

Houston

Public Schools

LEADING IN LEARNING

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Reviewed: January 24, 2019; February 3, 2022; February 2, 2023

Kennedy-Graven Model Policy 726

POST-ISSUANCE COMPLIANCE PROCEDURE AND POLICY FOR TAX-EXEMPT GOVERNMENTAL BONDS

I. PURPOSE

Independent School District No. 294 (Houston Public Schools), Houston County, Minnesota (the “Issuer”) issues tax-exempt governmental bonds (“TEBs”) to finance capital improvements, for cashflow borrowings, and in the form of lease-purchase financings to finance various public projects. As an issuer of TEBs, the Issuer is required by the terms of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder (the “Treasury Regulations”), to take certain actions after the issuance of TEBs to ensure the continuing tax-exempt status of such bonds. This Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds (the “Policy”) has been approved and adopted by the Issuer to ensure that the Issuer complies with its post-issuance compliance obligations under applicable provisions of the Code and Treasury Regulations.

II. EFFECTIVE DATE AND TERM

The effective date of this Policy is the date of approval by the Board of the Issuer (January 5, 2016) and this Policy shall remain in effect until superseded or terminated by action of the Board of the Issuer.

III. RESPONSIBLE PARTIES

A. The Director of Finance of the Issuer (the “Compliance Officer”) shall be the party primarily responsible for ensuring that the Issuer successfully carries out its post-issuance compliance requirements under applicable provisions of the Code and Treasury Regulations. The Compliance Officer will be assisted by the other Issuer staff and officials when appropriate. The Compliance Officer of the Issuer will also be assisted in carrying out post-issuance compliance requirements by the following organizations:

1. Bond Counsel (as of the date of approval of this Policy, bond counsel for the Issuer is Kennedy & Graven, Chartered);

2. Municipal Advisor (the person, organization, or officer of the Issuer primarily responsible for providing financial advisory services to the Issuer):
 3. Paying Agent (the person, organization, or officer of the Issuer primarily responsible for providing paying agent services for the Issuer); and
 4. Rebate Analyst (the organization primarily responsible for providing rebate analyst services for the Issuer).
- B. The Compliance Officer shall be responsible for assigning post-issuance compliance responsibilities to other staff of the Issuer, Bond Counsel, Paying Agent, and Rebate Analyst. The Compliance Officer shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance compliance requirements of the Issuer. The Compliance Officer shall provide training and educational resources to Issuer staff responsible for ensuring compliance with any portion of the post-issuance compliance requirements of this Policy.

IV. POST-ISSUANCE COMPLIANCE ACTIONS

The Compliance Officer shall take the following post-issuance compliance actions or shall verify that the following post-issuance compliance actions have been taken on behalf of the Issuer with respect to each issue of TEBs:

- A. The Compliance Officer shall prepare a transcript of principal documents (this action will be the primary responsibility of Bond Counsel).
- B. The Compliance Officer shall file with the Internal Revenue Service (the “IRS”), within the time limit imposed by Section 149(e) of the Code and applicable Treasury Regulations, an Information Return for Tax-Exempt Governmental Obligations, Form 8038-G (this action will be the primary responsibility of Bond Counsel).
- C. The Compliance Officer shall prepare an “allocation memorandum” for each issue of TEBs in accordance with the provisions of Treasury Regulations, Section 1.148-6(d)(1), that accounts for the allocation of the proceeds of the tax-exempt bonds to expenditures not later than the earlier of:
 1. eighteen (18) months after the later of (A) the date the expenditure is paid, or (B) the date the project, if any, that is financed by the tax-exempt bond issue is placed in service; or
 2. the date sixty (60) days after the earlier of (A) the fifth anniversary of the issue date of the tax-exempt bond issue, or (B) the date sixty (60) days after the retirement of the tax-exempt bond issue.

Preparation of the allocation memorandum will be the primary responsibility of the Compliance Officer (in consultation with the Municipal Advisor and Bond Counsel).

- D. The Compliance Officer, in consultation with Bond Counsel, shall identify proceeds

restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted.

- E. In consultation with Bond Counsel, the Compliance Officer shall determine whether the Issuer is subject to the rebate requirements of Section 148(f) of the Code with respect to each issue of TEBs. In consultation with Bond Counsel, the Compliance Officer shall determine, with respect to each issue of TEBs of the Issuer, whether the Issuer is eligible for any of the temporary periods for unrestricted investments and is eligible for any of the spending exceptions to the rebate requirements. The Compliance Officer shall contact the Rebate Analyst (and, if appropriate, Bond Counsel) prior to the fifth anniversary of the date of issuance of each issue of TEBs of the Issuer and each fifth anniversary thereafter to arrange for calculations of the rebate requirements with respect to such TEBs. If a rebate payment is required to be paid by the Issuer, the Compliance Officer shall prepare or cause to be prepared the Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, Form 8038-T, and submit such Form 8038-T to the IRS with the required rebate payment. If the Issuer is authorized to recover a rebate payment previously paid, the Compliance Officer shall prepare or cause to be prepared the Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, Form 8038-R, with respect to such rebate recovery, and submit such Form 8038-R to the IRS.

V. PROCEDURES FOR MONITORING, VERIFICATION, AND INSPECTIONS

The Compliance Officer shall institute such procedures as the Compliance Officer shall deem necessary and appropriate to monitor the use of the proceeds of TEBs issued by the Issuer, to verify that certain post-issuance compliance actions have been taken by the Issuer, and to provide for the inspection of the facilities financed with the proceeds of such bonds. At a minimum, the Compliance Officer shall establish the following procedures:

A. The Compliance Officer shall monitor the use of the proceeds of TEBs to:

1. ensure compliance with the expenditure and investment requirements under the temporary period provisions set forth in Treasury Regulations, Section 1.148-2(e);
2. ensure compliance with the safe harbor restrictions on the acquisition of investments set forth in Treasury Regulations, Section 1.148-5(d);
3. ensure that the investments of any yield-restricted funds do not exceed the yield to which such investments are restricted; and
4. determine whether there has been compliance with the spend-down requirements under the spending exceptions to the rebate requirements set forth in Treasury Regulations, Section 1.148-7.

B. The Compliance Officer shall monitor the use of all bond-financed facilities in order to:

1. determine whether private business uses of bond-financed facilities have exceeded the *de minimis* limits set forth in Section 141(b) of the Code as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons; and
2. determine whether private security or payments that exceed the *de minimis* limits set forth in Section 141(b) of the Code have been provided by nongovernmental persons with respect to such bond-financed facilities. The Compliance Officer shall provide training and educational resources to any Issuer staff who have the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities with regard to the limitations on the private business use of bond-financed facilities and as to the limitations on the private security or payments with respect to bond-financed facilities.

C. The Compliance Officer shall undertake the following with respect to each outstanding issue of TEBs of the Issuer:

1. an annual review of the books and records maintained by the Issuer with respect to such bonds; and
2. an annual physical inspection of the facilities financed with the proceeds of such bonds, conducted by the Compliance Officer with the assistance with any Issuer staff who have the primary responsibility for the operation, maintenance, or inspection of such bond-financed facilities.

VI. REMEDIES

In consultation with Bond Counsel, the Compliance Officer shall become acquainted with the remedial actions under Treasury Regulations, Section 1.141-12, to be utilized in the event that private business use of bond-financed facilities exceeds the *de minimis* limits under Section 141(b)(1) of the Code. In consultation with Bond Counsel, the Compliance Officer shall become acquainted with the Tax Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31, 2008-11 I.R.B. 592, to be utilized as a means for an issuer to correct any post-issuance infractions of the Code and Treasury Regulations with respect to outstanding tax-exempt bonds.

VII. CONTINUING DISCLOSURE OBLIGATIONS

- A. The school district has agreed to provide continuing disclosure, such as annual financial information and material event notices, pursuant to a continuing disclosure certificate or similar document (the “Continuing Disclosure Document”) prepared by Bond Counsel and made a part of the transcript with respect to each issue of bonds of the school district that is subject to such continuing disclosure requirements.

- B. The Continuing Disclosure Documents are executed by the school district to assist the underwriters of the school district's bond in meeting their obligations under Rule 15c2-12. The continuing disclosure obligations of the school district are governed by the Continuing Disclosure Documents and by the terms of Rule 15c2-12. The Compliance Officer is primarily responsible for undertaking such continuing disclosure obligations and to monitor compliance with such obligations.

VIII. OTHER POST-ISSUANCE ACTIONS

If, in consultation with Bond Counsel, Municipal Advisor, Paying Agent, Rebate Analyst, or the School Board, the Compliance Officer determines that any additional action not identified in this Policy must be taken by the Compliance Officer to ensure the continuing tax-exempt status of any issue of governmental bonds of the Issuer, the Compliance Officer shall take such action if the Compliance Officer has the authority to do so. If, after consultation with Bond Counsel, Municipal Advisor, Paying Agent, Rebate Analyst, or the School Board, the Compliance Officer determines that this Policy must be amended or supplemented to ensure the continuing tax-exempt status of any issue of governmental bonds of the Issuer, the Compliance Officer shall recommend to the School Board that this Policy be so amended or supplemented.

IX. RECORD RETENTION REQUIREMENTS

- A. The Compliance Officer shall collect and retain the records with respect to each issue of tax-exempt governmental bonds of the school district and with respect to the facilities financed with the proceeds of such bonds, including the following:
1. Basic records relating to the bond transaction (including resolutions, trust indenture, lease-purchase agreement, and bond counsel opinion);
 2. Documentation evidencing expenditure of bond proceeds;
 3. Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts);
 4. Documentation evidencing all sources of payment of security for the bonds; and
 5. Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, and rebate calculations).

X. TAXABLE GOVERNMENTAL BONDS

- A. Except for Section V, above, the provisions of this policy are not applicable to government bonds where the interest on such bonds is includable in gross income for federal income tax purposes. However, if an issue of taxable governmental bonds is later refunded with the proceeds of an issue of tax-exempt governmental refunding bonds, then the uses of the proceeds of

the taxable governmental bonds and the uses of the facilities financed with the proceeds of the taxable governmental bonds will be relevant to the tax-exempt status of the governmental refunding bonds. Accordingly, if there is any reasonable possibility that an issue of taxable governmental bonds may be refunded, in whole or in part, with the proceeds of an issue of tax-exempt governmental bonds then, for purposes of this policy, the Compliance Officer shall treat the issue of taxable governmental bonds as if such issue were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this policy with respect to such taxable governmental bonds.

- B. The Compliance Officer shall seek the advice of Bond Counsel as to whether there is any reasonable possibility of issuing tax-exempt governmental bonds to refund an issue of taxable governmental bonds.

Legal References: Minn. Stat. Ch.475 (Municipal Debt Act)
Minn. Stat. § 123B.595 (Facilities Maintenance Bonds)
Minn. Stat. § 123B.62 (Capital Facilities Bonds)
Minn. Stat. § 123B.61 (Capital Notes)
Minn. Stat. §§ 469.1812-1815 (Tax Abatement Bonds)

Cross References: Policy 101 (Legal Status of the School District)
Policy 703 (Annual Audit)
Policy 705 (Investments)