



# RIVER VALLEY SCHOOL DISTRICT

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## **Waiver of Performance Bonds Post Issuance Tax Exempt Bond Compliance**

~~Wisconsin Statutes require that public boards obtain a performance bond issued by a surety company licensed to do business in this state on any contract in excess of \$10,000, unless the contract meets the written standards for a waiver as established by the board.~~

~~The River Valley School District will consider waiver of the requirement for obtaining a performance bond if the following conditions are met:~~

- ~~1. The Director of Business Services shall obtain and review the most recent audited financial statements of the prime contractor of any project in excess of \$10,000 and determine if the financial condition of the contractor merits a waiver.~~
- ~~2. The legal contract must provide for sufficient retainage and require that the prime contractor obtain lien waivers from any and all subcontractors of the project and provide copies of same to the District prior to final payments under the contract.~~
- ~~3. The contractor must agree to provide the District a list naming any and all subcontractors and, if a waiver is made, the Director of Business Services will notify each of the subcontractors named of the waiver and the anticipated date of final payment to the prime contractor.~~

~~If the preceding conditions are met, the Director of Business Services shall bring a recommendation for approval to the Board of Education for consideration.~~

~~LEGAL REF.: Wisconsin Statutes Section 779.14~~

~~The Board of Education may from time to time issue bonds and other obligations. These interests are excludable from gross income for Federal income tax purposes or are excludable from interest that is paid in whole or in part by the Federal government or which bonds otherwise enjoy certain preferential treatment under the Internal Revenue Code of 1986, as amended, (the "code") or regulations promulgated implementing the Code (the "regulations"). The Board adopts this policy to ensure that proper procedures are followed to protect the tax-favored status of each bond issue.~~

~~The general purpose of the policies set forth herein is to ensure compliance with post-issuance Federal tax requirements generally falling into the following two categories:~~

### **A. Qualified Use of Proceeds and Financed Property**

~~Qualified use requirements generally require monitoring of the various direct and indirect uses of bond-financed property over the life of the bonds and calculations of the percentage of nonqualified uses.~~

## **B. Arbitrage Yield and Rebate**

Arbitrage requirements also require monitoring over the life of the bonds to determine whether the yield on investments acquired with bond proceeds are properly restricted and the district must file Form 8038-T to pay a yield reduction payment and/or rebate payment.

### **Responsible Official**

The Board designates the Business Manager as the Bond Compliance Officer with primary responsibility in post-issuance compliance. The compliance officer is authorized to obtain the assistance of the following in carrying out necessary functions under this policy:

- A. Bond Counsel – the District’s legal counsel that assists in the bond issuance
- B. External Financial Advisors – the District’s accounting firm or other financial advisor

All personnel that are responsible for ensuring post-issuance compliance with the tax rules must receive training or educational resources, as determined appropriate by the Bond Compliance Officer.

### **Post-Issuance Duties**

The Bond Compliance Officer will engage in a detailed review of post-issuance tax compliance with the tax rules to identify instances of noncompliance and prevent violations from occurring, or timely correct identified violations, if possible. When failures to comply with post-issuance compliance requirements are identified, the Bond Compliance Officer will promptly consult with bond counsel to determine if remedial action is available, or if some other action is required.

### **Private Use**

Bond-financed projects are subject to rules and limitations on private use. Private use includes non-governmental activity through leases, management agreements, research agreements, and other type of activity in which a non-governmental entity obtains a benefit or interest in the bond-financed project beyond that normally provided to the public. In the event such special usage is contemplated, the Bond Compliance Officer must assure compliance with applicable tax regulations.

### **Use of Bond Proceeds**

The Bond Compliance Officer shall assure that bond funds are used for the purpose for which the bond issue is authorized and that any project with a combination of authorized expenses from bond proceeds and other funds, result in expenses paid for with bond proceeds that are clearly identified and properly recorded.

The Bond Compliance Officer must assure that investment activities are conducted at fair market value, and may employ bidding procedure to establish a safe harbor. The Bond Compliance Officer shall be aware of any yield restrictions on any bond issue and monitor such. In the event that reimbursement is required, the Bond Compliance Officer shall work with the District’s advisors to complete and record those transactions and to assure proper filings with the IRS.

### **Recordkeeping Requirements**

The Bond Compliance Officer will assure coordination with all involved and retention of complete records. The following records, as applicable, shall be retained:

- A. audited financial statements of the School District throughout the period of the bond issue
- B. appraisals, surveys, and studies pertaining to the facilities financed with the proceeds of bonds, as well as any and all contracts entered into for the construction, renovation or purchase of bond-financed facilities
- C. all public discourse concerning the bonds, including informative materials distributed by the District, as well as other publications, such as third party studies, newspaper articles, etc.
- D. paying Agent or trustee statements
- E. all records regarding the management of bond funds, including investments and the gains (or losses) from such investments; and including specifically trustee statements regarding investments, investment contracts, or other such instruments
- F. Board resolutions authorizing reimbursement of bond funds or earned interest, and accounting of any such disbursements
- G. ledger of bond expenditures (including costs of issuance) and the dates and amounts of such expenditures (including requisitions, draw schedules, draw requests, invoices, bills and cancelled checks with respect to such expenditures)
- H. records of the sale of any bond-financed facilities, including Board resolutions, sales documents, and accounting of proceeds from such sale
- I. record of any private business uses of bond-financed facilities after the issue, including leases and subleases, licenses, management contracts, research contracts, naming rights agreements or other arrangements which provide special legal entitlements to nongovernmental persons or entities
- J. arbitrage rebate reports and records of rebate and yield reduction payments, if any
- K. resolutions or minutes of Board meetings at which any action was taken by the Board pertaining to the bond issue or subsequent treatment, including any formal elections under the Code or Regulations
- L. copies of each Form 8038-T and Form 8038-R filed with the IRS and any other forms or documents filed with the IRS, and
- M. any other documents or Board minutes regarding the Bond issue, financing, facilities, investments, reimbursements, governmental review reports, etc.

### **Recordkeeping Requirements**

The Bond Compliance Officer is responsible for the maintenance of records relating to the bond financings. In the event that different persons are responsible for different aspects of compliance with the tax rules (for example, the investment of bond proceeds and expenditure of bond proceeds on projects), the Bond Compliance Officer will assure coordination with all involved and retention of complete records.

Records of appraisals, surveys, and studies pertaining to the facilities financed with the proceeds of bonds, as well as any and all contracts entered into for the construction, renovation or purchase of bond-financed facilities, as applicable, shall be retained.

Approved: February 26, 1998