

Braham Area Public Schools
Ind. School District #314
Braham, MN 55006

Adopted: June 17, 2019

Reviewed:

#723 Post-Issuance Debt Compliance Procedures

The School Board of the Independent School District No. 314 Braham, Minnesota has adopted the attached Post-Issuance Debt Compliance Policy dated April 15, 2019. The Post-Issuance Debt Compliance Policy applies to qualifying debt obligations issued by the District. As directed by the adoption of the Post-Issuance Debt Compliance Policy, the Finance Manager of the District will perform the following Post-Issuance Debt Compliance Procedures for all of the District's outstanding debt.

1) General Post-Issuance Compliance

- a) Ensure written procedures and/or guidelines have been put in place for individuals to follow when more than one person is responsible for ensuring compliance with Post-Issuance Debt Compliance Procedures.
- b) Ensure training and/or educational resources for post-issuance compliance have been approved and obtained.
- c) The Finance Manager understands that there are options for voluntarily correcting failures to comply with post-issuance compliance requirements (e.g. as remedial actions under Section 1.141-12 of the Treasury Regulations and the ability to enter into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31(the "VCAP Program")).

2) General Recordkeeping

- a) Retain records and documents for the obligation and all obligations issued to refund the obligation for a period of at least seven years following the final payment of the obligation. If an obligation is refunded, then the final payment of the refunding obligation becomes the beginning of the period unless otherwise directed by the District's bond counsel.
- b) Retain electronic (preferred) and/or paper versions of records and documents for the obligation.
- c) General records and documentation to be assembled and retained:
 - i) Description of the purpose of the obligation (i.e. the project or projects) and the state statute authorizing the project.

- ii) Record of tax-exempt status or revocation of tax-exempt status, if applicable.
- iii) Any correspondence between the District and the IRS.
- iv) Audited financial statements.
- v) All accounting audits of property financed by the obligation.
- vi) Obligation transcripts, official statements, and other offering documents of the obligation.
- vii) Minutes and resolutions authorizing the issuance of the obligation.
- viii) Certifications of the issue price of the obligation.
- ix) Any formal elections for the obligation (i.e. an election to employ an accounting methodology other than the specific tracing method).
- x) Appraisals, demand surveys, or feasibility studies for property financed by the obligation.
- xi) All information reports filed for the obligations.
- xii) All management contracts and other service agreements, research contracts, and naming rights contracts.
- xiii) Documents related to governmental grants associated with construction, renovation or purchase of property financed by the obligation.
- xiv) Reports of any prior IRS examinations of the District or the District's obligation.
- xv) All correspondence related to the above (faxes, emails, or letters).

3) Arbitrage Yield Restriction and Rebate Recordkeeping

- a) Investment and arbitrage documentation to be assembled and retained:
 - i) An accounting of all deposits, expenditures, interest income and asset balances associated with each fund established in connection with the obligation. This includes an accounting of all monies deposited to the debt service fund to make debt service payments on the obligation, regardless of the source derived. Accounting for expenditures and assets is described in further detail in Section 4.
 - ii) Statements prepared by Trustee and/or Investment Provider.
 - iii) Documentation of at least quarterly allocations of investments and investment earnings to each obligation.
 - iv) Documentation for investments made with obligation proceeds such as:
 - (1) investment contracts (i.e. guaranteed investment contracts),
 - (2) credit enhancement transactions (i.e. obligation insurance contracts),
 - (3) financial derivatives (e.g. swaps, caps, and collars), and

- (4) bidding of financial products:
 - (a) Investments acquired with obligation proceeds are purchased at fair market value (e.g. three bid safe harbor rule for open market securities needed in advance refunding escrows).
- b) Computations of the arbitrage yield.
- c) Computations of yield restriction and rebate amounts including but not limited to:
 - i) Compliance in meeting the “Temporary Period from Yield Restriction Exception” and limiting the investment of funds after the temporary period expires.
 - ii) Compliance in meeting the “Rebate Exception.”
 - (1) qualifying for the “Small Issuer Exception,”
 - (2) qualifying for a “Spending Exception,”
 - (a) 6-Month Spending Exception
 - (b) 18-Month Spending Exception
 - (c) 24-Month Spending Exception
 - (3) qualifying for the “Bona Fide Debt Service Fund Exception,” and
 - (4) quantifying arbitrage on all funds established in connection with the obligation in lieu of satisfying arbitrage exceptions including reserve funds and debt service funds.
- d) Computations of yield restriction and rebate payments.
- e) Timely Tax Form 8038-T filing, if applicable.
 - i) Remit any arbitrage liability associated with the obligation to the IRS at each five-year anniversary date of the obligation, and the date in which the obligation is no longer outstanding (redemption or maturity date), whichever comes sooner, within 60 days of said date.
- f) Timely Tax Form 8038-R filing, if applicable.
 - i) Remit the form after the date in which the obligation is no longer outstanding (redemption or maturity date), whichever comes sooner, within 2 years of said date.
- g) Procedures or guidelines for monitoring instances where compliance with applicable yield restriction requirements depends on subsequent reinvestment of obligation proceeds in lower yielding investments (e.g. reinvestment in zero coupon SLGS).

4) Expenditure and Asset Documentation to be Assembled and Retained

- a) Documentation of allocations of obligation proceeds to expenditures (e.g. allocation of proceeds to expenditures for the construction, renovation or purchase of facilities owned and used in the performance of exempt purposes).
 - i) Such allocation will be done not later than the earlier of:
 - (1) eighteen (18) months after the later of the date the expenditure is paid, or the date the project, if any, that is financed by the obligation is placed in service; or
 - (2) the date sixty (60) days after the earlier of the fifth anniversary of the issue date of the obligation, or the date sixty (60) days after the retirement of the obligation.
- b) Documentation of allocations of obligation proceeds to issuance costs.
- c) Copies of requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to obligation proceed expenditures during the construction period.
- d) Copies of all contracts entered into for the construction, renovation or purchase of facilities financed with obligation proceeds.
- e) Records of expenditure reimbursements incurred prior to issuing obligations for projects financed with obligation proceeds (declaration of official intent/reimbursement resolutions including all modifications).
- f) List of all facilities and equipment financed with obligation proceeds.
- g) Depreciation schedules for depreciable property financed with obligation proceeds.
- h) Documentation that tracks the purchase and sale of assets financed with obligation proceeds.
- i) Documentation of timely payment of principal and interest payments on the obligation.
- j) Tracking of all issue proceeds and the transfer of proceeds into the debt service fund as appropriate.
- k) Documentation that excess earnings from a Reserve Fund are transferred to the Debt Service Fund on an annual basis. Excess earnings are balances in a Reserve Fund that exceed the Reserve Fund requirement.

5) Miscellaneous Documentation to be Assembled and Retained

- a) Ensure that the project, while the obligation is outstanding, will avoid IRS private activity concerns.
- b) The Finance Manager shall monitor the use of all obligation-financed facilities in order to:
 - i) Determine whether private business uses of obligation-financed facilities have exceeded the *de minimus* limits set forth in Section 141(b) of the Code as a result of:
 - (1) sale of the facilities;
 - (2) sale of District capacity rights;
 - (3) leases and subleases of facilities including easements or use arrangements for areas outside the four walls (e.g. hosting of cell phone towers);
 - (4) leasehold improvement contracts, licenses, management contracts in which the District authorizes a third party to operate a facility (e.g. cafeteria);
 - (5) research contracts;
 - (6) preference arrangements in which the District permits a third-party preference (e.g. parking in a public parking lot, joint ventures, limited liability companies or partnership arrangements);
 - (7) output contracts or other contracts for use of utility facilities including contracts with large utility users;
 - (8) development agreements which provide for guaranteed payments or property values from a developer;
 - (9) grants or loans made to private entities including special assessment agreements;
 - (10) naming rights agreements; and
 - (11) any other arrangements that provide special legal entitlements to nongovernmental persons.
 - ii) Determine whether private security or payments that exceed the *de minimus* limits set forth in Section 141(b) of the Code have been provided by nongovernmental persons with respect to such obligation-financed facilities.
- c) The Finance Manager shall provide training and educational resources to any District staff that have the primary responsibility for the operation, maintenance, or inspection of obligation-financed facilities with regard to the limitations on the private business use of obligation-financed facilities and

as to the limitations on the private security or payments with respect to obligation-financed facilities.

- d) The District shall undertake the following with respect to the obligations:
 - i) An annual review of the books and records maintained by the District with respect to such obligations.
 - ii) An annual physical inspection of the facilities financed with the proceeds of such obligations, conducted by the Finance Manager with the assistance of any District staff who have the primary responsibility for the operation, maintenance, or inspection of such obligation-financed facilities.
- e) Changes in the project that impact the terms or commitments of the obligation are properly documented and necessary certificates or opinions are on file.

6) Additional Undertakings and Activities that Support Sections 1 through 5 above:

- a) The Finance Manager will notify the District's bond counsel, financial advisor and arbitrage provider of any survey or inquiry by the IRS immediately upon receipt. Usually responses to IRS inquiries are due within 21 days of receipt. Such IRS responses require the review of the above-mentioned data and must be in writing. As much time as possible is helpful in preparing the response.
- b) The Finance Manager will consult with the District's bond counsel, financial advisor and arbitrage provider before engaging in post-issuance credit enhancement transactions (e.g. obligation insurance, letter of credit, or hedging transaction).
- c) The Finance Manager will monitor all "qualified tax-exempt debt obligations" (often referred to as "bank qualified" obligations) within the first calendar year to determine if the limit is exceeded, and if exceeded, will address accordingly. For obligations issued during years 2009 and 2010 the limit was \$30,000,000. During this period, the limit also applied to pooled financings of the governing body and provides a separate \$30,000,000 for each 501 (c)(3) conduit borrower. In 2011 and thereafter it is \$10,000,000 unless changed by Congress.
- d) Identify any post-issuance change to terms of obligations which could be treated as a current refunding of "old" obligations by "new" obligations, often referred to as a "reissuance."

- e) The Finance Manager will consult with the District's bond counsel prior to any sale, transfer, change in use or change in users of obligation-financed property which may require "remedial action" under applicable Treasury Regulations or resolution pursuant to the VCAP Program.
 - i) A remedial action has the effect of curing a deliberate action taken by the District which results in satisfaction of the private business test or private loan test. Remedial actions under Section 1.141-12(d)(e) and (f) include the redemption of non-qualified obligations and/or the alternative uses of proceeds or the facility (i.e. to be used for another qualified purpose).
- f) The Finance Manager will ensure that the appropriate tax form for federal subsidy payments is prepared and filed in a timely fashion for applicable obligations (e.g. Build America Bonds).

7) Continuing Disclosure Obligations

- a) Identify a position at the District to be responsible for compliance with continuing disclosure obligations as defined by the Rule and any policies of the District.
- b) The position responsible for compliance may have the ability to assign responsibilities, delegate where appropriate or engage a dissemination agent or third-party service providers to perform all or some of the duties described in this section. The District cannot delegate its compliance responsibilities.
- c) The District should specify how providers or delegated authorities will be monitored and supervised.
- d) The District should identify the documents that set forth the respective requirements being monitored at the time of closing for each obligation.
- e) The District should catalog all outstanding Continuing Disclosure Agreements and establish consolidated filing requirements based on the outstanding CDAs.
- f) The District should identify the frequency of the actions to be undertaken to ensure compliance, establish a system or filing alerts or reminders to administer the filing requirements.
- g) The Finance Manager for compliance must be made aware of any new outstanding debt, changes to obligation or loan covenants, events of acceleration or default that would materially affect investors.

- h) The District should review a compliance checklist to verify compliance with CDA requirements, at least annually, although it may be advisable to provide more frequent reviews in connection to specific material events.
- i) The District should monitor mandatory material events specifically identified in accordance with the Rule and file required notices within 10 days of occurrence.
 - i) Principal and interest payment delinquencies.
 - ii) Non-payment related defaults, if material.
 - iii) Unscheduled draws on debt service reserves reflecting financial difficulties.
 - iv) Unscheduled draws on credit enhancements reflecting financial difficulties.
 - v) Substitution of credit or liquidity providers or their failure to perform.
 - vi) Adverse tax opinion, IRS notices or material events affecting the tax status of the obligation.
 - vii) Modifications to rights of security holders, if material.
 - viii) Obligation calls, if material.
 - ix) Defeasances.
 - x) Release, substitution or sale of property securing repayment of the obligations, if material.
 - xi) Rating Changes.
 - xii) Bankruptcy, insolvency, receivership, or similar event of the obligated person(s).
 - xiii) Merger, consolidation, or acquisition of the obligated person, if material.
 - xiv) Appointment of a successor or additional trustee, or change of name of a trustee, if material.
 - xv) Incurrence of 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.
 - xvi) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the District, any of which reflect financial difficulties.
- j) In addition to the mandatory material events, the District should review and file any additional or voluntary event notices.

- k) The District should maintain a catalog of all outstanding obligations whether publicly offered or privately placed, and the terms and conditions that govern default or acceleration provisions.
- l) Any missed filing requirement should be remedied with a failure to file notice as soon as possible once the late filing is identified and the required information is available to file.
- m) Sensitive information such as bank accounts and wire information should be redacted from documents prior to posting on EMMA.
- n) The District needs to monitor for changes in law and regulations that effect continuing disclosure obligations and review disclosure policies and procedures periodically to ensure compliance and consistency with regulation and market expectations.

8) Compliance with Future Requirements

- a) Take measures to comply with any future requirements issued beyond the date of these Post-Issuance Debt Compliance Procedures which are essential to ensuring compliance with the applicable state and federal regulations.

IRS Background

The Internal Revenue Service (IRS) is responsible for enforcing compliance with the Internal Revenue Code (the “Code”) and regulations promulgated thereunder (“Treasury Regulations”) governing certain obligations (for example: tax-exempt obligations, Build America Bonds, Recovery Zone Development Bonds and various “Tax Credit” Bonds). The IRS encourages issuers and beneficiaries of these obligations to adopt and implement a post-issuance debt compliance policy and procedures to safeguard against post-issuance violations.

SEC Background

The Securities and Exchange Commission (SEC) is responsible for enforcing compliance with the SEC Rule 15c2-12 (the “Rule”). Governments or governmental entities issuing obligations generally have a requirement to meet specific continuing disclosure standards set forth in continuing disclosure agreements (“CDA”). Unless the issuer, obligated person, or a specific obligation is exempt from compliance with CDAs, these agreements are entered into at the time of obligation issuance to enable underwriter(s) to comply with the Rule. The Rule sets forth certain obligations of (i) underwriters to receive, review and disseminate official statements prepared by issuers of most primary offerings of municipal securities, (ii) underwriters to obtain CDAs from issuers and other obligated persons to provide material event disclosure and annual financial information on a continuing basis, and (iii) broker-dealers to have access to such continuing disclosure in order to make recommendations of municipal securities transactions in the secondary market. The SEC

encourages issuers and beneficiaries adopt and implement a post-issuance debt compliance policy and procedures to safeguard against Rule violations.

When obligations are issued, the CDA commits the issuer or obligated person to provide certain annual financial information and material event notices to the public. Issuers and other obligated persons may also choose to provide periodic, voluntary financial information and filings to investors in addition to fulfilling the specific responsibilities delineated in their CDA. It is important to note that issuers and other obligated persons should not give any one investor certain information that is not readily available to all market participants by disseminating information to the marketplace, at large. Issuers and other obligated persons should be aware that any disclosure activities determined to be “communicating to the market” can be subject to regulatory scrutiny.

Post-Issuance Debt Compliance Policy Objective

The District desires to monitor these obligations to ensure compliance with the IRS Code, Treasury Regulations and the SEC Rule. To help ensure compliance, the District has developed the following policy (the “Post-Issuance Debt Compliance Policy”). The Post-Issuance Debt Compliance Policy shall apply to the obligations mentioned above, including bonds, notes, loans, lease purchase contracts, lines of credit, commercial paper or any other form of debt that is subject to compliance.

Post-Issuance Debt Compliance Policy

The Finance Manager of the District is designated as the District’s agent who is responsible for post-issuance compliance of these obligations.

The Finance Manager shall assemble all relevant documentation, records and activities required to ensure post-issuance debt compliance as further detailed in corresponding procedures (the “Post-Issuance Debt Compliance Procedures”). At a minimum, the Post-Issuance Debt Compliance Procedures for each qualifying obligation will address the following:

1. General Post-Issuance Compliance
2. General Recordkeeping
3. Arbitrage Yield Restriction and Rebate Recordkeeping
4. Expenditure and Asset Documentation to be Assembled and Retained
5. Miscellaneous Documentation to be Assembled and Retained
6. Additional Undertakings and Activities that Support Sections 1 through 5 above
7. Continuing Disclosure Obligations
8. Compliance with Future Requirements

The Finance Manager shall apply the Post-Issuance Debt Compliance Procedures to each qualifying obligation and maintain a record of the results. Further, the Finance Manager will ensure that the Post-Issuance Debt Compliance Policy and Procedures are updated on a regular and as needed basis.

The Finance Manager or any other individuals responsible for assisting the Finance Manager in maintaining records needed to ensure post-issuance debt compliance, are authorized to expend funds as needed to attend training or secure use of other educational resources for ensuring compliance such as consulting, publications, and compliance assistance.

Most of the provisions of this Post-Issuance Debt Compliance Policy are not applicable to taxable governmental obligations unless there is a reasonable possibility that the District may refund their taxable governmental obligation, in whole or in part, with the proceeds of a tax-exempt governmental obligation. If this refunding possibility exists, then the Finance Manager shall treat the taxable governmental obligation as if such issue were an issue of tax-exempt governmental obligations and comply with the requirements of this Post-Issuance Debt Compliance Policy.

Private Activity Bonds

The District may issue tax-exempt obligations that are “private activity” bonds because either (1) the bonds finance a facility that is owned by the District but used by one or more qualified 501(c)(3) organizations, or (2) the bonds are so-called “conduit bonds”, where the proceeds are loaned to a qualified 501(c)(3) organization or another private entity that finances activities eligible for tax-exempt financing under federal law (such as certain manufacturing projects and certain affordable housing projects). Prior to the issuance of either of these types of bonds, the Finance Manager shall take steps necessary to ensure that such obligations will remain in compliance with the requirements of this Post-Issuance Debt Compliance Policy.

In a case where compliance activities are reasonably within the control of a private party (i.e., a 501(c)(3) organization or conduit borrower), the Finance Manager may determine that all or some portion of compliance responsibilities described in this Post-Issuance Debt Compliance Policy shall be assigned to the relevant party. In the case of conduit bonds, the conduit borrower will be assigned all compliance responsibilities other than those required to be undertaken by the District under federal law. In a case where the Finance Manager is concerned about the compliance ability of a private party, the Finance Manager may require that a trustee or other independent third party be retained to assist with record keeping for the obligation and/or that the trustee or such third party be responsible for all or some portion of the compliance responsibilities.

The Finance Manager is additionally authorized to seek the advice, as necessary, of bond counsel and/or its financial advisor to ensure the District is in compliance with this Post-Issuance Debt Compliance Policy.