

# State of Oregon, Department of Administrative Services

## Bond Post-Issuance Compliance Policy and Procedures

(adopted 10/16/2017)

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### I. PURPOSE

The purpose of this Policy is to ensure the State of Oregon, Department of Administrative Services (the “Issuer”) complies with applicable requirements of federal tax and securities laws that apply to any tax-exempt obligations or other publicly-offered debt issued by the Issuer. This Policy is designed to set forth compliance procedures so that the Issuer utilizes the proceeds of all issues of bonds, certificates of participation, tax-exempt leases, and tax anticipation notes (collectively referred to as “Bonds”) in accordance with applicable federal tax and securities law requirements with respect to outstanding Bonds.

**The procedures in Section II and III describe the federal tax laws and only apply to Bonds to the extent that they are issued as federally tax-exempt obligations. Such procedures do not apply to Bonds issued as federally taxable obligations.** To comply with applicable federal tax requirements, the Issuer must confirm that the requirements are met at the time each Bond issue is issued and throughout the term of the Bonds (until maturity or redemption). Generally, compliance should include retention of records relating to the expenditure of the proceeds of each Bond issue, the investment of the proceeds of each Bond issue, and any allocations made with respect to the use of the proceeds of each Bond issue, sufficient to establish compliance with applicable federal tax requirements, including records related to periods before the Bonds are issued (e.g., in the case of reimbursement of prior expenditures), until three (3) years after the final maturity or redemption date of any issue of Bonds.

**The procedures in Section IV describe the federal securities laws and only apply to Bonds to the extent that there is a disclosure document prepared in connection with a public offering or private placement of the Bonds. For example, they do not apply to debt for which an official statement or other disclosure document is not prepared.** To comply with applicable federal securities requirements, the Issuer must comply with the anti-fraud rules at the time of issuance and must maintain continuous compliance with its continuing disclosure obligations until the final maturity or redemption of the applicable issue of Bonds.

## **II. FEDERAL TAX PROCEDURES**

A. Responsible Officials. The Capital Finance and Planning Section (“CFPS”) Manager is responsible to identify the employees responsible for each of the procedures listed below, notify employees of the responsibilities, and provide them a copy of these procedures. The CFPS Manager has designated each of the two Capital Finance Analysts as the employees who are responsible to ensure compliance with the tax requirements relating to all Bonds for the Issuer (the “Tax Compliance Officers”) for the Bond programs assigned to each employee. Upon employee transitions, the CFPS Manager will advise any newly-designated Tax Compliance Officers of his/her responsibilities under these procedures and will ensure the Tax Compliance Officers understand the importance of these procedures. If staff positions are restructured or eliminated, the CFPS Manager will reassign responsibilities as needed.

B. Issuance of Bonds.

Bond Counsel. The Issuer will retain a nationally-recognized bond counsel law firm (“Bond Counsel”) to assist the Issuer in issuing Bonds. In connection with any tax-exempt Bond issue, Bond Counsel will deliver a legal opinion which will be based in part on covenants and representations set forth in the Issuer’s Tax Certificate (the “Tax Certificate”) and other certificates relating to the Bonds, including covenants and representations concerning compliance with post-issuance federal tax law requirements that must be satisfied to preserve the tax-exempt status of tax-exempt Bonds. As described more fully below, the Issuer will also consult with Bond Counsel and other legal counsel and advisors, as needed, following issuance of each Bond issue to ensure that applicable post-issuance requirements in fact are met, so that the tax-exempt status of interest will be maintained for federal income tax purposes for as long as any Bonds remain outstanding.

The Tax Compliance Officers will consult with Bond Counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the tax-exempt status of interest will be maintained. Those requirements and procedures shall be documented in a Tax Certificate and other certificates and/or other documents finalized at or before issuance of the Bonds. If there is no document in the transcript titled “Tax Certificate,” the Tax Compliance Officers will consult with Bond Counsel prior to the closing of the financing to understand which document(s) in the transcript contain the tax representations and covenants. The requirements and procedures in the Tax Certificate shall include

future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout the term of the Bonds (including any refunding Bonds).

Documentation of Tax Requirements. The federal tax requirements relating to each Bond issue will be set forth in the Tax Certificate executed in connection with the Bond issue, which will be included in the closing transcript. The certifications, representations, expectations, covenants and factual statements in the Tax Certificate relate primarily to the restriction on use of the Bond-financed facilities by persons or entities other than the Issuer, changes in use of assets financed or refinanced with Bond proceeds, restrictions applicable to the investment of Bond proceeds and other moneys relating to the Bonds, arbitrage rebate requirements, and economic life of the Bond-financed assets.

Information Reporting. The Tax Compliance Officers will assure filing (by Bond Counsel) of information returns on IRS Form 8038-G no later than the 15<sup>th</sup> day of the second calendar month in the calendar quarter following the calendar quarter in which an issue of Bonds is issued. The Tax Compliance Officers will confirm that the IRS Form 8038-G is accurate and is filed in a timely manner with respect to all Bond issues, including any required schedules and attachments. The IRS Form 8038-G filed with the IRS, together with an acknowledgement copy (if available) or IRS Notice CP152, will be included in the closing transcript for each Bond issue, or kept in the records related to the applicable issue of Bonds.

C. Application of Bond Proceeds.

Use of Bond Proceeds. The Tax Compliance Officers shall perform the following procedures:

- Monitor the use of Bond proceeds and the use of the Bond-financed assets (e.g., facilities or equipment) throughout the term of the Bonds (including any refunding Bonds) to ensure compliance with covenants and restrictions set forth in the applicable Tax Certificate;
- Maintain records identifying the assets or portion of assets that were financed or refinanced with proceeds of each issue of Bonds;
- Consult with Bond Counsel and other legal counsel as needed in the review of any contracts or arrangements involving use of Bond-financed facilities to ensure compliance with all covenants and restrictions set forth in the applicable Tax Certificate;

- Maintain records for any contracts or arrangements involving the use of Bond-financed facilities as might be necessary or appropriate to document compliance with all covenants and restrictions set forth in the applicable Tax Certificate; and
- Communicate as necessary and appropriate with personnel responsible for the Bond-financed assets to identify and discuss any existing or planned use of the Bond-financed assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the applicable Tax Certificate.

*Timely Expenditure of Bond Proceeds.* At the time of issuance of any Bonds issued to fund original expenditures, the Issuer must reasonably expect to spend at least 85% of all proceeds expected to be used to finance such expenditures (which proceeds would exclude proceeds in a reasonably required reserve fund) within three (3) years after issuance of such Bonds.<sup>1</sup> In addition, for such Bonds, the Issuer must reasonably expect to incur a substantial binding obligation to a third party to spend, within six months after issuance, original expenditures of not less than 5% of such amount of proceeds, and must reasonably expect to complete the Bond-financed projects and allocate Bond proceeds to costs with due diligence.<sup>2</sup> Satisfaction of these requirements allows project-related Bond proceeds to be invested at an unrestricted yield for three (3) years.<sup>3</sup> Bonds issued to refinance outstanding obligations are subject to separate expenditure requirements, which shall be outlined in the Tax Certificate relating to such Bonds. The Tax Compliance Officers will monitor the appropriate capital project accounts (and, to the extent applicable, working capital expenditures and/or refunding escrow accounts) and ensure that Bond proceeds are spent within the applicable time period(s) required under federal tax law.

*Capital Expenditures.* In general, proceeds (including earnings on original sale proceeds) of Bonds issued to fund original expenditures, other than proceeds deposited in a reasonably required

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<sup>1</sup> In the case of short-term working capital financings (*e.g.*, TANs), the Issuer's actual maximum cumulative cash flow deficit as of the close of the six-month period commencing on the issue date must be at least equal to 100% of the issue price of the notes (under the six-month rebate exception, excluding the reasonable working capital reserve) or 90% of the issue price of the notes (under the statutory safe harbor exception) in order for the notes to be exempt from the rebate requirements.

<sup>2</sup> These requirements do not apply to short-term working capital financings (*e.g.*, TANs).

<sup>3</sup> Proceeds of working capital financings (*e.g.*, TANs) may be invested at an unrestricted yield for thirteen (13) months.

reserve fund or used to pay costs of issuance, should be spent on capital expenditures.<sup>4</sup> For this purpose, capital expenditures generally mean costs to acquire, construct, or improve property (land, buildings and equipment), or to adapt the property to a new or different use. The property financed or refinanced must have a useful life longer than one (1) year. Capital Expenditures include design and planning costs related to the Bond-financed project, and include architectural, engineering, surveying, soil testing, environmental, and other similar costs incurred in the process of acquiring, constructing, improving or adapting the property. In the case of Oregon Article XI-Q Bonds, the costs must also be capitalizable under generally accepted accounting principles (with the exception of pollution remediation costs when such costs are legally required to complete the authorized project) and actually capitalized to the Bond-financed asset (with the exception of public universities that have a capitalization threshold higher than \$5,000). Capital Expenditures do not include operating expenses of the Bond-financed project or incidental or routine repair or maintenance of the Bond-financed project, even if the repair or maintenance will have a useful life longer than one (1) year.

D. Use of Bond-Financed Assets.

Ownership and Use of Bond-Financed Projects. For the life of a Bond issue, unless the Bond-financed project was grant-funded or otherwise complies with the limitations on Private Use as described below, the Bond-financed project must be owned and operated by the Issuer or another state or local governmental entity.<sup>5</sup> At all times while the Bond issue is outstanding, no more than 10% (or \$15 million, if less) of the Bond proceeds of an issue may be used, directly or indirectly, in a trade or business carried on by a person other than a state or local governmental unit ("Private Use").<sup>6</sup> In addition, not more than 5% (or \$5 million, if less) of the proceeds of any Bond issue may be used, directly or indirectly, to make a loan to any person other than a state or local governmental entity.

Generally, Private Use consists of any contract or other arrangement, including leases, management contracts, operating agreements, guarantee contracts, take or pay contracts, output

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<sup>4</sup> Proceeds of working capital financings (e.g., TANs) need not be spent for capital expenditures.

<sup>5</sup> There are often state law requirements that must be considered as well. For example, in addition to any federal tax requirements, the case of Article XI-Q bonds, the Project must be owned or operated by the State of Oregon.

<sup>6</sup> This 10% limitation is limited to 5% in cases in which the Private Use is either unrelated or disproportionate to the governmental use of the financed facility.

contracts or research contracts, which provides for use by a person who is not a state or local government on a basis different than the general public. There are certain exceptions to Private Use that may be available for certain contracts or arrangements. In addition, the Bond-financed project may be used by any person or entity, including any person or entity carrying on any trade or business, if such use constitutes "General Public Use". General Public Use is any arrangement providing for use that is available to the general public at either no charge or on the basis of rates that are generally applicable and uniformly applied. The Tax Compliance Officers shall contact Bond Counsel if there may be a lease, sale, disposition or other change in use of assets financed or refinanced with Bond proceeds to determine whether such change would result in Private Use.

Management or Operating Agreements. Any management, operating or service contracts whereby a non-exempt entity is using assets financed or refinanced with Bond proceeds (such as bookstore, cafeteria or dining facility, externally-managed parking facilities, gift shops, etc.) must relate to portions of the Bond-financed project that fit within the allowable limitations on Private Use or the contracts must meet the IRS safe harbor for "qualified management contracts." Any replacements of or changes to such contracts relating to Bond-financed assets or facilities, or leases of such assets or facilities, should be reviewed by Bond Counsel.

Useful Life Limitation. The weighted average maturity of the Bond issue cannot exceed 120% of the weighted average economic life of the Bond-financed assets. The Tax Compliance Officers will verify this limitation is not exceeded at the time of each Bond issuance.

E. Investment Restrictions; Arbitrage Yield Calculations; Rebate.

Investment Restrictions. Investment restrictions relating to Bond proceeds and other moneys relating to the Bonds are set forth in the Tax Certificate. The Tax Compliance Officers will monitor the investment of Bond proceeds to ensure compliance with applicable yield restriction rules.

Use and Control of Bond Proceeds. Unexpended Bond proceeds (including reserves) may be held directly by the Issuer or by the trustee for the Bond issue under an indenture or trust agreement. The investment of Bond proceeds will be monitored by the Tax Compliance Officers for Bond proceeds held in the Office of the State Treasurer ("OST") accounts or held by the trustee. In addition, the Tax Compliance Officers will maintain appropriate records regarding investments and transactions involving

Bond proceeds. The account statements will be obtained on a monthly basis from OST or the trustee's website and maintained to document investments and transactions involving Bond proceeds.

Arbitrage Yield Calculations. Investment earnings on Bond proceeds should be tracked and monitored to comply with applicable yield restrictions and/or rebate requirements. Any funds of the Issuer set aside or otherwise pledged or earmarked to pay debt service on Bonds should be analyzed to assure compliance with the tax law rules on arbitrage, invested sinking funds, and pledged funds (including gifts or donations linked or earmarked to the Bond-financed assets).

Rebate. The Issuer is responsible for calculating (or causing the calculation of) rebate liability for each Bond issue, and for making any required rebate payments. Unless Bond Counsel has advised the Issuer that the Bonds are exempt from the rebate requirements described in this section, the Issuer will retain an arbitrage rebate consultant to perform rebate calculations that may be required to be made from time to time with respect to any Bond issue. The Issuer is responsible for providing the arbitrage rebate consultant with requested documents and information on a prompt basis, reviewing applicable rebate reports and other calculations and generally interacting with the arbitrage rebate consultant to ensure the timely preparation of rebate reports and payment of any rebate.

The reports and calculations provided by the arbitrage rebate consultant are intended to assure compliance with rebate requirements, which require the Issuer to make rebate payments, if any, no later than sixty (60) days after the fifth (5<sup>th</sup>) anniversary date and each fifth (5<sup>th</sup>) anniversary date thereafter through the final maturity or redemption date of a Bond issue. A final rebate payment must be made within sixty (60) days of the final maturity or redemption date of a Bond issue.

The Issuer will confer and consult with the arbitrage rebate consultant to determine whether any rebate spending exceptions may be met. Rebate spending exceptions are available for periods of 6 months, 18 months and 2 years. The Issuer will review the Tax Certificate and/or consult with the arbitrage rebate consultant or Bond Counsel for more details regarding the rebate spending exceptions. In the case of tax anticipation notes, the Issuer will consult with the arbitrage rebate consultant to determine whether either the six-month spending exception or the statutory safe harbor exception to the rebate rules is met (in which case no rebate would be owed) or whether the proceeds of the notes are subject, in whole or in part, to rebate.

Copies of all arbitrage rebate reports, related return filings with the IRS (*i.e.*, IRS Form 8038-T), copies of cancelled checks with respect to any rebate payments, and information statements must be retained as described below. The responsible official of the Issuer described in Subsection A of this Section II (the Tax Compliance Officers) will follow the procedures set forth in the Tax Certificate entered into with respect to any Bond issue that relate to compliance with the rebate requirements.

F. Record Retention.

Allocation of Bond Proceeds to Expenditures. The Issuer shall allocate Bond proceeds to expenditures for assets, and shall trace and keep track of the use of Bond proceeds and property financed or refinanced therewith.

Record Keeping Requirements. Copies of all relevant documents and records sufficient to support an assertion that the tax requirements relating to a Bond issue have been satisfied will be maintained by the Issuer for the term of a Bond issue (including refunding Bonds, if any) plus three (3) years, including the following documents and records:

- Bond closing transcripts;
- Copies of records of investments, investment agreements, credit enhancement transactions, arbitrage reports and underlying documents, including trustee or state treasury statements;
- Copies of material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, invoices, disbursement requests and supporting documents, grant agreements, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds;
- All contracts and arrangements involving private use, or changes in use, of the Bond-financed property;
- Each Annual Bond Post-Issuance Compliance Checklist, as described below and attached;



- All reports and documents relating to the allocation of Bond proceeds and private use of Bond-financed property; and
- Itemization of property financed with Bond proceeds, including placed in service dates;
- In the case of short-term working capital financings, such as tax anticipation notes, information regarding the Issuer's revenue, expenditures and available cash balances sufficient to support the Issuer's maximum cumulative cash flow deficit; and
- Copies of all arbitrage rebate reports, related return filings with the IRS (*i.e.*, IRS Form 8038-T), and copies of cancelled checks with respect to any rebate payments.

### **III. POST-ISSUANCE COMPLIANCE**

A. In General. The Issuer will conduct periodic reviews of compliance with these procedures to determine whether any violations have occurred so that such violations can be remedied through the "remedial action" regulations (Treas. Reg. Section 1.141-12) or the Voluntary Closing Agreement Program ("VCAP") described in IRS Notice 2008-31, or successor guidance. If any changes or modifications to the terms or provisions of a Bond issue are contemplated, the Issuer will consult Bond Counsel. The Issuer recognizes and acknowledges that such modifications could result in a "reissuance" of the Bonds for federal tax purposes (*i.e.*, a deemed refunding) and thereby jeopardize the tax-exempt status of the Bonds after the modifications.

The Tax Compliance Officers will consult with Bond Counsel and other legal counsel and advisors, as needed, following issuance of each issue of the Bonds to ensure that all applicable post-issuance requirements in fact are met, so that interest on the Bonds will be excluded from gross income for federal income tax purposes so long as any Bonds remain outstanding. This will include, without limitation, consultation in connection with future contracts with respect to the use of Bond-financed assets and future contracts with respect to the use of output or throughput of Bond-financed assets.

The Issuer will engage an expert advisor as arbitrage rebate consultant to assist in the calculation of arbitrage rebate payable with respect to the investment of Bond proceeds.

B. Monitoring Private or Other Use of Financed Assets. The Issuer will maintain records identifying the assets or portion of assets that are financed or refinanced with proceeds of a Bond issue, including the uses and the users thereof (including terms of use and type of use). Such records

may be kept in any combination of paper or electronic form. In the event the use of Bond proceeds or the assets financed or refinanced with Bond proceeds is different from the covenants, representations or factual statements in the Tax Certificate, the Issuer will promptly contact and consult with Bond Counsel to ensure that there is no adverse effect on the tax-exempt status of the Bond issue and, where appropriate, will remedy any violations through the “remedial action” regulations (Treas. Reg. Section 1.141-12), the VCAP described in IRS Notice 2008-31, or successor guidance, or as otherwise prescribed by Bond Counsel.

C. Ongoing Training

Training shall be made available to the Tax Compliance Officers to support each Tax Compliance Officer’s understanding of the tax requirements applicable to the Bonds. Such training may include, but would not be limited to, attending training sessions at local conferences such as OGFOA, participation in IRS teleconferences, reading technical guidance materials provided by educational organizations, the IRS, and/or Bond Counsel, and discussing questions and issues with the Issuer’s Bond Counsel and/or arbitrage rebate consultant.

D. Annual Bond Post-Issuance Compliance Checklist. The Tax Compliance Officers will complete the attached “Annual Bond Post-Issuance Compliance Checklist” with respect to all outstanding Bonds of the programs handled by such Tax Compliance Officer on or before October 1 of each annual period. The Tax Compliance Officers will retain a copy of each completed and signed checklist in a file that is retained in accordance with the document retention requirements described in Section II above.

**IV. FEDERAL SECURITIES LAW PROCEDURES.**

A. Anti-Fraud Provisions.

Pursuant to the antifraud provisions of the Securities Act of 1933 and the Securities and Exchange Act of 1934, and accompanying regulations, applicable to securities such as the Bonds, if publicly offered, any material provided by the Issuer in connection with the offer or sale of the Bonds may not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. This material may be in the form of an offering circular or offering memorandum for a

private placement and, although it is unclear whether such rules apply to these materials, the Tax Compliance Officers should review them with the same standard in mind. For a publicly offered transaction, the disclosure document may be a preliminary official statement or a final official statement and any materials provided to the rating agencies or credit enhancement provider. Such material may also include information provided to an institutional investor about the Issuer or the Bonds in connection with a private placement. The antifraud provisions also apply to continuing disclosure discussed below. The Tax Compliance Officers will actively participate in the Bond issuance process to ensure that all information regarding the Issuer described in the official statement or other materials prepared in connection with the initial sale of publicly offered Bonds do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

B. Continuing Disclosure.

In connection with an offering of publicly offered Bonds, the Issuer will execute a Continuing Disclosure Certificate, Continuing Disclosure Undertaking, Continuing Disclosure Agreement or such similarly titled document (herein referred to as the "Continuing Disclosure Certificate"). Pursuant to the Continuing Disclosure Certificate, the Issuer may be obligated to provide annual financial disclosure to the secondary market through the Municipal Securities Rulemaking Board ("MSRB") Electronic Municipal Market Access ("EMMA") system, as well as notices of certain material events listed in the Continuing Disclosure Certificate. The Issuer has entered into an Interagency Agreement with the OST Debt Management Division ("DMD") dated February 14, 2013 that outlines the respective responsibilities of the Issuer and OST in relation to continuing disclosure requirements. Those responsibilities have been incorporated into this Section IV. B. as described below.

The CFPS Manager has designated each of the two Capital Finance Coordinators as the employees who are responsible to ensure compliance with the continuing disclosure requirements relating to disclosures through EMMA for all Bonds for the Issuer (the "Disclosure Compliance Officers") for the programs assigned to each employee. In addition, the two Tax Compliance Officers are responsible to update information in Appendix A as described below. In order to maintain compliance with the Issuer's obligations in the Continuing Disclosure Certificate, the Disclosure Compliance Officers and/or the Tax Compliance Officers will, if and as required by such Continuing Disclosure Certificate (or as required by the Interagency Agreement) perform the procedures outlined below.

Annual Financial Information Disclosed in Appendix A. The Tax Compliance Officers shall update and provide to OST for inclusion in Appendix A, General Information Relating to the State of Oregon, as set forth in the following tables of Appendix A, which is disclosed in the Official Statements: General Fund Revenue Statement; Actual General Fund Revenues Compared with Legislatively Adopted Budget Estimates; Lottery Resources and Allocation of Resources; Other Funds and Lottery Distributions by Revenue Source; Summary of Expenditures by Program Area by Fund.

Annual Financial Information Disclosed in Appendix B. The Statewide Accounting and Reporting Services (“SARS”) unit within the Department of Administrative Services is responsible for publishing the State of Oregon Comprehensive Annual Financial Report (“CAFR”). The CAFR is disclosed in Appendix B of the Official Statements in its entirety. The CAFR for each fiscal year ending June 30 is normally published by December 31. SARS provides the CAFR to OST for inclusion in Appendix B. For Lottery Revenue Bonds, Appendix B contains the CAFR of the Oregon State Lottery.

Providing Annual Financial Information to MSRB Through EMMA. Section II.B. of the Interagency Agreement requires state agencies to develop and provide electronically through EMMA to the MSRB, no later than April 1 of each year, the annual financial information, including operating data, that is required to be provided by each Continuing Disclosure Certificate related to such agencies’ bond programs. Currently, the Continuing Disclosure Certificates related to the Issuer’s Bond programs require the annual filing of the State’s CAFR and Appendix A, and the OST DMD annually files the State’s CAFR and Appendix A on behalf of the State of Oregon with the MSRB through EMMA. This is normally completed by OST by February 1 of each year. OST notifies state agencies that administer bond programs when such filings are complete. To ensure agencies have filed timely pursuant to Section II.B. of the Interagency Agreement, OST requires each agency to complete an annual Certificate of Filing for each bond program, which includes a list of the EMMA submission ID numbers. The Disclosure Compliance Officers shall annually attach by cross-reference OST’s filing of the State’s CAFR and Appendix A to applicable cusips in EMMA for the bond programs assigned to each officer and return the Certificate of Filing to OST no later than March 15 of each year. In addition, the Disclosure Compliance Officer for the Lottery Revenue Bond program shall annually file the CAFR of the Oregon State Lottery by March 15 of each year.

Providing Notice of Bond Calls and Defeasances to MSRB Through EMMA. The Issuer regularly engages an Escrow Agent in connection with refundings. Through the Escrow Deposit Agreement, the Escrow Agent is responsible for providing notice to MSRB through EMMA of any bond

calls, if material, on the date a redemption notice is mailed to registered owners of the bonds or certificates of participation and notices of any defeasances on the date of closing of the bonds or certificates of participation. The Disclosure Compliance Officers shall monitor the performance of any Escrow Agent engaged by the Issuer to assist in the performance of any obligation under the Continuing Disclosure Certificate. For any defeasance not associated with a refunding, the Disclosure Compliance Officers shall confer with OST and agree upon whether the Issuer or OST will provide the required notice.

*Providing Notice to OST of Unscheduled Disclosure Events.* The CFPS Manager, the Tax Compliance Officers, or the Disclosure Compliance Officers (as applicable) shall provide notice to the OST DMD of the occurrence of any of the following events upon receipt of notice or knowledge of the event in a timely manner, but in no case greater than three (3) days from receipt of notice or knowledge of the event:

- Principal and interest payment delinquencies;
- Non-payment related defaults, if material;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions or the issuance by the Internal Revenue Service 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 security, or other material events affecting the tax status of a security;
- Modifications to rights of security holders, if material;
- Release, substitution or sale of property securing repayment of securities, if material;
- Rating changes;
- Bankruptcy, insolvency, receivership or similar event of the Issuer;

- The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, if material;
- Appointment of a successor or additional trustee or name change of trustee, if material;
- Non-origination bond calls and any call resulting from damage or destruction of the project or collateral or a similar event, regardless of whether the Issuer's recovery, if any, is from insurance, the state Insurance Fund or from third parties.

*Providing Notice to OST of Other Significant Events.* The Issuer shall also provide notice to the OST DMD of the occurrence of any other significant event of which the Issuer receives notice or has knowledge that may adversely affect the Issuer's bond programs upon receipt of notice or knowledge of the event in a timely manner, but in no instance greater than three (3) days. The type of information the Issuer must report includes but is not limited to the following:

- The Issuer's receipt, or service on the Issuer, of any claim, demand, complaint or other notice of litigation or threatened proceedings against the Issuer or against any of the Issuer's program borrowers before a court, administrative agency, or any other tribunal which has the potential of having a material adverse effect on the Issuer's bond program(s). Litigation against the Issuer shall be considered material and must be reported if the demand, or a reasonable assessment of the Issuer's maximum possible liability under, or expense of compliance with, any adverse judgment, order or settlement is expected to equal or exceed \$5 million. Litigation against an Issuer program borrower must be reported upon the Issuer's receipt of notice of such litigation when an adverse result in the litigation against the borrower reasonably may be anticipated to have a material adverse impact on the Issuer bond program or on the Issuer's ability to pay debt service on any bonds issued on behalf of the Issuer.
- The Issuer's receipt of notice of the introduction in the United States Congress of any measure that reasonably may be expected to have a negative impact on the bond program(s) or any funds or revenue streams of the program(s) that exceeds \$5 million per fiscal year.

- The Issuer's receipt of notice of financial shortfalls, funding problems (including cash-flow reductions or deficiencies), or financial difficulties of or affecting its borrowers where applicable, and any other program changes, operational difficulties of the Issuer or its borrowers, or other events that may have a significant adverse impact on the Issuer's ability to pay debt service or to comply with the terms of its outstanding bond documents.
- The Issuer's receipt of notice of the Oregon Legislative Assembly's referral of any referendum, or the qualification for placement on the ballot of a state initiative measure on the ballot that reasonably may be expected to have a negative impact on the bond program(s), or on any funds or revenue streams of the program(s) that exceeds \$5 million per fiscal year.
- The Issuer's receipt of notice of the introduction in the Oregon Legislative Assembly of any measure that reasonably may be expected to have a negative impact on the bond program(s) or any funds or revenue streams of the program(s) that exceeds \$5 million per fiscal year.

*Providing Notice of Unscheduled Disclosure and Other Significant Events to MSRB.* Upon receipt from the Issuer of notice of any Unscheduled Disclosure or Other Significant Event, OST DMD will assume the lead role in coordinating the analysis to determine the materiality of the event. OST will consult with the Issuer and, where applicable, the Oregon Department of Justice, bond counsel and other parties, in the assessment of whether any such events are required to be disclosed to comply with a Continuing Disclosure Certificate or otherwise warrant disclosure to MSRB. If OST determines disclosure is appropriate, OST will draft (or cause to be drafted) the disclosure information that will be reported, and OST will transmit the disclosure information to the MSRB through the EMMA within ten (10) business days of the occurrence of the event or as soon as practical after the date the Issuer acquired knowledge of the occurrence of the event.

#### C. Ongoing Training

Training shall be made available to the Disclosure Compliance Officers to support each Disclosure Compliance Officer's understanding of the continuing disclosure requirements applicable to the Bonds. Such training may include, but would not be limited to, attending training sessions at local conferences such as OGFOA, participation in IRS teleconferences, reading technical guidance

materials provided by educational organizations, the SEC, and/or Bond Counsel, and discussing questions and issues with the Issuer's Bond Counsel.

D. Annual Bond Post-Issuance Compliance Checklist. The Disclosure Compliance Officers will complete the attached "Annual Bond Post-Issuance Compliance Checklist" with respect to all outstanding Bonds of the programs handled by such Disclosure Compliance Officer on or before October 1 of each annual period in conjunction with completion of the checklist by the Tax Compliance Officers. The Disclosure Compliance Officers are only responsible to address the checklist item related to compliance with Continuing Disclosure Certificates.



## Annual Bond Post-Issuance Compliance Checklist

(To be completed by the “Tax Compliance Officers” and by the “Disclosure Compliance Officers” as described in the Bond Post-Issuance Compliance Policy and Procedures)

Date Completed: \_\_\_\_\_ Applicable Bond Programs: \_\_\_\_\_

	Yes	No
Has there been a sale of all or any portion of a facility financed with tax-exempt bonds (a “Project”)?		
Has there been a lease of all or any portion of a Project to any party other than a state or local government?		
Has there been a new, or amendment of an already existing, management or service contract related to a Project?		
Has there been a new naming rights agreement relating to all or any portion of a Project?		
Has there been any other arrangement with an entity, other than a state or local government, which provided legal rights to that entity with respect to a Project?		
Are any required rebate/yield restriction arbitrage computations not up-to-date?		
Is the Issuer out of compliance with the record retention requirements as described in Section II of the Bond Post-Issuance Compliance Policy and Procedures?		
Has the Issuer failed to make any required filings with EMMA as required by their Continuing Disclosure Certificates?		

If an answer to any question above is “Yes”, or the answer is unclear, the Tax Compliance Officers or the Disclosure Compliance Officers shall consult with the Issuer’s bond counsel to determine (i) if the event could adversely impact the tax-exemption of the Issuer’s outstanding tax-exempt bonds and/or (ii) whether any action needs to be taken during the upcoming annual period to ensure compliance with the tax-exempt bond or securities law restrictions.

*The undersigned is the “Tax Compliance Officers” and the “Disclosure Compliance Officers” as described in the Bond Post-Issuance Compliance Policy and Procedures and has completed the above checklist to the best of the knowledge of the undersigned.*

\_\_\_\_\_  
Tax Compliance Officer

\_\_\_\_\_  
Disclosure Compliance Officer