an account for the benefit of the District.

(c) Both prior to and after the issue date of the bonds, the Administrator of Business Services will consult with, advise and inform the principal operating officials of those departments, including capital projects and facility departments, if any, of the District that are expected to receive and spend available project proceeds of the issue of the requirements set forth below. This may be accomplished by providing a copy of these Compliance Procedures to those officials.

(i) The “available project proceeds” of the bonds means 100% of the excess of the sale proceeds of the issue over the amount (not exceeding 2%) of sale proceeds used to pay costs of issuance of the issue and sale proceeds deposited in a reasonably required reserve, if any, for the bonds, plus investment earnings on that excess.

(ii) 100% of available project proceeds must be spent, in the case of build America bonds, for capital expenditures within the meaning of general federal income tax

principles, and, in the case of qualified school construction bonds, for qualified purposes—that is, for (A) construction, rehabilitation, or repair of public school facilities, the acquisition of land on which such facilities are to be constructed, and (B) the acquisition of equipment to be used in the public school facility that is being constructed, rehabilitated or repaired with proceeds of such bonds.

(iii) in the case of qualified school construction bonds, the District will conform with all applicable provisions of the American Recovery and Reinvestment Act of 2009 and Office of the Superintendent of Public Instruction (“OSPI”) published procedures and requirements, including, but not limited to: (A) Davis-Bacon Fair Labor Act; (B) all applicable Code and IRS requirements; and (C) applicable OSPI allocation requirements (including, but not limited to: (1) issue qualified school construction bonds within 150 days of OSPI allocation award (or such other time period as may be established by OSPI); (2) submit a copy of the applicable IRS Form 8038 to OSPI School Facilities and Organization within 15 days of issuance of the qualified school construction bonds; and (3) issue the qualified school construction bonds within applicable state constitutional and statutory debt limits).

(iv) A reasonable allocation method must be used to allocate available project proceeds of the issue to expenditures, and these allocations need to be made in writing and retained with the books and records of the District. A final allocation may be made no later than the first to occur of (A) eighteen months following the completion of construction or acquisition of the projects financed with available project proceeds of the issue or (B) the first computation date for the rebate amount, if any, with respect to the issue (not later than the fifth anniversary of the issue date of the issue). If funds from different sources are allocated to capital expenditures for the same project, the District generally expects to use an allocation method that allocates available project proceeds to expenditures before allocating other funds to expenditures for the same project, and to use a first-in, first-out method to account for expenditures from separate issues of tax-advantaged bonds. In any event, available project proceeds of the bonds shall be allocated only to capital expenditures.

6. Records to be Maintained for Tax-Advantaged Bonds. Unless otherwise permitted by future IRS regulations or other guidance, the District will maintain written records (which may be in electronic form) with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

- (a) the official Transcript of Proceedings for the original issuance of the bonds;
- (b) records showing how the bond proceeds were invested, as described in 3(a) above;
- (c) records showing how the bond proceeds were spent, as described in 3(b) and 5(c) above, including purchase contracts, construction contracts, progress payment

requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;

- (d) information, records and calculations showing that, with respect to each bond issue, the District was eligible for the “small issuer” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3(c), (d) and (e) above; and
- (e) records showing that special use arrangements, if any, affecting bond-financed property made by the District with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-advantaged bonds and restrictions on the use of proceeds of tax-advantaged bonds to make or finance loans to any person other than a state or local government unit, as described in 4 above.

The basic purpose of the foregoing record retention procedure for the District’s tax-advantaged bonds is to enable the District to readily demonstrate to the IRS upon an audit of any tax-advantaged bond issue that the District has fully complied with all federal tax requirements that must be satisfied after the issue date of the bonds so that those bonds continue to be eligible for the applicable tax advantage under the Code.

7. Identification and Remediation of Potential Violations of Federal Tax Requirements for Tax-Advantaged Bonds. If at any time during the life of an issue of tax-advantaged bonds, the District discovers that a violation of federal tax requirements applicable to that issue may have occurred, the Administrator of Business Services will consult with bond counsel to determine whether any such violation actually has occurred and, if so, take prompt action to accomplish an available remedial action under applicable IRS regulations or to enter into a closing agreement with the IRS under the Voluntary Closing Agreement Program described under Notice 2008-31 or other future published guidance.
8. Education With Respect to Federal Tax Requirements for Tax-Advantaged Bonds. The Administrator of Business Services and his or her staff, as well as the principal operating officials of those departments of the District for which property is financed with proceeds of tax-advantaged bonds should be provided with education and training on federal tax requirements applicable to tax-advantaged bonds. The District recognizes that such education and training is vital as a means of helping to ensure that the District remains in compliance with those federal tax requirements in respect of its bonds. The District therefore will enable and encourage those personnel to attend and participate in educational and training programs offered by, among others, the Washington Association of School Administrators, Washington State School Directors Association, Washington Municipal Treasurers Association and the Washington Finance Officers Association with regard to the federal tax requirements applicable to tax-advantaged bonds.

Procedure 6050-P1

Legal References: Sections 54A, 54F, 54AA, 103, 141, 148,149, 150, 265 and 6431 of the Internal Code of 1986

Chapters 28A.335, 28A.530, 39.36, 39.46, 39.50 and 39.53 RCW

Federal Laws governing Tax-exempt obligations

Laws governing issuance of bonds and obligations (voted and non-voted

Former Procedure: 7705-P1

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