

## New Policy - Vol. 25, No. 2

[Drafting Note: This policy is not mandatory. However, if the School Board issues bonds, it is required to adhere to the various laws and provisions set forth herein].

### 6146 - POST-ISSUANCE COMPLIANCE FOR TAX-EXEMPT AND TAX-ADVANTAGED OBLIGATIONS

The School Board may, from time to time, finance its capital improvements and operations through the issuance of debt obligations that are eligible for tax benefits under the Internal Revenue Code of 1986, as amended (the "Code"), and regulations promulgated thereunder ("Treasury Regulations"). Such obligations may include tax-exempt obligations and/or obligations eligible for tax credits (direct subsidies to the School District or tax credits to bond owners). All such tax-exempt obligations or tax-advantaged obligations are referred to herein as "Obligations," whether in the form of general obligation bonds, revenue bonds, bond anticipation notes, tax anticipation notes, lease-purchase obligations, installment-purchase obligations or otherwise.

This policy and related AP 6146 document practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations in order that the interest on such Obligations continue to be eligible to be excluded from gross income for Federal income tax purposes or that the Obligations continue to receive tax-advantaged treatment. The Federal tax law requirements applicable to each issue of Obligations will be detailed in the nonarbitrage or tax compliance certificate prepared by bond counsel (the "Tax Certificate") and signed by officials of the District and the post-closing compliance checklist provided by bond counsel with respect to such issue. This policy and related AP 6146 establish a permanent, ongoing structure of practices and procedures that will facilitate compliance with the Code, Treasury Regulations and SEC Rule 15c2-12 (the "Rule").

The Board recognizes that compliance with applicable provisions of the Code and Treasury Regulations is an on-going process, necessary during the entire term of the Obligations, and is an integral component of the District's debt management. Accordingly, the analysis of those facts and implementation of this policy and administrative procedures will require on-going monitoring and consultation with an attorney experienced in legal work relating to the issuance of tax-exempt obligations or tax-advantaged obligations ("Bond Counsel") and the District's accountants.

This policy and the related AP 6146 do not address any post-issuance compliance requirements under State law. Nor is this policy and related AP 6146 a substitute, or a replacement, for any Tax Certificate or a post issuance compliance checklist relating to specific Obligations. The District is responsible for compliance with any such Tax Certificate or post-issuance compliance checklist.

This policy may be modified, expanded, abridged, or otherwise amended only by the Board upon consultation with the District's attorney and Bond Counsel, but without any notice to or consent from any trustee, bondholder or any other person.

#### A. Investment and Expenditure of Proceeds

The District's system of internal controls and accounting will be capable of tracking the investment and expenditure of proceeds of Obligations and other amounts subject to special requirements, and the allocation of such proceeds and other amounts to District facilities. Appropriate coding will be developed to identify District facilities (or portions thereof) financed or refinanced by Obligations. Such Administrative Procedures will ensure that such proceeds are expended only for the purposes authorized by the resolution and, as applicable, referendum, pursuant to which such Obligations were issued and in compliance with the Tax Certificate relating to the Obligations or other instructions of Bond Counsel.

#### B. Financed Facilities

The District will track the use of facilities (or portions thereof) financed or refinanced by Obligations in the private trades or businesses for private business use. Arrangements for the sale, disposition, lease, sublease, management or other use of more than \_\_\_\_% (although not included in U.S. Department of Treasury regulations, one percent (1%) threshold is suggested as a trigger for greater security) [NOTE: Private business use limit applies to each bond issue rather than each financed

**facility.]** of facilities financed or refinanced by Obligations with a term of (i) less than 200 days will be subject to prior review and approval by the Chief Financial Officer (CFO), and (ii) equal to or greater than 200 days will be subject to prior review and approval by the CFO and Bond Counsel. The CFO will track the aggregate annual private business use (if any) of facilities financed or refinanced by Obligations.

C. Periodic Review

The District will periodically review compliance with the requirements of the Code and Treasury Regulations necessary to preserve the tax advantages of such Obligations. Such reviews will include final allocations of proceeds not later than eighteen (18) months after completion of facilities financed or refinanced with proceeds of Obligations and annual reviews to ensure private business use of such facilities does not exceed allowable levels. Such annual review will be conducted in connection with the preparation of the District's audited financial statements.

D. Potential Non-Compliance

If the CFO, upon any annual review or otherwise, discovers non-compliance with any requirements of the Code or Treasury Regulations necessary to preserve the tax advantages of such Obligations, the CFO will, after consultation with the District's attorney and Bond Counsel, take necessary actions to remedy any such non-compliance, including among others the use of the "remedial actions" described in Treasury Regulations 1.141-12 and the IRS Voluntary Closing Agreement Program.

E. Retention of Professionals; Rebate Analyst

The District will engage such professionals or consultants as are necessary, in the judgment of the Superintendent, to ensure that the requirements of the Code and Treasury Regulations necessary to preserve the tax advantages of such Obligations are timely met, including, without limitation, the requirement to compute and pay rebatable arbitrage to the United States government or to confirm an exception thereto. The CFO will ensure that all information reports or other returns or filings with the United States Department of Treasury or Internal Revenue Service will be filed timely on behalf of the District.

F. Purchase of Investments

All investments of the proceeds of Obligations will be purchased at fair market value, as defined in the Code and Treasury Regulations, and will comply with the requirements of the Code and Treasury Regulations relating to yield restriction as advised by Bond Counsel.

G. Credit Enhancement Transactions

The CFO will consult with Bond Counsel prior to engaging in any post-issuance credit enhancement transactions (i.e., bond insurance or letters of credit) or hedging transactions (i.e., interest rate swaps, caps, etc.) relating to any Obligation.

H. Subsidy Payments

The CFO will implement proper administrative guidelines to ensure that any Federal subsidy payable in respect of any direct-pay tax credit bonds is requested by the timely filing of any required return or other documentation and that, upon receipt, such amounts are transmitted to the appropriate account of the District.

I. Post-Issuance Modifications

The CFO will consult with Bond Counsel prior to any modification of the interest rate, maturity date, or other material terms of any Obligation.

J. Records Retention

The District will retain records sufficient to demonstrate compliance with the requirements of the Code and Treasury Regulations necessary to preserve the tax advantages of such Obligations for

the period required by law, presently understood to be the life of the Obligations or any succeeding refunding Obligation plus three (3) years.

K. Continuing Disclosure

The CFO will implement proper administrative procedures to ensure that the District complies with any undertakings to provide continuing disclosure in accordance with the Rule, including annual filing of operating and financial information and notices of listed "material events." The CFO may enter into a contract with a third party to assist the District in complying with its continuing disclosure obligations.

L. Training and Education

The Board authorizes the Superintendent, CFO, and any other person assigned responsibilities under this policy and the administrative procedures to attend educational seminars and conferences providing training and education on post-issuance compliance issues at least once a year and will pay the authorized expenses of such person.