

# **SOUTH DAKOTA BOARD OF REGENTS**

## **Policy Manual**

**SUBJECT:** Bond Compliance and Management

**NUMBER:** 5.26

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### **A. PURPOSE**

To provide guidelines and procedures for the issuance and post-issuance compliance in connection with bond transactions.

### **B. DEFINITIONS**

1. **Arbitrage and Arbitrage Rebate:** Arbitrage generally is the earnings that an issuer will earn when it invests proceeds of the bonds in investments with a yield above the yield on the bonds. Generally, an issuer is required to make payments of any arbitrage it earns as a result of the investment to the US Treasury, which is known as “arbitrage rebate.” There are certain exceptions to the payment of arbitrage rebate, including exceptions when certain spend-down targets are met.
2. **Auxiliary System:** On October 21, 2004, the Board established a combined system of housing and auxiliary facilities for all six universities to leverage the strength of the system for bonding purposes, this is referred to as the Auxiliary System.
3. **Board:** The Board means the governing body of the South Dakota Board of Regents.
4. **Bond or Bonds:** A Series of housing and facilities system revenue bonds.
5. **Electronic Municipal Market Access (EMMA):** The Municipal Securities Rulemaking Board’s (MSRB) Electronic Municipal Market Access system for municipal securities or any other electronic format or system prescribed by the MSRB.
6. **Financial Obligation:** A (a) debt obligation, (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, and existing or planned debt obligation; or (c) guarantee of (a) or (b); provided that “financial obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.
7. **Official Statement:** A document prepared by or on behalf of the South Dakota Board of Regents in connection with a new issue of municipal securities. An Official Statement is comparable to a prospectus for a corporate equity or debt offering.
8. **Private Business Use:** Any use of Board financed property by any person other than a state or local government unit, including as a result of (i) ownership, (ii) actual beneficial

use pursuant to a lease or a management service, incentive payment, research or output contract of (iii) any other similar arrangement, agreement or understanding, whether written or oral, except for use of bond-financed property on the same basis as the general public.

9. **Remediation:** The Internal Revenue Code (“Code”) and Treasury Regulations (the “Regulations”) prescribed self-help mechanisms that an issuer may use to remediate non-qualified bonds as a result of a violation of Private Business Use covenants.
10. **Rule:** SEC Rule 15c2-12 under the Securities Exchange Act of 1934, as amended.
11. **Undertakings:** Agreement by SDBOR, as an issuer of municipal securities, with respect to such securities, to disseminate annual financial information, certain operating information and disclosures concerning certain events to the marketplace as provided for under the Rule.
12. **Voluntary Closing Agreement Program:** Program used by issuers of bonds to voluntarily resolve violations of provisions of the Code and applicable Regulations.
13. **Yield Restriction and Yield Reduction Payments:** A requirement that an issuer not invest gross proceeds of the bond at a yield higher than the bond yield. Generally on a new money project bond financing, this takes effect after a 3-year temporary period where investing above bond yield is allowed. Yield reduction payments are a payment made to the US Treasury to for the earnings that exceeded the yield restriction.

## C. POLICY

The South Dakota Board of Regents (*SDBOR*) issues bonds to finance and refinance capital projects for the Issuer. The bonds that are covered under this policy are issued on behalf of the South Dakota Board of Regents Auxiliary System. SDBOR has the right to issue these bonds pursuant to SDCL section 13-51A. This policy is only for the benefit of the Issuer. No other person (including an owner of a bond) may rely on the procedures included in this policy

### 1. Bonds Subject to this Policy

- 1.1. Attached hereto as *Appendix A* is a list of SDBOR’s outstanding Auxiliary System bonds. SDBOR will designate an individual as the Compliance officer who will update this list of the Auxiliary System’s outstanding bonds whenever bonds are issued and whenever an issue of bonds subject to this policy are fully retired. If payments on the bonds are provided for by an escrow, such bonds should remain on the list for purposes of tax compliance for three years after the bonds are paid in full.

### 2. Facilities Subject to this Policy

- 2.1. Attached hereto as *Appendix B-1* is a list of auxiliary system facilities or projects financed or refinanced in whole or in part with proceeds of the bonds and that are subject to federal tax restrictions. The compliance officer should update these lists as appropriate.

- 2.2. A list of projects is necessary to track private business use of bond-financed facilities. In order to simplify the maintenance of the list, the compliance officer may include entire buildings or other facilities even if only partially financed with bonds. The list for issue of Bonds should be completed within a reasonable period after the final allocation of Bond proceeds is made. In the case of refunding Bonds, the list of Projects should include the list of assets financed or refinanced by the refunded Bonds.

### **3. Assignment of Responsibility to Staff; Creation of Compliance Committee**

- 3.1. SDBOR designates the compliance officer as having responsibility to keep all records required to be kept by the SDBOR under this policy, to make all reports to the Board required by this policy, and to otherwise assure that all actions required of SDBOR hereunder be taken in a timely manner. The compliance officer may further delegate certain tasks to other officers, employees or agents of SDBOR. Such delegation shall not relieve the compliance officer from responsibility to assure that all tasks assigned to the compliance officer hereunder are completed in a timely fashion.
- 3.2. The Board hereby establishes the Compliance Committee comprised of the compliance officer, the System Vice-President of Finance and Administration, and General Counsel to oversee compliance with the requirements of the Code and Regulations and the federal securities laws relating to bond transactions, as well as to ensure adequacy of SDBOR's primary and secondary disclosure filings. The Board hereby delegates its responsibility to ensure such compliance to the Compliance Committee.

### **4. General Bond Issuance Matters**

#### **4.1. Bond Documents: Covenants; Ongoing Requirements**

- 4.1.1. In connection with each bond transaction, the compliance committee and bond counsel shall cause a review of all of the bond documents to be made to determine (i) the ongoing covenants of SDBOR in connection with the bonds (for example, maintenance of a rate covenant; maintenance of insurance on facilities, and compliance with restrictions on transfer or encumbrance of property); (ii) ongoing requirements for filings (for example, filings of financial statements) to be made with trustees, underwriters, rating agencies, bond insurers or other parties, and the timing for, or the events that would trigger, such filings; and (iii) any other ongoing requirements as set forth in the bond documents.
- 4.1.2. If deemed necessary by the compliance officer, the compliance officer may work with bond counsel to develop a summary of a bond transaction that includes the key components and ongoing requirements of the transaction, including in particular any unique post-issuance requirements (for example, any requirement for approval by a bond insurer), as well as a comparison of such requirements to those in existing documents. The compliance officer should endeavor to keep all Issuer covenants and requirements for new issues as consistent as possible with those in existing transactions, for ease of administration, as the compliance officer considers to be in the best interests

of SDBOR.

- 4.1.3. As part of the annual review to be conducted as described below, the compliance committee shall annually determine or cause to be determined whether each issue of bonds is in compliance with the covenants and other ongoing requirements applicable to such issue under the related bond documents. The annual report shall state whether SDBOR is in compliance with such covenants and ongoing requirements, and specify any actions to be taken to remedy any noncompliance.

#### 4.2. Annual Review and Reporting

##### 4.2.1. Annual Review

The compliance committee shall not later than September 1<sup>st</sup> of each year conduct an annual review with respect to the most recent full fiscal year of SDBOR. The annual review shall consist of the following:

- Verify that the compliance officer has all undertakings and the tax records set forth in Part 6.7 – Records to be Maintained;
- Review each of the provisions of this policy and assess general compliance with such provisions during the year;
- Conduct the reviews required pursuant to Parts 4, 5, and 6; and
- Consult with other staff, counsel, SDBOR's financial advisor and other appropriate professionals to (i) evaluate the effectiveness of this policy and (ii) solicit and consider recommendations for improvements to the policy.

##### 4.2.2. Annual Reporting

Upon completion of the annual review, the Compliance Committee shall prepare an annual written report to the Board no later than December 15<sup>th</sup> of each year. Such written report shall consist of the following:

- A statement as to whether all required records are in the possession of the compliance officer;
- A brief description of overall compliance with the provisions of this policy;
- The reports required pursuant to Parts 4, 5, and 6; and
- The results of the compliance committee's consultation with other staff, counsel, the Issuer's financial advisor and other appropriate professionals to evaluate the effectiveness of this policy, including recommendations for improvements to this policy.

### 5. Securities Law Compliance

- 5.1. SDBOR has responsibility for the primary and secondary disclosure in connection with the bonds. SDBOR is committed to ensuring that such disclosure is complete, accurate, and timely. All audited financial statements, annual reports, official

statements, continuing disclosure filings, rating agency presentations, road shows and other information intended or reasonably expected to be viewed by investors, rating agencies or the public shall be prepared and disseminated on a timely basis in compliance with applicable standards, rules or guidance promulgated by the Securities and Exchange Commission (SEC); and with respect to audited financial statements, the Governmental Accounting Standards Board (GASB) (or such other accounting principles as may be applicable to the Issuer in the future pursuant to applicable law).

## 5.2. Official Statements

In bond transactions where it is necessary to prepare an official statement, the Issuer shall adhere to the following disclosure procedures.

5.2.1. Preparation – The compliance committee shall have the responsibility for causing preliminary (if needed) and final official statements, and any necessary supplements or amendments thereto (collectively, “*Official Statements*”), to be prepared.

5.2.2. Review – The compliance committee shall review, comment on and update Official Statements. The compliance committee shall be responsible for ensuring all information and data presented with regard to the SDBOR and the projects being financed is complete, accurate, and current, in all material respects, including disclosures regarding legislative and regulatory matters applicable to the Issuer.

An Official Statement shall not be publicly disseminated until, in the opinion of the compliance officer (following consultation with the financial advisor, bond counsel and the other members of the compliance committee), it is in compliance with the disclosure standards.

Although prior Official Statements may be used as a template in later transactions, each Official Statement shall be thoroughly reviewed by the compliance committee to ensure all information is up-to-date and accurate in all material respects and does not omit important information that would be material to potential bondholders.

5.2.2.1. Governing Body Member Review – Each member of the Board should review a substantially final form of each Official Statement prior to its distribution to the public, with particular focus on the information regarding SDBOR, and shall inform the compliance office of any information the member believes is not complete or accurate or which has been omitted and should be included. The compliance committee may retain the assistance of professionals, including consultants, disclosure counsel, the financial advisor and the underwriter(s) in preparing and review Official Statements.

## 5.3. Continuing Disclosure

If SDBOR has entered into an undertaking in connection with an issuance of bonds, the Compliance officer shall cause to be filed with the MSRB’s Electronic Municipal

Market Access system (EMMA):

- all annual financial information (the “*Annual Financial Information*”) and audited financial statements (the “*Audited Financial Statements*”) described in the undertakings; and
- notices (the “*Reportable Event Disclosures*”) of certain enumerated events listed in the undertakings and in *Appendix C* hereto (the “*Reportable Events*”) in accordance with and at the times required by the Undertakings. In this regard, the Board, the Compliance Committee and the compliance officer shall adhere to the following procedures.

5.3.1. SDBOR’s Audited Financial Statements – All audited financial statements of SDBOR shall be prepared in accordance with GASB, shall be audited by a firm of independent auditors or the State of South Dakota’s Department of Legislative Audit, and shall be approved by the Board prior to filing. SDBOR will use its best efforts to ensure that the audited financial statements are filed in a timely manner.

5.3.2. Reportable Event Filings – As required by the Rule, the Compliance officer shall monitor the reportable events, and shall cause reportable event disclosures to be made as necessary and within the times required by the undertakings. The Compliance officer shall consult with the Compliance Committee, the Financial Advisor, and Counsel to the extent he deems advisable in connection with each reportable event disclosure.

No reportable event disclosure filing shall be disseminated unless, in the opinion of the Compliance officer, such filing complies with the disclosure standards.

5.3.3. Annual Determination of Reportable Events – As part of the annual review required pursuant to Part 4 (and in connection with each Bond issuance), the compliance officer shall cause a review to be made to determine all reportable event filings made during the year, and whether a reportable event occurred during the year for which appropriate disclosure was not made as required by the undertakings. If such an event occurred in the preceding year and appropriate disclosure was not made, or if the annual financial information or audited financial statements were not filed in a timely manner, the compliance officer shall cause a reportable event disclosure, filing to be prepared and disseminated.

The compliance officer will include in the annual report, required pursuant to Part 4, a report on each reportable event disclosure filed during the year.

As provided in Part 7 below, the Compliance officer may obtain the assistance of the Financial Advisor, a Dissemination Agent or other professionals to compile, format and disseminate the information and materials necessary to comply with the Issuer’s continuing disclosure responsibilities.

#### 5.4. Guidelines for Disclosures to the Investor Community

SDBOR is committed to fair disclosure to the investor community in compliance with

all applicable securities laws. The SEC has noted that the phrase “speaking to the market” refers to any disclosure by an issuer of municipal securities to the public that is reasonably expected to reach investors and the trading markets (whether or not such disclosure is published for the purpose of providing information to the securities markets). The Board understands that officials of SDBOR speaking to the public, even if not for the purpose of releasing financial information to the public, could be deemed to be speaking to the market and therefore subjecting themselves and SDBOR to securities laws violations if such officials make a material misrepresentation or omission in their statements to the public.

SDBOR has established the following policy with respect to disclosure of material non-public information about the Issuer to anyone outside of the Issuer unless it is disclosed to the public at the same time. The only exception is to persons who have previously agreed in writing to maintain confidentiality, as described below.

- 5.4.1. “Material” information is information that a reasonable investor in the Issuer’s bonds could consider import. Information is “non-public” if it has not been previously released in a way that is designed to reach the investing public, such as filing with EMMA.

Material non-public information can be communicated in many ways, such as:

- Releases of audited financial statements, including filing of annual financial information or reportable events disclosures and voluntary notices of EMMA
- Contacts with analysts covering the Issuer
- Analyst and investor visits
- Speeches, conferences, panel discussions and interviews with the media
- Responding to market rumors or news reports of events that could materially affect the financial condition of the Issuer.

- 5.4.2. The compliance committee is responsible for determining the content and timing of any disclosure to the investing public and has primary responsibility for interpreting this Policy with respect to compliance with securities laws and for establishing and implementing procedures to ensure compliance of all communications by employees or officials of the Issuer with the Disclosure Standards.

- 5.4.3. Only the following persons are authorized to disclose material non-public information or other general information relating to the financial condition of SDBOR to the investor community (including analysts, broker-dealers and individual and institutional bondholders):

- Executive Director
- Systems Vice-President of Finance and Administration
- Financial compliance officer

- General Counsel

Public statements made by other employees and officials of the Issuer are not intended to be, and shall not be, relied upon by members of the investor community. Attached as *Appendix D* is a form of voluntary disclosure to be filed with EMMA and placed on the SDBOR website, advising the investor community of this policy.

5.4.4. The compliance committee has established the following guidelines for disclosure of material information:

- Filing with EMMA, after approval by the compliance officer.
- Participation in speeches, conferences, panel discussions or media interviews where material non-public information may be disclosed must be reviewed and approved by the compliance officer in accordance with these guidelines.
- Visits by investors, analysts or other financial professionals must be cleared with the compliance officer, and statements made during these visits are covered by this policy.
- SDBOR's policy is not to comment on rumors or speculation.

5.4.5. The following people may receive material non-public information: the Issuer's attorneys, accountants, investment bankers, financial advisors and other entities that are subject to confidentiality agreements or are required to maintain confidentiality as a matter of professional responsibility. If an unauthorized disclosure occurs, immediately contact general counsel.

## 6. Tax Matters

- 6.1. Ensuring the tax exempt or tax advantaged status (the "*Tax Status*") of the bonds is maintained after issuance requires a thorough and ongoing review of the use of the proceeds of the bonds, the investments purchased with such proceeds and the projects and their uses, as well as continuing compliance with various requirements, all as provided in the code.
- 6.2. Federal tax law imposes restrictions related to investment and expenditure of bond proceeds and on the use of facilities financed with bonds. Compliance with these restrictions is often necessary to maintain the tax status of the bonds. In connection with each issue of tax-exempt bonds, SDBOR has covenanted or will covenant not to take any action that would cause the interest on the bonds to become included in the gross income of the holders of the bonds for federal income tax purposes. In connection with each issue of tax-advantaged bonds, SDBOR desires not to take any action that would result in the disallowance of any interest payment subsidy or tax credit to the holders of the tax-advantaged bonds (or to third parties).
- 6.3. These procedures are being adopted by SDBOR to assist it in fulfilling covenants to maintain the tax-exempt or tax-advantaged status of the bonds. These procedures are not intended to diminish or augment those covenants. It is the intention of SDBOR that it will comply with all applicable Federal tax law requirements and



maintain sufficient records to demonstrate such compliance.

- 6.4. SDBOR is aware that the Internal Revenue Service (IRS) maintains an active force of revenue agents who examine bond issues for compliance. As a result of such examinations, the IRS may require payment of financial penalties or impose other sanctions to preserve the tax status of the bonds or may declare bonds to no longer be tax-exempt or tax-advantaged. Any such declaration could result in legal action against SDBOR. To minimize the risk of such occurrence, these procedures have been adopted to provide a framework for post-issuance compliance. SDBOR is aware that the IRS may take adequate written procedures into account when entering into a settlement with SDBOR and may settle matters on more favorable terms should such settlement be required.

- 6.5. Pre-Issuance Review and Analysis

Prior to the issuance of bonds after the date of the adoption of this policy, the compliance officer shall consult with bond counsel regarding the facilities to be financed or refinanced, the actual and expected use of the projects, the requirements of the code and any specific tax issues identified by the compliance officer or bond counsel. The compliance officer will work with bond counsel to obtain necessary records and documentation, such as tax compliance questionnaires, certificates and opinions of counsel and respect to the expected use of the projects and the effect of such use on the tax status of the proposed bonds.

- 6.6. Tax Agreements

In each bond transaction, it is expected that the compliance officer shall execute, or review, a tax certificate and agreement which details the tax requirements relating to the bonds of that transaction. The compliance officer shall refer to and review such tax agreements regularly. Should the compliance officer not understand any portion of such tax agreements, the compliance officer will seek an explanation from counsel. Under certain circumstances, on the advice of counsel, tax agreements may be amended to clarify (or modify) the tax covenants contained therein. See Part 7 Miscellaneous, "Special Procedures for Special Cases" if no tax agreement is executed in connection with an issue of tax exempt or tax advantaged bonds.

- 6.7. Records to be Maintained

In coordination with SDBOR's "records officer", the compliance officer shall cause to be maintained the following records for each issue of bonds:

- 6.7.1. Closing Transcripts – A complete closing transcript of all documents, certificates and legal opinions delivered in connection with the issuance of the bonds, as provided by bond counsel at the time of closing.
- 6.7.2. Investments and Arbitrage Rebate – All documents relating to the investment and disbursement of Bond proceeds:
  - 6.7.2.1. Account statements showing the disbursements of all bond proceeds, together with completed requisitions and supporting materials required by the bond documents;
  - 6.7.2.2. Account statements showing all investment activity of each account

that holds bond proceeds or amounts for the payment of debt service on bonds;

- 6.7.2.3. Copies of all requests for bids, bid responses, bidding agent or broker's certificates and other documentation to establish the acquisition at a fair market value of
  - All investments of bond proceeds and moneys for the payment of debt service, and
  - Any swaps, options, or other financial derivatives entered into with respect to any bonds;
- 6.7.2.4. Copies of any subscriptions for the purchase of U.S. Treasury Obligations of the State and Local Government Series (SLGS);
- 6.7.2.5. All calculations of yield restriction compliance; and
- 6.7.2.6. All calculations of arbitrage rebate liability that is or may become due with respect to any series of bonds (including calculations showing that no arbitrage rebate is due), together with, if applicable, account statements or cancelled checks showing the payment of any rebate amounts to the U.S. Treasury together with any applicable IRS Form 8038-T or Form 8038-R.
- 6.7.3. Private Business Use – Copies of all significant contracts and agreements of SDBOR, including any leases, management contracts, naming rights agreements, research agreements, concessions, or service contracts, with respect to the use of any property owned by SDBOR and acquired or financed with the proceeds of bonds (excluding arm's length contracts covering 50 or fewer days; however, if not retained. Summaries of the terms of such contract shall be retained). The compliance officer shall cause such contracts to be reviewed either by staff of SDBOR, bond counsel or an outside consultant (i) to determine if such contracts cause any private business use of such facilities, or (ii) if the compliance officer cannot reasonably determine whether such contract causes private business use. If any such contract is determined to cause private business use of a project, the compliance officer should determine or cause to be determined for each year, the percentage of such facility so privately used. Such determination may be made in consultation with counsel or other consultants.
- 6.7.4. Actions under These Procedures – The compliance officer shall retain all records, reports, memoranda and other documents and correspondence relating to these procedures or actions taken under the procedures.
- 6.7.5. Correspondence with the Internal Revenue Service – The compliance officer shall retain all records of contact with the IRS, including filings, examinations, voluntary closing agreement requests or private letter rulings.
- 6.7.6. Retention of Records for Three Years Past Final Payment – Notwithstanding any other policy of SDBOR, each of the records described above shall be maintained for at least as long as the bonds relating to such records (including

refunding bonds) are outstanding, plus three years, and for such longer period as may be required by any applicable law or regulation.

#### 6.8. Arbitrage Compliance

- 6.8.1. The compliance officer shall be responsible for ensuring that payment is made to the U.S. Treasury of all arbitrage rebate installments and payments when due. The compliance officer shall engage such professional arbitrage rebate consultants as he shall deem necessary to prepare or assist in such computations. The compliance officer shall consult with bond counsel, the financial advisor and the arbitrage rebate consultant regarding which actions are necessary to comply with the arbitrage restrictions and arbitrage rebate requirements of the code. Taking into account any applicable exemptions from the arbitrage rebate requirement for each issue of bonds, the compliance officer shall cause computations to be made annually and as otherwise required, of the accrued arbitrage rebate amount with respect to each issue of bonds.
- 6.8.2. If and to the extent that any bond proceeds are or become subject to a yield restriction requirement, the compliance officer shall be responsible for investing such proceeds at not in excess of the permitted yield and for making any yield reduction payments to the U.S. Treasury as are necessary to maintain the tax status of interest on the affected bonds.

#### 6.9. Expenditure of Bond Proceeds

- 6.9.1. Use of Bond Proceeds – For each issue of bonds, the compliance officer shall review all expenditures of bond proceeds and the purpose for such expenditures, as and when such expenditures occur, to ensure that such expenditures comply with the tax requirements applicable to such issue of Bonds.
- 6.9.2. Timing of Expenditures – The compliance officer shall monitor the timing and amount of the expenditure of each issue of bonds, as and when such expenditures occur, to comply (i) if applicable, with any exceptions from arbitrage rebate relating to such issue of bonds and (ii) any other requirements relating to the expenditure of the proceeds of such issue of bonds.
- 6.9.3. Allocations of Bond Proceeds to Expenditures – The compliance officer shall compile an allocation of all bond proceeds and earnings thereon to particular expenditures. The compliance officer will only allocate expenditures to expenditures that meet all of the requirements of the application bond documents. The Board and the compliance officer understand that such allocations need not follow a direct tracing of bond proceeds and may be changed up to 18 months after the date of the expenditure to which such proceeds were or will be allocated or, if later, the date the project financed by the bonds is placed in service. In no event may such reallocation be made after the date that is 60 days after the fifth anniversary of the issuance date of the bonds, or 60 days after the retirement in full of all the bonds of the issue, if earlier. Such allocations may include allocations to expenditures made

prior to the issuance of the bonds in accordance with the applicable reimbursement rules in the regulations. At such time as the compliance officer determines that there will be no additional expenditures of bond proceeds (other than proceeds in a debt service reserve fund, if any) and that SDBOR will not or cannot reallocate such proceeds to expenditures because the time limits set forth above have expired, the compliance officer shall declare such allocation to be a final allocation of bond proceeds to expenditures. The compliance officer shall maintain all such allocations of proceeds to expenditures, including any final allocations, with the records it must maintain.

- 6.9.4 Allocations of Equity to Projects Financed In Part By Bonds – The compliance officer shall compile an allocation of funds derived from sources other than tax-advantaged bonds (“equity”) allocated to expenditures that are part of the same project or same plan of finance as assets financed with the proceeds of the bonds (such project being defined as a “mixed project”). To the extent the equity is “qualified equity” of the project, in each one-year period, equity may be allocated to any private business use of the mixed project before bond proceeds are allocated to private business use of the mixed project. At such time the compliance officer determines there will be no more expenditures of a mixed project, the compliance officer shall make a final declaration of the mixed project that details the allocation of bond proceeds and qualified equity in the project, by amount and percentage. The compliance officer shall maintain all such allocations, including the final declaration of the project, with the records it must maintain. The compliance officer recognizes that to the extent the project is a mixed project, the allocation of percentage of qualified equity in the project and percentage of bond proceeds funding the project will be used to determine whether in any one-year period, the equity in the mixed project is sufficient to cover all private business use of the mixed project in that year, or whether bond proceeds are allocated to private business use. The compliance officer shall consult with bond counsel or other advisors regarding the mixed use project allocation rules as necessary.
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#### 6.10. Use of Projects

In order to maintain the tax status of bonds, the compliance officer will monitor the use of any project to comply with restrictions on use of a project by persons other than SDBOR as set forth in the tax agreements for the bonds. For example, the following is a list of typical restrictions. It is not comprehensive and the compliance officer should reference the tax agreements for a complete description of such restrictions.

- 6.10.1. Users of a project, other than state or local governmental units generally, shall not use more than 10% of the facilities financed by any one issue of bonds, on any basis other than the same basis as the general public. Any use of any portion of a project by any person or entity other than the Issuer shall be discussed with bond counsel.
- 6.10.2. No portion of the project shall be sold or otherwise disposed of or leased; no

management contract, concession or contract for naming rights will be entered into relating to a project; and no other “special legal entitlement” (i.e. preferential access to or use of a project) relating to the project shall be granted to an individual or entity (other than a state or local governmental unit), without prior review by bond counsel to ensure that such action complies with the tax agreement applicable to such issue of bonds and will not affect their tax status.

- 6.10.3. Management Contracts relating to projects should generally conform to the requirements of Rev. Proc. 2017-13.
- 6.10.4. Research Contracts relating to projects should generally conform to Rev. Proc. 2007-47.
- 6.10.5. The compliance officer and SDBOR recognize that there are many situations under which private business use is permitted to exceed the limits described above without violating tax covenants. SDBOR and the compliance officer may permit such private business use to exceed the 10% limit described above if permitted by all applicable tax agreements or bond counsel provides advice that allows such use.

The projects financed or refinanced by the Issuer are Auxiliary System facilities. As such, private business use of the projects is generally determined by the terms of any contracts (including research contracts, leases, management contracts and food service contracts) entered into by the institution for the use of all or a portion of the projects. The compliance officer will work with bond counsel to obtain necessary records and documentation demonstrating that the use of planned use of a project complies with all applicable tax requirements. If the compliance officer becomes aware of any use of projects that could affect the tax status of bonds, the compliance officer will consult with counsel to determine any potential tax consequences for the bonds.

SDBOR and the compliance officer recognize that if private business use or non-qualified use of projects exceeds the limits provided in the bond documents, a remedial action may be required in accordance with the code. In such event, the compliance officer shall prepare, or direct bond counsel to prepare, a memorandum describing any required remedial action and shall report to the compliance committee.

#### 6.10.6. Action on the Discovery of a Potential Violation

- 6.10.6.1. Reallocation – SDBOR and the compliance officer recognize that, in limited circumstances, if there is a failure to spend bond proceeds property, such bond proceeds can be allocated to qualified costs that may be financed with bond proceeds, *provided* that such reallocation occurs within specified time frames. If the compliance officer determines that a failure to spend Bond proceeds on qualified costs has occurred, the compliance officer will (with the aid of counsel or other consultant or staff of SDBOR) determine if a reallocation of

bond proceeds is possible. If the compliance officer decides to make such a reallocation, the compliance officer shall prepare (or cause to be prepared) a document describing such reallocation and the effect of such reallocation. The lists of bond-financed property in *Appendix B-1* and *Appendix B-2* shall be revised, if necessary, as a result of such reallocations.

6.10.6.2. Remediation – SDBOR and the compliance officer recognize that if, among other things, there is a failure to use bond proceeds properly, a failure to spend all bond proceeds, or a disposition of a project or private business use of a project in excess of allowed limits, a remedial action may be required in accordance with the code and the regulations. The compliance officer should (with the aid of counsel or other consultant or staff of SDBOR) determine if such remedial actions are required and possible. The compliance officer should prepare or cause to be prepared a memorandum describing any such remedial action or proposed remedial action. The memorandum should describe whether such remedial action will serve to cure any particular tax law violation. The memorandum should include a full description of such required actions of SDBOR and the effect of such remedial action. A copy of any such memorandum shall be given by the compliance committee. The lists of bond-financed property in *Appendix B-1* and *Appendix B-2* shall be revised, if necessary, as a result of such remedial action.

6.10.6.3. Voluntary Closing Agreement Program – SDBOR recognizes that if private business use exceeds the limits provided in the bond documents and remedial action is not undertaken (or is not possible) or if another violation of the covenants of SDBOR necessary to maintain the tax status of bonds occurs, then it may be necessary or advisable for SDBOR to enter into a voluntary closing agreement with the Internal Revenue Service pursuant to the Tax Exempt Bonds Voluntary Closing Agreement Program described in Treasury Notice 2008-31 or any successor guidance (the “*VCAP Program*”). The compliance officer shall (in consultation with counsel) determine if a voluntary closing agreement is appropriate.

The compliance officer shall prepare or cause to be prepared a memorandum describing any proposed application for a voluntary closing agreement and any proposed voluntary closing agreement. The memorandum shall describe whether the voluntary closing agreement will serve to cure any particular tax violation and the nature of such violation. If any actions are required by SDBOR for such voluntary closing agreement application, the memorandum shall include a full description of such required actions. A copy of any such memorandum shall be provided to the compliance committee.

Following the execution of any voluntary closing agreement, the

compliance officer shall prepare a report describing the effect of such closing agreement. The lists of bond-financed property in *Appendix B-1* and *Appendix B-2* may need to be revised as a result of such closing agreement and, if so, the compliance officer should so revise the lists.

#### 6.11. Annual Tax Compliance Review

- 6.11.1. As part of the compliance committee's annual review to be completed as provided in Part 4.2, the compliance committee shall conduct a review of the contracts and other records described above under the title "Records to be Maintained" to determine for each issue of bonds whether each issue of such bonds complies with the tax requirements applicable to such bonds (including restrictions on private business use and private loans) and with the other provisions of this policy.
- 6.11.2. To the extent that any violations or potential violations of tax requirements are discovered, the compliance committee shall make recommendations or take such other actions as the compliance committee shall reasonable deem necessary or appropriate to assure the timely correction of such violations or potential violations through remedial actions described in the code or regulations, or in the VCAP program.

#### 6.12. Tax Compliance Reporting

The compliance committee's written report required pursuant to Part 4 shall set forth the results of the annual tax compliance review as provided above. The report shall address compliance with the requirements of this Part 6, any accrued arbitrage rebate liability of SDBOR, and arbitrage rebate payments made to the U.S. Treasury and any other matters affecting the tax status of the bonds.

##### 6.12.1. Action on IRS Contract

- 6.12.1.1. Examination of Bonds – SDBOR and the compliance officer recognize that the IRS or another regulatory entity may undertake an examination of bonds. In the event that SDBOR is notified of such an examination, SDBOR shall as quickly as possibly notify the compliance officer, and the compliance officer shall promptly inform the compliance committee. The compliance committee should coordinate the defense of such examination and should determine if counsel should be hired and, if so, which counsel. Except to the extent that SDBOR determines that another party should undertake a response, the compliance officer will be responsible for compiling answers to any information or document request that might be presented to the Issuer as a result of such examination. If an examination cannot be closed without a closing agreement, the compliance officer should use reasonable efforts to reach an acceptable closing agreement with such regulatory agency and to obtain all required Board approvals of such closing agreement.

Regardless of how an examination of the bonds is closed, the compliance officer should retain all communications with the IRS or other regulatory agency relating to such examination among the records kept under the procedures.

6.12.1.2. Compliance Checks – The IRS and other regulatory agencies may conduct compliance checks from time to time. As part of such compliance check, the IRS or another regulatory agency may send questionnaires to SDBOR. The compliance officer may, if authorized, hire counsel to assist in the response to a compliance check. The compliance officer should advise the compliance committee or any such compliance check promptly after receiving notice thereof.

#### 6.13. Applicability of this Part 6 – Tax Matters

If, in consultation with bond counsel, the compliance officer determines that any of the provisions of Part 6 shall not apply to a particular issue of bonds, the compliance officer shall document such determination and shall not be required to comply with such provision(s).

### 7. Miscellaneous

#### 7.1. Professionals

SDBOR is a regular issuer of bonds. Accordingly, SDBOR shall retain the regular services of nationally recognized bond counsel. SDBOR shall also retain the services of a financial advisor in connection with each bond transaction. SDBOR may also retain the services of other professionals, including special counsel, trustees, paying agents and escrow agents, on a transaction-by-transaction basis, as deemed necessary by the compliance officer. The selection of financial advisors, bond counsel and all other professionals shall be authorized and approved by the Board.

The compliance committee and other SDBOR officers and employees may utilize the services of such professionals in connection with the execution of any of their responsibilities under this policy.

#### 7.2. Training

7.2.1. The compliance officer and designated staff and the other members of the compliance committee shall participate in such continuing professional education courses and seminars in public finance, debt management and related topics as necessary or appropriate to ensure a sufficient level of knowledge and training for the effective administration of, and compliance with, this policy.

7.2.2. The compliance officer will provide copies of bond documents and this policy to other staff members who may be responsible for taking actions described in the bond documents and in particular to any person who is to be a successor compliance officer. The compliance officer will assist in the education of any successor compliance officer and the transition of the duties under this policy.



- 7.2.3. The compliance officer should undertake to maintain a reasonable level of knowledge concerning the rules related to tax-exempt and tax-advantaged bonds so that he or she may fulfill his or her duties hereunder. The compliance officer may consult with counsel, attend conferences and presentations of trade groups, read material posted on various websites, including the website of the Tax-Exempt Bond function of the IRS, and use other means to maintain such knowledge. Recognizing that the compliance officer may not be fully knowledgeable in this area, such officer may consult with in-house or outside counsel, consultants and experts to assist in exercising his or her duties under these procedures. The compliance officer should coordinate appropriate training and education of other personnel of SDBOR.
- 7.2.4. The compliance officer should review the bond documents and these procedures periodically to determine if there are portions that need further explanation and, if so, will attempt to obtain such explanation from counsel or other experts or consultants or staff.

### 7.3. Additional Records

The compliance officer shall cause to be maintained all records, in addition to those described in Part 6 above, necessary to demonstrate SDBOR's compliance with this policy.

### 7.4. Changes to the Policy

The Procedures contained herein may be revised and amended from time to time as the Board and the compliance officer deem necessary to comply with the requirements of the code or the securities laws. The Board and the compliance officer may, from time to time and upon the issuance of new bonds, contact counsel to determine whether the procedures contained herein adequately address the post-issuance responsibilities of SDBOR as required by the code and the securities laws.

### 7.5. Specific Procedures for Special Cases

The Procedures contained herein specifically address post-issuance compliance procedures with respect to tax-exempt governmental bonds issued for capital projects under Section 103 of the Code, Build America Bonds issued under Section 54AA of the Code and Recovery Zone Economic Development Bonds issued under Section 1400U-2 of the Code. The Board and the compliance officer recognize that these procedures may be inadequate for other types of tax-exempt obligations, tax-credit or direct pay obligations (other than Build America Bonds), for which additional procedures may be required. In addition, occasionally SDBOR will enter into financing agreements or leases for equipment; the interest on which is intended to be tax-exempt but for which no tax certificate and agreement exists. In the event that SDBOR enters into such equipment financings or issues private activity tax-exempt obligations, tax-exempt obligations funding a significant amount of working capital, tax-credit bonds, or direct pay bonds, or if the Board receives an indication from counsel that additional procedures are required, or if SDBOR enters into any derivative products, these procedures should be revised to reflect any special rules

and requirements and post-issuance responsibilities applicable to such type of tax advantaged obligations and derivative products.

#### 7.6. Authorization and Expense

This policy is not intended to provide authorization to the compliance officer to enter into contracts for service or to spend SDBOR funds. To the extent that the compliance officer determines that such contracts or expenditures are desirable and are not otherwise authorized, the compliance officer should obtain such authorization before entering into such contracts and spending such SDBOR funds.

### **FORMS / APPENDICES:**

Appendix A – List of Bonds

Appendix B-1 – List of Bond-Financed Property

Appendix B-2 – List of Disposed Bond-Financed Property

Appendix C – List of Reportable Events

Appendix D – Form of Statement Re: Disclosures to Investor Community

Appendix E – Form of Annual Report

### **SOURCE:**

BOR April 2014; June 2019; October 2023 (Clerica

