

MANAGEMENT SUPPORT

Construction Financing Procedures

Bonds: Securities and Post-Issuance Tax Compliance

Part A: Disclosure Procedures for Publicly Offered Bonds

1. Purpose. As an issuer of municipal securities ("Bonds"), Snohomish School District No. 201, Snohomish County, Washington (the "District") is subject to the antifraud provisions of the Securities Act of 1933 and the Securities and Exchange Act of 1934, as well as the antifraud provisions of the Securities Act of Washington (chapter 21.70 RCW). These acts impose various obligations on the District, including requiring disclosure of material information regarding its publicly-offered Bonds to allow investors to make informed decisions. Documents prepared in connection with the marketing of the District's Bonds cannot contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements not misleading. The procedures contained in this Part A are designed to assist the District in its compliance with securities laws and promote best practices regarding disclosure.

The District has three major disclosure obligations when it publicly offers Bonds: (a) to prepare an official statement for all public offerings of its Bonds that is delivered to the underwriter(s) for distribution to potential and actual purchasers and that sets forth the terms of the Bonds and information regarding the District; (b) to provide continuing disclosure required by the District's written undertakings made pursuant to paragraph (b)(5) of Securities and Exchange Commission ("SEC") Rule 15c2-12 ("Rule 15c2-12"); and (c) if and when the District provides information that can reasonably be expected to be relied on by the market, to ensure that the information is not inaccurate or misleading.

2. Official Statements. The District prepares a preliminary and final official statement for each publicly-offered series of Bonds.

(a) *Procedure and Timeline for Preparing Official Statements.* In advance of each series of publicly-offered Bonds, the District's Executive Director of Business Services, or such other officer of the District who may in the future perform the duties of that office, if any (the "Executive Director") will select the financing team, including financial advisor(s), bond counsel and underwriter(s) (for negotiated offerings only). The District's bond counsel (or other member of the financing team selected by the Executive Director) drafts the preliminary and final official statements on behalf of the District. The financial advisor will prepare a schedule for each series of Bonds, including dates for distributing drafts of the preliminary and final official statements. The Executive Director will coordinate among District staff and consultants (including, but not limited to, the District's financial advisor and bond counsel) the review of the District's preliminary and final official statements, and should assign or cause to be assigned to staff and consultants review of those portions of the preliminary and final official statements regarding which staff and consultants have particular knowledge (e.g., bond counsel's review of portions of the preliminary and final official statements that describe the federal income tax

treatment of interest on Bonds). Prior to “deeming final” any preliminary official statement, the District may be required to participate in a “due diligence” call with the financial advisor, underwriter(s) and bond counsel. The objective of the due diligence call is to verify that the preliminary official statement prepared in connection with the public offering of Bonds provides a complete and accurate description of Bonds and the District. The financial advisor or the underwriter(s) are expected to provide a questionnaire to the District and bond counsel that is designed to confirm and/or obtain information that will be used in the preliminary official statement.

(b) *“Deeming Final” the Preliminary Official Statement.* The Secretary to the Board of Directors (the “Secretary”) and/or the Executive Director, or such other District official, if any, designated by the Board of Directors of the District (the “Board”) will: (i) review and “deem final” (within the meaning of Rule 15c2-12), if necessary and upon such official’s satisfaction, any preliminary official statement prepared in connection with all of the District’s publicly offered Bonds; (ii) authorize the “deemed final” preliminary official statement to be distributed prior to the date any underwriter or purchaser bids for, purchases, offers or sells such Bonds; and (iii) acknowledge in writing any action taken pursuant to clauses (i) and (ii) of this paragraph.

(c) *Final Official Statement.* The Secretary and/or the Executive Director (or such other District official, if any, designated by the Board) will review and approve on behalf of the District a final official statement with respect to any of the District’s publicly offered Bonds, substantially in the form of the “deemed final” preliminary official statement for that series of Bonds and supplemented or amended as the Executive Director and/or Secretary (or such other District official, if any, designated by the Board) deems necessary, desirable, or appropriate. The Secretary and/or the Executive Director (or such other District official, if any, designated by the Board) is authorized to execute each such official statement and the District is authorized to deliver or cause to be delivered that official statement to the underwriter in the manner required by Rule 15c2-12, the Municipal Securities Rulemaking Board (“MSRB”), any notice of competitive sale, if applicable, and the applicable bond purchase agreement.

(d) *Training.* The District is expected to provide periodic training opportunities to finance staff who participate in the District’s Bond offerings regarding disclosure obligations and best practices. Such training sessions will include education regarding the District’s disclosure obligations under applicable securities laws and responsibilities and potential liabilities regarding such obligations.

(e) *Document Retention.* The Executive Director (or designee) will retain for a period of at least five years printed copies of each preliminary and final official statement and any written certifications or opinions relating to disclosure matters. The Executive Director (or designee) is not required to retain drafts of any disclosure materials.

3. Continuing Disclosure Obligations. The District is required to make annual filings with the MSRB as described in the written continuing disclosure undertaking for each

outstanding bond issue (which may include tax-exempt or taxable bonds), and to file notice of certain material events.

(a) *Method of Filing.* Filings will be made in electronic form through the MSRB's web-based system known as Electronic Municipal Market Access ("EMMA"), currently available at <http://www.emma.msrb.org>. Filings will be made in word-searchable PDF.

(b) *Annual Filings.* No later than the last day of the ninth month after the end of each fiscal year of the District, the District will file (or cause to be filed) the following annual financial information:

- (i) Annual financial statements prepared (except as noted in the financial statements) in accordance with applicable generally accepted accounting principles for local governmental units of the State of Washington, such as the District, as such principles may be changed from time to time, which statements may be unaudited, provided that audited financial statements will be filed if and when they are prepared and available to the District;
- (ii) A statement of authorized, issued and outstanding general obligation debt of the District;
- (iii) The assessed value of the property within the District subject to *ad valorem* taxation; and
- (iv) The District's *ad valorem* tax levy rates and amounts and the percentage of taxes collected.

(c) *Material Event Notices.*

- (i) Generally, if any of the following events occur, the District will provide, or cause to be provided, to the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the event, notice of the occurrence of the any of the following events with respect to the bonds: (1) principal and interest payment delinquencies; (2) non-payment 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 Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 – TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds; (7) modifications to rights of holders of the Bonds, if material; (8) bond calls (other than scheduled mandatory redemptions of Term Bonds), if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the District, as such "Bankruptcy Events" are

defined in Rule 15c2-12; (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 trustee or the change of name of a trustee, if material; (15) incurrence of a financial obligation of the District or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the District or obligated person, any of which affect security holders, if material; and (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the District or obligated person, any of which reflect financial difficulties. The term “financial obligation” means a (A) debt obligation; (B) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (C) guarantee of (A) or (B). The term “financial obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.

- (ii) In addition, the District will provide, or cause to be provided, to the MSRB, in a timely manner, a notice of any failure by the District to provide complete or timely annual financial information as required by Section 3 of this Part A.

(d) *Responsible Officer.* The Executive Director has primary responsibility for ensuring compliance with the District’s obligations to file annual financial information and notices of material events. In addition, the Executive Director (or designee) is registered with EMMA and familiar with the filing requirements and procedures. The duty to comply with the undertakings will be included in the job description for the Executive Director. The Executive Director will keep a record of each written undertaking to provide continuing disclosure and a copy of each filing pursuant to the undertakings. The Executive Director (or designee) is expected to sign up with EMMA for email reminders.

(e) *Periodic Review of Information Regarding Bonds on EMMA.* Prior to each new bond issue, the District will examine its continuing disclosure filings on EMMA to determine whether proper filings have been made during the five years before the new issue. Any material failure to comply with an undertaking generally must be disclosed in future District’s official statements for a period of five years after the failure occurs.

4. Speaking to the Market. The SEC has stated that, when a municipal issuer of outstanding securities provides “information to the public that is reasonably expected to reach investors and the trading market, those disclosures are subject to the antifraud provisions” the information cannot be misleading or contain incorrect information. A statement made outside of the context of a public offering of Bonds possibly could violate the antifraud rules if the statement: (a) is a misrepresentation; (b) is made publicly; (c) is material; (d) involves a security

traded on an efficient market; and (e) would induce a reasonable investor, relying on the statement, to misjudge the value of the security. Examples of information that might be relied on by investors in the District's outstanding Bonds include ongoing disclosure filings, unaudited and audited financial statements, investor presentations, and financial information posted on the District's website.

Part B. Post-Issuance Compliance Procedures for Tax-Advantaged Bonds.

1. Purpose. The purpose of the post-issuance compliance procedures contained in this Part B ("Compliance Procedures") for tax-exempt bonds, qualified school construction bonds and other bonds issued by the District for which a federal tax advantage is provided by the Internal Revenue Code of 1986, as amended (the "Code"), is to ensure that the District will be in compliance with requirements of the Code that must be satisfied with respect to such bonds or other obligations (sometimes collectively referred to herein as "bonds" or "tax-advantaged bonds") after the bonds are issued.

2. Responsibility for Monitoring Post-Issuance Tax Compliance. The Board of Directors of the District (the "Board") has the overall, final responsibility for monitoring whether the District is in compliance with post-issuance federal tax requirements for the District's tax-advantaged bonds. However, the Board assigns to the Executive Director (as defined previously in Part A) the primary operating responsibility to monitor the District's compliance with post-issuance federal tax requirements for the District's bonds.

3. Arbitrage Yield Restriction and Rebate Requirements. The Executive Director shall maintain or cause to be maintained records of:

(a) Purchases and sales of investments made with bond proceeds (including amounts treated as "gross proceeds" of bonds under section 148 of the Code) and receipts of earnings on those investments;

(b) Expenditures made with bond proceeds (including investment earnings on bond proceeds) in a timely and diligent manner for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;

(c) Information showing, where applicable for a particular calendar year, that the District was eligible to be treated as a "small issuer" in respect of bonds issued in that calendar year because the district did not reasonably expect to issue more than (i) \$5,000,000 of tax-advantaged bonds in that calendar year or (ii) \$15,000,000, of which any amount in excess of \$5,000,000 will be attributable to the financing of capital expenditures made after December 31, 2001, for the construction of public school facilities;

(d) Calculations that will be sufficient to demonstrate to the Internal Revenue Service ("IRS") upon an audit of a bond issue that, where applicable, the District has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;

(e) Calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement was applicable, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and

(f) Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

4. Restrictions on Private Business Use and Private Loans. The Executive Director shall adopt procedures that are calculated to educate and inform the principal operating officials of those departments, including capital projects and facility departments, if any, of the District (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of tax-advantaged bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-advantaged bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the Executive Director shall provide to the users of the property a copy of this Compliance Procedure and other appropriate written guidance advising that:

(a) “Private business use” means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and *the United States of America and any federal agency*, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;

(b) Under section 141 of the Code, no more than 10% of the proceeds of any tax-advantaged bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-advantaged bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use—that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than *the lesser* of \$5,000,000 or 5% of the proceeds of a tax-advantaged bond issue may be used to make or finance a loan to any person other than a state or local government unit;

(c) Before entering into any special use arrangement with a non-governmental person that involves the use of bond-financed property, the user must consult with the

Executive Director, provide the Executive Director with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;

(d) In connection with the evaluation of any proposed nongovernmental use arrangement, the Executive Director should consult with nationally recognized bond counsel to the District as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under Section 141 of the Code may be taken by the District as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-advantaged status of the bonds that financed the property; and

(e) The Executive Director and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-advantaged status of the bonds that financed the property.

For any property that was financed with proceeds of tax-advantaged bonds issued as “qualified school construction bonds,” the Executive Director and the users of that property also shall ensure that the property continues to be used by the District as, or as part of, a public school facility for as long as those tax-advantaged bonds remain outstanding.

5. Special Compliance Procedures for Qualified School Construction Bonds. This portion of the Compliance Procedure only applies only to the District’s outstanding qualified school construction bonds. After the issue date of the bonds, the District will prepare and sign, and the District (or the District’s designated paying agent for the bonds) will timely file IRS Form 8038-CP in order to receive the federal credit payment with respect to each interest payment as shown on the applicable Information Return. Form 8038-CP will be filed no earlier than (but promptly following) the 90th day prior to each interest payment date and no later than the 45th day prior to each interest payment date for the bonds. The District will provide on Form 8038-CP the information required for the federal credit payments to be made by direct deposit to an account for the benefit of the District.

6. Use of Bond Proceeds During the Construction Period. Monitoring the expenditure of bond proceeds is necessary to assure that the required amount of bond proceeds are expended for capital expenditures and that not more than 10% of the bond proceeds are expended for projects that will be used for in a private trade or business (including by the federal government and nonprofit entities).

(a) The Executive Director is responsible for reviewing the transcript for the bonds, and in particular the authorizing documents and the federal tax certificate, as well as invoices

and other expenditure records to monitor that the bond proceeds are spent on authorized project costs.

(b) If any unspent bond proceeds remain at the completion of the project, the Executive Director, conferring with bond counsel, will direct application of the excess proceeds for permitted uses under federal tax law, state law and bond authorization documents.

(c) Any change in the scope of the project financed with bond proceeds should be reviewed and documented. If state or local circumstances should cause any alteration to the specific planned expenditures described in the bond election resolution, then (1) the board shall conduct a public hearing to consider those circumstances and to receive public testimony and (2) at a public meeting held subsequent to such public hearing, the board may determine that alterations to the planned expenditures are in the best interests of the District and authorize such alterations by adopting a new resolution or amending the original bond election resolution.

(d) If a project is financed with a combination of bond proceeds and funds from other sources, and if the project includes both governmental and non-governmental uses of the bond-financed facilities, then the Executive Director will allocate project costs between the bond proceeds and the other sources of funds expended on the project. Such allocation will occur no later than 18 months after the later of the date of expenditure or the date that the project is placed into service, but in no event more than five years after the date of issue.

7. Refundings. When all or a portion of the proceeds of a bond issue will be used to refund or defease a prior bond issue, the Executive Director will:

(a) If the refunding plan contemplates the use of a refunding escrow, confirm that any scheduled purchases of State and Local Government Series or open market securities are made as scheduled;

(b) On the date of redemption of the prior issue, confirm that the refunded bonds have been redeemed and cancelled; and

(c) Promptly following the date of redemption of the prior issue, confirm that all proceeds of the refunding issue have been spent or, if there are excess proceeds of the refunding issue, verify that such excess proceeds do not exceed an amount permitted by applicable Treasury Regulations.

8. Records to be Maintained for Tax-Advantaged Bonds. It is the procedure of the District that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

- (a) The official Transcript of Proceedings for the original issuance of the bonds;
- (b) Records showing how the bond proceeds were invested, as described in 3(a) above;
- (c) Records showing how the bond proceeds were spent, as described in 3(b) and 5(c) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;
- (d) Information, records and calculations showing that, with respect to each bond issue, the District was eligible for the “small issuer” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3(c), (d) and (e) above; and
- (e) Records showing that special use arrangements, if any, affecting bond-financed property made by the District with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-advantaged bonds and restrictions on the use of proceeds of tax-advantaged bonds to make or finance loans to any person other than a state or local government unit, as described in 4 above.

The basic purpose of the foregoing record retention procedure for the District’s tax-advantaged bonds is to enable the District to readily demonstrate to the IRS upon an audit of any tax-advantaged bond issue that the District has fully complied with all federal tax requirements that must be satisfied after the issue date of the bonds so that those bonds continue to be eligible for the applicable tax advantage under the Code.

9. Reissuance. A significant modification (which can include a waiver) of the bond documents may result in bonds being deemed refunded or “reissued.” Such an event will require, among other things, the filing of new information returns with the federal government and the execution of a new arbitrage certificate. Bond counsel should be consulted prior to any modification of the bond documents or the acceptance of any waiver of a term of the bond documents.

10. Identification and Remediation of Potential Violations of Federal Tax Requirements for Tax-Advantaged Bonds.

- (a) So long as any of the District’s tax-advantaged bond issues remain outstanding, the Executive Director should periodically consult with the users of the District’s bond-financed property to review and determine whether current use arrangements involving that property continue to comply with applicable federal tax requirements as described in these Compliance Procedures. This may be accomplished, for example, by periodically meeting with users,

providing questionnaires to users about current use arrangements, or adopting other protocols reasonably calculated to ensure compliance with applicable federal tax requirements on a continuing basis. This periodic review may be scheduled, for example, at or before the times that the District is required to file with the MSRB the annual financial information and operating data pursuant to the District's undertaking to provide continuing disclosure with respect to outstanding bonds.

(b) If at any time during the life of an issue of tax-advantaged bonds, the District discovers that a violation of federal tax requirements applicable to that issue may have occurred, the Executive Director will consult with bond counsel to determine whether any such violation actually has occurred and, if so, take prompt action to accomplish an available remedial action under applicable IRS regulations or to enter into a closing agreement with the IRS under the Voluntary Closing Agreement Program described under Notice 2008-31 or other future published guidance.

11. Education Procedure with Respect to Federal Tax Requirements for Tax-Advantaged Bonds. It is the procedure of the District that the Executive Director and his or her staff, as well as the principal operating officials of those departments of the District for which property is financed with proceeds of tax-advantaged bonds should be provided with education and training on federal tax requirements applicable to tax-advantaged bonds. The District recognizes that such education and training is vital as a means of helping to ensure that the District remains in compliance with those federal tax requirements in respect of its bonds. The District therefore will enable and encourage those personnel to attend and participate in educational and training programs offered by, among others, the Washington Association of School Administrators, Washington Association of School Business Officials and Washington State School Directors Association with regard to the federal tax requirements applicable to tax-advantaged bonds.

The foregoing procedures contained in Parts A and B supersede and replace any prior procedures.

Legal References: Sections 54A, 54F, 103, 141, 148, 149, Federal laws governing tax-
150, 265, 1001 and 6432 of the Code, and exempt and tax-advantaged
applicable regulations obligations

Securities Act of 1933; Securities and Federal and State regulation of
Exchange Act of 1934; Chapter 21.70 municipal securities disclosure
RCW; and 17 C.F.R. § 240.15c2-12

Chapters 28A.335, 28A.530, 39.36, 39.46, 39.50 and 39.53 RCW State laws governing the issuance of bonds and obligations (voted and non-voted)

Resolutions of the Board, adopted and to be adopted, authorizing the issuance of bonds or tax-advantaged bonds

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