

Construction Financing

Governmental Bonds Post Issuance Compliance Procedure

This procedure is intended to guide Stanwood-Camano School District No. 401, Snohomish County, Washington (the "District") in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed securities of the District. This procedure 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 procedure 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 Executive Director of Business Services will be responsible for ensuring that the policy is followed and checklists and records maintained. The Executive Director of Business Services 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 CD ROM 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, 8038-GC or 8038-TC, if applicable.
2. Bond transcripts will be retained by the following parties and in the following locations within the District: The office of the Executive Director of Business Services.

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 Executive Director, Business Services.
- c. Records of investments and interest earnings on the proceeds of securities will be maintained by the Executive Director, Business Services. 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 Executive Director, Business Services 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 Executive Director, Business Services 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 Executive Director, Business Services 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 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 Executive Director, Business Services 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 Executive Director, Business Services identifies private use of tax-exempt debt financed facilities, the Executive Director, Business Services 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 Executive Director, Business Services of the District 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 listed "material events." For some types of material events (early bond calls), the State's fiscal agent has undertaken the responsibility of filing notice of the applicable material event.

D. Other Notice Requirements. In some instances, the proceedings authorizing the issuance of securities will require the District to file information periodically with other parties, e.g., bond insurers, banks, 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 Executive Director, Business Services of the District will maintain a listing of those requirements and monitor compliance by the District.