

SCHOOL DISTRICT OF NEW LONDON

ADMINISTRATIVE GUIDELINE 685 - POST-ISSUANCE COMPLIANCE POLICY FOR TAX-EXEMPT AND TAX-ADVANTAGED OBLIGATIONS AND CONTINUING DISCLOSURE

- A. The following policy/procedure relates to procedures and systems for monitoring post-issuance compliance generally.
1. The Director of Business and HR Services shall be responsible for monitoring post-issuance compliance issues and will be considered the Compliance Officer.
 2. The Compliance Officer will coordinate procedures for record retention and review of such records.
 3. All documents and other records relating to Obligations issued by the Issuer shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service ("IRS") requirements, such as those contained in Revenue Procedure 97-22.
 4. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.14112 of the Regulations and the Treasury's TaxExempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate.
 5. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.
- B. **Issuance of Obligations Documents and Records.** With respect to each issue of Obligations, the Compliance Officer will:
1. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the "Transcript").
 2. Confirm that bond counsel has filed the applicable information report (e.g., Form 8038, Form 8038-G, Form 8038-CP) for such issue with the IRS on a timely basis.
 3. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations with other applicable staff members of the Issuer.

C. **Arbitrage.** The following policy/procedure relates to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations. The Compliance Officer will:

1. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.
2. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the Transcript.
3. Maintain a system for tracking investment earnings on the proceeds of the Obligations.
4. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.
5. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.
6. Monitor compliance with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.
7. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.
8. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.
9. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

10. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
11. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
12. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.
13. Arrange for timely computation and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable.

D. **Private Activity Concerns.** The following policy/procedure relates to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations. The Compliance Officer will:

1. Maintain records determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.
2. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.
3. Maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.
4. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.
5. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:
 - a. Sale of the facilities, including sale of capacity rights;
 - b. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
 - c. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;

- d. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
 - e. Joint-ventures, limited liability companies or partnership arrangements;
 - f. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
 - g. Development agreements which provide for guaranteed payments or property values from a developer;
 - h. Grants or loans made to private entities, including special assessment agreements; and
 - i. Naming rights arrangements.
- 6. Monitoring of private use should include the following:
 - a. Procedures to review the amount of existing private use on a periodic basis; and
 - b. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.
- 7. If the Compliance Officer identifies private use of facilities financed with tax-exempt or tax-advantaged debt, the Compliance Officer will consult with the Issuer's bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.
- E. **Qualified Tax-Exempt Obligations.** If the Issuer issues "qualified tax-exempt obligations" in any year, the Compliance Officer shall monitor all tax-exempt financings (including lease purchase arrangements and other similar financing arrangements and conduit financings on behalf of 501(c)(3) organizations) to assure that the \$10,000,000 "small issuer" limit is not exceeded.
- F. **Federal Subsidy Payments.** The Compliance Officer shall be responsible for the calculation of the amount of any federal subsidy payments and the timely preparation and submission of the applicable tax form and application for federal subsidy payments for tax-advantaged obligations such as Build

America Bonds, New Clean Renewable Energy Bonds and Qualified School Construction Bonds.

- G. **Reissuance.** The following policy/procedure relates to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes. The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.
- H. **Record Retention.** The following policy/procedure relate to retention of records relating to the Obligations issued. The Compliance Officer will:
1. Coordinate with staff regarding the records to be maintained by the Issuer to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
 2. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.
 3. Coordinate with staff to generally maintain the following:
 - a. The Transcript relating to the transaction (including any arbitrage or other tax certificate and the bond counsel opinion);
 - b. Documentation evidencing expenditure of proceeds of the issue;
 - c. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation.
 - d. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);
 - e. Documentation evidencing all sources of payment or security for the issue; and
 - f. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).
 4. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.

5. Keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

I. **Continuing Disclosure.** Under the provisions of SEC Rule 15c2-12 (the "Rule"), Participating Underwriters (as defined in the Rule) are required to determine that issuers (such as the Issuer) have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with Offerings subject to the Rule. Unless the Issuer is exempt from compliance with the Rule or the continuing disclosure provisions of the Rule as a result of certain permitted exemptions, the Transcript for each issue of related obligations will include a Continuing Disclosure Agreement executed by the Issuer. In order to monitor compliance by the Issuer with its Continuing Disclosure Agreements, the Compliance Officer will, if and as required by such Continuing Disclosure Agreements:

1. Assist in the preparation or review of annual reports ("Annual Reports") in the form required by the related Continuing Disclosure Agreements.
2. Maintain a calendar, with appropriate reminder notifications, listing the filing due dates relating to dissemination of Annual Reports, which annual due date is generally expressed as a date within a certain number of days (e.g., 180 days) following the end of the Issuer's fiscal year (the "Annual Report Due Date"), as provided in the related Continuing Disclosure Agreements.
3. Ensure timely dissemination of the Annual Report by the Annual Report Due Date, in the format and manner provided in the related Continuing Disclosure Agreements, which may include transmitting such filing to the Municipal Securities Rulemaking Board ("MSRB") through the Electronic Municipal Market Access ("EMMA") System at www.emma.msrb.org in the format prescribed by the MSRB.
4. Monitor the occurrence of any "Material Event" (as defined in the Continuing Disclosure Agreements) and timely file notice of the occurrence of any such Material Event in the manner provided under the Continuing Disclosure Agreements. To be timely filed, such notice must be transmitted within 10 days (or such other time period as set forth in the Continuing Disclosure Agreements) of the occurrence of such Material Event.
5. Ensure timely dissemination of notice of any failure to perform under a Continuing Disclosure Agreement, if and as required by the Continuing Disclosure Agreement.
6. Respond to requests, or ensure that the Issuer Contact (as defined in the Continuing Disclosure Agreement) responds to requests, for information under the Rule, as provided in the Continuing Disclosure Agreements.

7. Monitor the performance of any dissemination agent(s) engaged by the Issuer to assist in the performance of any obligation under the Continuing Disclosure Agreements.
- J. **Conduit Bond Financings.** In conduit bond financings, such as industrial revenue bonds or Midwestern Disaster Area Bonds, the Issuer is not in a position to directly monitor compliance with arbitrage requirements and qualified use requirements because information concerning and control of those activities lies with the private borrower. The Issuer's policy in connection with conduit financings is to require that the bond documents in such financings impose on the borrower (and trustee or other applicable party) responsibility to monitor compliance with qualified use rules and arbitrage and other federal tax requirements and to take necessary action if remediation of nonqualified bonds is required.

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REVISION DATE(S):

REVIEW DATE(S): October 17, 2024

CROSS-REFERENCE: Policy 685 Post-Issuance Compliance Policy for Tax-Exempt and Tax-Advantaged Obligations and Continuing Disclosure

LEGAL REFERENCE: Internal Revenue Code (1986)
Securities Exchange Act (1934)