

Administrators Operating Guide is intended to supplement and define Board policies, serve as administrative regulations and official directives.

24-LOCAL REVENUE SOURCES BOND ISSUES

PROCEDURES REGARDING COMPLIANCE WITH BOND COVENANTS

These procedures are intended to assist the District in complying with federal guidelines as they pertain to the issuance of bonds, maintenance tax notes, or tax-exempt leases (each an “obligation,” and collectively, “obligations”) that are issued as obligations, the interest on which is exempt from federal taxation. Failure to comply with federal guidelines could have serious consequences for investors, the District, and its officials.

I. COMPLIANCE WITH FEDERAL TAX LAW AND ARBITRAGE COMPLIANCE

Arbitrage refers to the difference between the interest paid on tax-exempt obligations and the interest earned by investing the proceeds of tax-exempt obligations in higher-yielding investments. Such higher-yielding investments could take the form of loans, securities, real property, personal property, or other investments that could yield a profit to the District. Federal income tax laws generally restrict the ability to earn arbitrage utilizing the proceeds of tax-exempt obligations. Generally, any profit from investing obligation proceeds at a yield above the yield paid on the obligations belongs to the federal government and must be rebated to the federal government. If the District fails to comply with federal tax guidelines, obligations could be deemed to be “arbitrage bonds” by the Internal Revenue Service (IRS), which would expose the District to monetary liability from the District’s investors.

The arbitrage yield on the obligations is set forth on the IRS Form 8038-G for tax-exempt obligations and on the IRS Form 8038-TC for tax-credit obligations.

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With respect to the investment and expenditure of the proceeds of obligations, the District's Assistant Superintendent of Finance & Operations will undertake the following in order to monitor and ensure that the obligations do not become "arbitrage bonds":

1. Instruct the person who is primarily responsible for the construction, renovation, or acquisition of the facilities financed by the obligations (the "project") that the project must proceed with due diligence and that binding contracts for the expenditure of at least five percent of the proceeds of the obligations will be entered into within six months of the date of closing of the obligations (the "issue date");
2. Monitor that at least 85 percent of the proceeds of the obligations to be used for the construction, renovation, or acquisition of the project are expended within three years of the issue date;
3. Monitor investment of proceeds of the obligations and restrict the yield of the investments to the yield on the obligations after three years of the issue date;
4. Monitor all amounts deposited into an interest and sinking fund, also known as a debt service fund or bond fund ("I&S fund"), to ensure that the maximum amount invested within the I&S fund at a yield higher than the yield on the obligations does not exceed an amount equal to the debt service on the obligations in the succeeding 12-month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the obligations for the immediately preceding 12-month period;

Note: The purpose of the I&S fund is to achieve a proper matching of revenues with principal and interest payments within each fiscal year. The I&S fund should be used a mechanism for payment of current debt service and not as a long-term investment fund for debt service many years in the future.

5. Ensure that no more than 50 percent of the proceeds of the obligations are invested in an investment with a guaranteed yield for four years or more;
6. If the District plans to spend funds on hand for a project, with the intent to later repay such funds from a debt issue, contact bond counsel to obtain advice regarding a reimbursement resolution;
7. Ensure that the applicable information return (e.g., IRS Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS; and

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8. If proceeds of the obligations are to be invested in interest-earning investments, ensure that, unless excepted from rebate and yield restriction under section 148(f) of the Code, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS:
 - a. At least every five years after the issue date; and
 - b. Within 30 days after the date the obligations are retired.

If proceeds of the obligations are to be invested in interest-earning investments, it should be discussed whether hiring an arbitrage consultant is prudent.

PRIVATE BUSINESS USE

Generally, the proceeds of tax-exempt obligations may not inure to the benefit of entities other than state or local governments (private business use). Private business use occurs whenever obligation proceeds are used to benefit any entity other than a state or local government, including nonprofit corporations and the federal government. In simple terms, a series of obligations may lose their tax-exempt status if:

- More than ten percent of the proceeds of the obligations are to be used for any private business use and the payment of the principal of, or the interest on, more than ten percent of the proceeds of the obligations is secured by or payable from property used for a private business use; or
- The amount of proceeds of the obligations used to make loans to borrowers other than state and local governments exceeds the lesser of five percent of the proceeds or \$5 million.

With respect to the use of the facilities financed or refinanced with the proceeds of a series of tax-exempt obligations, the Assistant Superintendent of Finance & Operations will:

1. Develop procedures, or a "tracking system," to identify all property financed with tax-exempt debt;
2. Monitor and record the date on which the project is substantially complete and available to be used for the purpose intended;

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3. Monitor and record whether, at any time the obligations are outstanding, any person, other than the District, the employees of the District, the agents of the District, or members of the general public have any contractual right (such as a lease, purchase contract, management agreement, or other service agreement) with respect to any portion of the project;
4. Monitor and record whether, at any time the obligations are outstanding, any person, other than the District, the employees of the District, the agents of the District, or members of the general public has a right to use the output of the project (e.g., water, gas, electricity, capacity);
5. Monitor and record whether, at any time the obligations are outstanding, any person, other than the District, has a naming right for the project or any other contractual right granting an intangible benefit;
6. Monitor and record whether, at any time the obligations are outstanding, the project or any portion of the project is sold or otherwise disposed of;
7. Before entering into any private business use arrangement that involves the use of the project, the Assistant Superintendent of Finance & Operations must obtain a description of the proposed private business use arrangement and determine whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the project.

In connection with the evaluation of any proposed private business use arrangement, the Assistant Superintendent of Finance & Operations should consult with bond counsel to discuss whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the project, and, if not, whether any remedial action permitted under federal guidelines may be taken as a means of enabling such private business use without adversely affecting the tax-exempt status of the obligations;

8. Prior to any sale of property owned by the District (real or personal), the Assistant Superintendent of Finance & Operations must confirm whether such property was financed with tax-exempt debt, and if so, determine whether the proposed disposition of the property could impact the tax-exempt status of the series of obligations that financed the acquisition of such property; and
9. Take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the order, resolution, or indenture adopted by the Board authorizing the issuance of the applicable series of obligations.

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RECORD RETENTION

The Assistant Superintendent of Finance & Operations will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of the obligations and the use of the project for a period ending three years after the final payment of the obligations. To comply with the foregoing, the Assistant Superintendent of Finance & Operations should:

1. Maintain any official action of the District, such as a reimbursement resolution, stating its intent to reimburse with the proceeds of tax-exempt obligations any amount expended prior to the issue date for the acquisition, renovation, or construction of the project;
2. Track that proceeds of the obligations are spent on qualified purposes for which the obligations were issued by recording all expenditures;
3. Maintain detailed records of all expenditures and investments related to all funds created by the obligations (e.g., constructions fund, I&S fund, escrow fund); and
4. Ensure that the project is used in a manner consistent with applicable legal requirements.

If any portion of a series of obligations is refunded with the proceeds of another series of tax-exempt obligations, the records described above relating to the refunded obligations will be maintained until the three years after the final payment of the refunding obligations. Such records can be maintained in paper or electronic format.

RESPONSIBLE PERSON AND CONTINUITY

The Assistant Superintendent of Finance & Operations will receive appropriate training regarding the District's accounting system, contract intake system, facilities management, and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed with the proceeds of the obligations. The foregoing notwithstanding, the Assistant Superintendent of Finance & Operations will be authorized and instructed to retain such experienced advisors and agents as may be necessary to carry out the purposes of these instructions.

Prior to cessation of employment with the District, the Assistant Superintendent of Finance & Operations should identify his or her successor to maintain compliance with these procedures.

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II. COMPLIANCE WITH FEDERAL SECURITIES LAW

Obligations, whether taxable or tax-exempt, sold in a public offering in an amount of \$1 million or more are subject to Rule 15c2-12 (the "Rule") of the United States Securities and Exchange Commission (SEC). Additionally, the District may have covenanted to comply with the Rule even with respect to obligations that would otherwise be exempt from the Rule (e.g., obligations sold in a private placement or obligations sold in an amount less than \$1 million). Pursuant to the Rule, the District is required to make annual filings of certain information, as well as make filings upon the occurrence of certain specified events. All filings must be made with the Municipal Securities Rulemaking Board (MSRB) through its Electronic Municipal Market Access System (EMMA) at <http://emma.msrb.org/>.

ANNUAL FILINGS

The District must file the information listed below with EMMA within six months of each fiscal year end for so long as the respective series of obligations remains outstanding. The District's fiscal year ends on August 31 of each year. Therefore, the District must provide updated information by February 28 or February 29, as applicable, of the subsequent year. If audited financial statements are not available by the last day of February, the District must provide unaudited financial information by such date and provide audited financial statements when such statements become available. The District must file each of the following items with EMMA:

1. The District's audited financial statements; and
2. An update of all financial tables included in the official statement used in connection with the respective series of obligations. The information should be from the most recent fiscal year end.

The Assistant Superintendent of Finance & Operations must compile, prepare, and make such filings within the required time, or, alternatively, contract with a third-party, such as the District's financial advisor, to make such filings on the District's behalf.

NOTICES OF SPECIFIED EVENTS

The District must provide notice of any of the following events with respect to a series of obligations to the MSRB in a timely manner (but not in excess of ten business days after the occurrence of the event):

1. Principal and interest payment delinquencies;

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2. Nonpayment-related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the obligations, or other material events affecting the tax status of the obligations;
7. Modifications to rights of obligation holders, if material;
8. Obligation calls, including redemptions and other early payments, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the obligations, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the District;
13. The consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the District, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional paying agent or the change of name of a paying agent, if material; and
15. In a timely manner, notice of a failure of the District to make the required annual filings listed at ANNUAL FILINGS, above.

The Assistant Superintendent of Finance & Operations should review this list at regular intervals to determine whether any event has occurred that may require a filing with EMMA.

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III. COMPLIANCE WITH STATE LAW REPORTING REQUIREMENTS

During the 84th Legislative Session, the Investment and Financial Services (IFS) Committee favorably voted for the passage of House Bill 1378 (H.B. 1378) relating to the fiscal transparency and accountability of political subdivisions, which was ultimately passed by the Legislature. H.B. 1378 requires political subdivisions, such as the District, to annually compile and report financial information about its debt obligations, and to report its current credit rating to its residents. H.B. 1378 also requires website posting of the annual financial report. The requirements to compile and report information required by H.B. 1378 apply to fiscal year ending on or after January 1, 2016.

In accordance with Chapter 140, Texas Local Government Code, as amended, the District shall annually compile and report the following financial information:

- (1) As of the last day of the preceding fiscal year, debt obligation information for the District that must state the:
 - a. amount of all authorized debt obligations;
 - b. principal of all outstanding debt obligations;
 - c. principal of each outstanding debt obligation;
 - d. combined principal and interest payments required to pay all outstanding debt obligations on time and in full;
 - e. combined principal and interest payments required to pay each outstanding debt obligation on time and in full;
 - f. amounts required by Subparagraphs a – e, above, limited to authorized and outstanding debt obligations secured by ad valorem taxation, expressed as a total amount and as a per capita amount; and
 - g. following for each debt obligation the:
 - (i) issued and unissued amount;

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- (ii) spent and unspent amount;
 - (iii) maturity date; and
 - (iv) stated purpose for which the debt obligation was authorized;
- (2) The current credit rating given by any nationally recognized credit rating organization to debt obligations of the District; and
- (3) Any other information that the District considers relevant or necessary to explain the values required by Subparagraphs (1)a. – (1)f., above, including:
- a. an explanation of the payment sources for the different types of debt; and
 - b. a projected per capital amount of an amount required by Subparagraph (1)a. above, as of the last day of the maximum term of the most recent debt obligation issued by the District.

The District will post the annual financial information on its website, and it will also provide a link to the Texas Comptroller's website where the District's financial information may be viewed. Alternatively, the District may provide to the Texas Comptroller the annual financial information report so that the Texas Comptroller can post the information on its website.

Except as provided above, the District will ensure that:

- (1) the District's annual financial report is made available for inspection by any person and is posted continuously on the District's website until the District posts the next annual financial report; and
- (2) the contact information for the main office of the District is continuously posted on its website, including the physical address, the mailing address, the main telephone number, and an email address.