



## Blue Mountain Community College *Administrative Procedure*

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**Procedure Title:** Bond Post-Issuance Compliance Procedures  
**Procedure Number:** 01-2015-0001  
**Board Policy Reference:** IV.H.

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**Accountable Administrator:** AVP Finance & Business Operations  
**Position responsible for updating:** AVP Finance & Business Operations  
**Original Date:** 7/7/15  
**Date Approved by Cabinet:** 7/8/15  
**Authorizing Signature:** *Original signature on file*  
**Dated:** 7/7/15  
**Date Posted on Web:** 7/8/15  
**Revised:**  
**Reviewed:**

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### **Purpose/Principle/Definitions:**

This Procedure establishes the requirements and procedures for ensuring compliance with federal tax laws and securities laws relating to the issuance and post-issuance monitoring of bonds and related disclosure obligations. This Procedure statement represents the objectives of Blue Mountain Community College, Oregon (the “Issuer”) and will be adhered to by all employees, officials, and financial representatives affiliated with the Issuer.

The Issuer will provide opportunities for education and training for the parties identified in this procedure in order to facilitate their performance of the responsibilities in this procedure. The Associate Vice President of Finance and Business Operations and his or her designated staff are responsible for staying current with any changes in the rules for tax-exempt bonds and disclosure. The Associate Vice President of Finance and Business Operations may rely upon outside advisors for assistance and guidance with these matters.

The Associate Vice President of Finance and Business Operations will monitor compliance with the guidelines contained in this Procedure as well as any other covenants related to bonds not specifically included herein.

### **FEDERAL TAX LAW COMPLIANCE**

The Issuer shall comply with all federal tax laws related to tax-exempt bonds and tax-exempt bond financed facilities prior to and after issuance. The Associate Vice President of Finance and Business Operations is assigned the primary responsibility to monitor compliance with federal tax

requirements. The Associate Vice President of Finance and Business Operations may assign staff responsibility for components of this Procedure.

### 1. Use of Proceeds

The Associate Vice President of Finance and Business Operations will monitor expenditure of bond proceeds and permit expenditures only as permitted in the authorizing documents and under federal tax law. If any proceeds remain following completion of the project, the Associate Vice President of Finance and Business Operations will, in consultation with bond counsel, direct the use of remaining proceeds in accordance with the authorizing documents or to the redemption or defeasance of outstanding bonds.

### 2. Use of Project Financed

To maintain the tax-exempt status of the bonds, the projects financed must be used for governmental purposes during the life of the bond issue except for permitted de minimus amounts or remedial actions. The Associate Vice President of Finance and Business Operations will monitor and maintain records regarding any private use by third parties (including business corporations, partnerships, limited liability companies, associations, non-profit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency) of the project financed with tax-exempt bonds. The Associate Vice President of Finance and Business Operations will consult with the Issuer's bond counsel prior to any private use of the project (including sale or lease of all or a portion of the project, easements, use arrangements, management contracts, preference arrangements, "naming rights" contract, "public-private partnership" arrangements, or any similar use arrangement that provides special legal entitlements for the use of the bond financed property) to obtain federal tax advice in whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use. If the Associate Vice President of Finance and Business Operations determines that the use of bond proceeds or bond financed projects is different from the covenants and representation in the tax certificate, the Associate Vice President of Finance and Business Operations will contact bond counsel in a timely manner. The Issuer will work with bond counsel to implement any remedial action necessary to preserve the tax-exempt status of the bonds.

### 3. Arbitrage Rebate

Arbitrage is the difference (profit) earned from investing tax-exempt proceeds in investments that have a higher yield than the yield on the bond issue. The Associate Vice President of Finance and Business Operations will monitor ongoing compliance with regards to arbitrage rebate obligations of the Issuer for each bond issue.

- A. Timeline – an arbitrage rebate installment payment is required to be paid no later than 60 days after the end of every 5th bond year throughout the life of a bond issue and within 60 days of retirement of the bonds.
- B. Schedule – the Associate Vice President of Finance and Business Operations will maintain a schedule of each bond issue and the 5th bond year. The Associate Vice President of Finance and Business Operations shall review the schedule no less than annually to determine when a 5th bond year is approaching. Arbitrage rebate calculations on outstanding bond issues may be performed as often as annually or in alternating years, but never longer than the 5<sup>th</sup> year.

- C. Calculations – the Issuer has the option to perform arbitrage calculations internally or to contract with a third party provider for arbitrage rebate calculations and preparation of IRS Form 8038-T (Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate). The Issuer will either complete the calculations internally or provide a third party provider with copies of all applicable records 30 to 60 days before the reporting deadline for the third party provider to prepare the arbitrage calculations and submit a report and IRS Form 8038-T, if applicable, to the Issuer. If positive arbitrage exists at the end of a 5<sup>th</sup> year bond period, the Issuer will prepare payment to submit with IRS Form 8038-T. Upon redemption of a bond issue, a payment of 100% of the amount due must be paid no later than 60 days after the discharge date.
- D. Yield Restriction – The Associate Vice President of Finance and Business Operations will monitor ongoing compliance with regards to yield restriction. Interim arbitrage calculations will be used to evaluate investment strategies or optional elections that may reduce future rebate liabilities.
- E. Yield Reduction Payments – If the Issuer fails to expend all amounts required to be spent as of the close of any temporary period specified in the Tax Certificate (generally three years for proceeds of a new money issue and 13 months for amounts held in a debt service fund), the Associate Vice President of Finance and Business Operations will determine and pay any required yield reduction payment.
- F. Exceptions – there are exceptions to the general rebate requirements applicable to government bond proceeds: the most common being the small issuer exception and spending exceptions. The Associate Vice President of Finance and Business Operations shall consult with the Issuer’s bond counsel to determine if any exceptions to rebate apply. The small issuer exception applies if the total principal amount of tax-exempt governmental obligations of the Issuer issued by or on behalf of the Issuer and subordinate entities during the calendar year, including the new issue, will not be greater than \$5,000,000, plus such additional amount not in excess of \$10,000,000 as is to be spent for the construction of public school facilities. If the small issuer exception does not apply, the Associate Vice President of Finance and Business Operations will monitor expenditures prior to semi-annual target dates for any expected spending exception outlined in the tax certificate for each issue (the six-month, 18-month, or 24 month spending rebate exceptions) to determine if the Issuer met the spending exception.
- G. “Bona fide” debt service funds – when possible, debt service funds will be accounted for and funded to achieve a proper matching of revenues with principal and interest payments within each bond year so the earnings are exempt from arbitrage.
- H. Advance Refunding Escrows – State and Local Government Securities (SLGs) are commonly used for refunding escrows to yield restrict the investments. The Associate Vice President of Finance and Business Operations will ensure SLGS for a refunding escrow account meet the yield restriction requirement.

#### 4. Information Filing and Monitoring

At the time of issuance and throughout the life of the bond issue, issuers of governmental bonds must comply with certain information filing requirements under §149(e) of the Code. The Associate Vice President of Finance and Business Operations shall work with the Issuer’s bond counsel to complete and file each applicable form by the required due date after each bond issue.

- A. Tax-exempt bonds: IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) must be filed by the 15th day of the second calendar month following the quarter in which the bonds were issued. For example, the due date of Form 8038-G for bonds issued on February 15th is May 15th.
- B. IRS Form 8038-T (Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate) must be filed within 60 days after each five year period reporting deadline or within 60 days after the debt is retired, if arbitrage rebate applies (See Section 3).

#### 5. Reimbursement Resolutions

The Associate Vice President of Finance and Business Operations is responsible for ensuring that Reimbursement Resolutions are prepared in accordance with §1.150-2 of the U.S. Treasury regulations for projects the Issuer intends to finance with bonds.

#### RECORDS RETENTION

The Associate Vice President of Finance and Business Operations shall maintain the following records for the life of the bond issue, and for the life of any bond issue that refunds the bond issue, and for a period of three years thereafter.

1. The bond transcript (including the Official Statement, Board minutes and resolutions authorizing issuance, trustee statements, and bond counsel opinion);
2. Documentation showing expenditure of bond proceeds, including receipts, purchase contracts, construction contracts, progress payments, invoices, cancelled checks, and payment of bond issuance costs;
3. Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts, leases, user agreements);
4. Documentation evidencing all sources of payment or security for the bonds;
5. Documentation pertaining to any investment of bond proceeds (including the amount of each investment, the date the investment is made, the date the investment matures, the sale date, the interest rate and/or yield, the actual investment income received, SLGs subscriptions, yield calculations, guaranteed investment contracts, and records of interest earnings on reserve funds).
6. Arbitrage rebate reports prepared internally and by outside consultants.
7. If applicable, information, records and calculations showing that, with respect to each bond issue, the Issuer was eligible for the “small issuer” exception or one of the spending exceptions to the arbitrage rebate requirements.
8. All tax returns and other communication related to the bonds such as certificates, forms and returns filed with the IRS.

## FEDERAL SECURITIES LAW COMPLIANCE

The Issuer will comply with all continuing disclosure agreements under SEC Rule 15c2-12 (the "Rule). The Rule prohibits any broker, dealer, or municipal securities dealer from acting as an underwriter in a primary offering of municipal securities unless the issuer promises in writing to provide certain ongoing information. The annual financial information is to be sent to the MSRB or as designated by the SEC. The Associate Vice President of Finance and Business Operations will coordinate with staff, and may engage a dissemination agent, counsel or other professionals to assist in performing the actions listed below.

1. The Associate Vice President of Finance and Business Operations will compile and maintain a set of currently effective continuing disclosure agreements of the Issuer (the "Current Agreements".)
2. The Associate Vice President of Finance and Business Operations shall ensure that all necessary financial and operating data is filed in the manner and by the filing dates set forth in the Current Agreements. The Associate Vice President of Finance and Business Operations shall review the Current Agreements annually prior to the filing dates keeping in mind the information and timing requirements may differ between Current Agreements. As part of the annual review, the Associate Vice President of Finance and Business Operations shall also review prior filings made within the past five years and the Associate Vice President of Finance and Business Operations will remedy any late or missing filings.
3. The Associate Vice President of Finance and Business Operations shall keep a calendar of filing dates required under the Current Agreements and subscribe to notification services made available through the EMMA system.
4. The Associate Vice President of Finance and Business Operations shall monitor the occurrence of the following events and/or other events set forth in the Current Agreements and shall provide notice of the same in the manner required by the applicable Current Agreement (likely within 10 days of occurrence):
  - a. Principal and interest payment delinquencies;
  - b. Non-payment related defaults, if material;
  - c. Unscheduled draws on debt service reserves reflecting financial difficulties;
  - d. Unscheduled draws on credit enhancements reflecting financial difficulties;
  - e. Substitution of credit or liquidity providers, or their failure to perform;
  - f. Adverse tax opinions, 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 Obligations, or other events affecting the tax status of the Bonds;
  - g. Modifications to rights of Bond holders, if material;
  - h. Bond calls, if material, and tender offers;
  - i. Defeasances;

- j. Release, substitution or sale of property securing repayment of the Bonds, if material;
  - k. Rating changes;
  - l. Bankruptcy, insolvency, receivership or similar event of the Issuer;
  - m. 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, 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;
  - n. Appointment of a successor or additional trustee or the change of name of a trustee, if material.
5. The Associate Vice President of Finance and Business Operations shall review drafts of any official statement for a new offering of securities and with assistance from its dissemination agent, counsel, or other agents of the Issuer, as applicable, shall determine that the official statement accurately and completely describes the Issuer's continuing disclosure compliance history within the five years prior to the date of the official statement. This compliance review is not intended to limit the Issuer's other reviews of or diligence procedures relating to its official statements.
6. The Associate Vice President of Finance and Business Operations shall arrange for annual disclosure training with bond counsel for the Associate Vice President of Finance and Business Operations and designated staff to include education on these procedures and the disclosure obligations under federal and state securities laws.