

Regulation DIG-R

Las Cruces Public Schools

Related Entries: DIG
Responsible Office: Chief Financial Officer

POST ISSUANCE TAX AND BOND DISCLOSURE COMPLIANCE

I. PURPOSE

The purpose of this Regulation is to implement Policy DIG with clear and concise guidelines and rules.

II. GUIDELINES

A. **Monitoring of Post-Issuance Compliance**

The District's Chief Financial Officer (the "Compliance Officer") will be responsible for monitoring post-issuance compliance for the Bonds pursuant to these procedures, The Compliance Officer may designate employees of the District to carry out the duties under these procedures on the Compliance Officer's behalf in the same manner and with the same effect as any similar designation for any other purposes permitted by law.

B. **Compliance with Covenants in Bond Documents**

The Compliance Officer will ensure compliance with all covenants made by the District in the documents related to the Bonds (the "Bond Documents") which must be complied with to maintain the preferential tax status of the Bonds, including, but not limited to sue of the Bond-financed facilities, timely completion of arbitrage rebate calculations, required filings and restriction on investment of Bond proceeds.

C. **Federal Tax Law Compliance**

1. **Proper Use of and Allocation of Bond Proceeds:** The Compliance Officer will ensure that Bond proceeds are allocated to expenditures in a manner that is consistent with the purpose for which each Bond issue was undertaken, as set forth in the Bond Documents. The Compliance Officer will also ensure that allocations of Bond proceeds to expenditures are timely made in accordance with the applicable tax regulations. (e.g., as of the date of adoption of these Procedures, for each Bond issue, allocations of Bond proceeds to expenditures must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years after the Bonds were issued or 60 days after the Bond issue is retired.)

2. **Investment Bond Proceeds:** The Compliance Officer will ensure that Bond proceeds are invested in investments that are permissible under the Bond Documents, and any applicable state laws and federal tax laws (e.g., federal tax law requires that investments purchased with Bond proceeds must be purchased and sold at fair market value).
3. **Arbitrage Calculations:** The Compliance Officer will ensure the timely completion of arbitrage yield restriction and rebate calculations and filings for each issue of Bonds.
4. **Yield Reduction/Rebate Payments:** The Compliance Officer will ensure the timely payment, if applicable, of yield reduction payments and/or rebate, for each issue of Bonds.
5. **Use of Bond-financed Facilities:** The Compliance Officer will review any agreement or other arrangement for the sale, lease, or use of any portion of any Bond-financed facilities, including, but not limited to, service, vendor and management contracts, research agreements, licenses to use Bond-financed property or naming rights agreements for compliance with federal tax laws and the Bond Documents. The Compliance Officer will consult bond counsel for further guidance if necessary.
6. **Post-Issuance Transactions:** The Compliance Officer will, as directed by the Bond Documents or as otherwise deemed appropriate by the Officer, consult with bond counsel before making any changes or amendments to Bond Documents for a Bond issue, including, but not limited to entering or modifying investment agreements; making any change in security for the Bonds, engaging in post-issuance credit enhancement transactions (e.g., change in letter of credit) or hedging transactions (e.g., interest rate swap, cap); terminating or appointing a successor trustee; changes in mode, releasing any liens; or reissuing a Bond issue.
7. **Remedial Action:** If at any time during the life of a Bond issue, the Compliance Officer discovers that a violation of federal tax law requirements applicable to that issue may have occurred, the Compliance Officer may consult with bond counsel to determine whether any such violation actually has occurred. If the Compliance Officer determines that a violation has in fact occurred, the Compliance Officer will inform the Board of Education (the “Board”), and the Board will take prompt action to accomplish an available remedial action under applicable regulations or to enter into a closing agreement with the IRS under the IRS’s Voluntary Closing Agreement Program or other future published guidance.

D. Record Keeping

1. Responsibility for Record Keeping

- a. The compliance Officer will be responsible for maintaining records related to Bonds.

- b. The Compliance Officer will maintain a central list of records to each issue of Bonds. The list shall identify:
 - i. The name and date of the document related to the issue;
 - ii. The person or office responsible for the document; and
 - iii. The physical or electronic location of the document.
2. **Bond Records to be Maintained:** The following documents will be maintained at the Compliance Officer's office (the "Bond Records") in electronic and/or hard-copy format for the term of each issue of Bonds (including refunding Bonds, if any), plus at least three years after the April 15 of the year the last Bond of each issue is retired:
 - a. The bond transcript for each Bond issue (which includes among other Bond Documents, the trust indenture, loan, lease, or other financing agreement, the relevant IRS Form 8038 (including Forms 8038-G or 8038, as applicable) with proof of filing, the bond counsel opinion and the tax agreement including all attachments, exhibits and any verification report);
 - b. Records of debt service payments for each issue of Bonds;
 - c. Documentation evidencing the expenditure of Bond proceeds, such as construction or contractor invoices and receipts for equipment and furnishings, bond trustee requisitions and project completion certificates, as well as records of any special allocations made for tax purposes including post-issuance changes in allocations;
 - d. Documentation evidencing the lease or use of Bond-financed property by public and private sources, including, but not limited to, service, vendor, and management contracts, research agreements, licenses to use Bond-financed property, or naming rights agreements;
 - e. Documentation pertaining to investment of Bond proceeds, including the yield calculations for each class of investments, actual investment income received from the investment of proceeds, investment agreements, payments made pursuant to investment agreements and rebate calculations and copies of any 8038-T or 8038-R filed with respect to the Bonds;
 - f. Documentation pertaining to remedial action and other change-of-use records;
 - g. Amendments and other changes to the Bond Documents (including interest rate conversions and defeasances);
 - h. Letters of credit and other guarantees for Bond issues; and

- i. Interest rate swaps and other derivatives that are related to Bond issues.

E. Bond Counsel Review

The Compliance Officer may engage bond counsel to assist in implementing these procedures, including, but not limited to, assistance in the following areas:

1. Rebate calculations and compliance;
2. Records retention;
3. Periodic review of the Bond Records for compliance with federal tax laws regarding private business use;
4. Determination of whether a violation of federal tax law requirements applicable to that Bond issue may have occurred and the District's options to address the violation so the preferential tax status of the Bond issue is maintained;
5. Termination or modification of any interest rate swaps or other derivatives;
6. Review of investment agreements;
7. Modifications to Bond Documents; and
8. Other federal tax law compliance, including any annual reporting requirements that may be imposed by the IRS.

F. Review

The Compliance Officer is responsible for an annual review of each outstanding Bond issue pursuant to these Procedures. The initial review of each outstanding Bond issue must occur within eight (8) months of the adoption of these Procedures and subsequent reviews must be completed by December 31st of each year. Subsequent reviews will focus on events that happened in the immediately preceding year (e.g., new investment agreements, whether a spending exception threshold was met, whether there was a change in use of a portion of the Bond-financed facility). The Compliance Officer is required to present the annual review to the Board. The Compliance Officer may delegate all or any portion of the reviews to other employees, but such employees must report their findings to the Compliance Officer. The Compliance Officer will recommend changes to these Procedures to the Board as appropriate to ensure compliance with any covenants in the Bond Documents and other federal tax law requirements which must be complied with to maintain the preferential tax status of the Bonds.

G. Training Requirements

Within twelve (12) months of the Compliance Officer's appointment or designation, and on an annual basis every year thereafter, the Compliance Officer and the Officer's designees will undergo training regarding basic federal tax concepts

relating to the Bonds and records required to be maintained under these Procedures. Such training may include, but is not limited to, attending post-issuance compliance sessions presented by the Government Finance Officers Association (GFOA), National Association of Bond Lawyers (NABL) or other similar trade organizations and public finance law firms and arbitrage compliance specialists.

H. Deadline Reminder System

For any Bond issues issued after the date of adoption of these Procedures, a deadline reminder sheet will be completed within two weeks of the date such adoption.



Approved, Chief Financial Officer

12/10/2019

Date Approved

History: Revised 12.06.19

Legal Reference: 17 CFR Part 240.15c2-12 – Municipal securities disclosure