



ADMINISTRATIVE DIRECTIVE

8.10.045-AD

Tax-Exempt Bond Post-Issuance Compliance & Continuing Disclosure Policy

I. Federal Tax Procedures:

A. PURPOSE

This Administrative Directive implements Policy 8.10.040-P, which establishes compliance requirements so that the District utilizes the proceeds of all issues of bonds, certificates of participation, bond anticipation notes, and tax and revenue anticipation notes (collectively referred to as “Bonds”) in accordance with applicable federal tax requirements, and complies with all other ongoing applicable federal requirements with respect to outstanding Bonds.

B. PROCEDURES

1. **Responsible Official.** The Superintendent will hold the Chief Financial Officer (“CFO”) responsible for each of the procedures listed below, will notify the current CFO of these responsibilities, and will provide the CFO a copy of these procedures. Upon employee transitions, the Superintendent will advise any newly-designated CFO of his/her responsibilities under these procedures and will ensure the CFO understands the importance of these procedures. If employee positions are restructured or eliminated, the Superintendent will reassign responsibilities as necessary.

2. **Issuance of Bonds**

a. **Bond Counsel.** The District will retain a nationally-recognized bond counsel law firm (“Bond Counsel”) to assist the District 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 District’s Tax Certificate (or other closing documents containing the tax representation) (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 CFO or designee 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 tax-exempt status of interest will be maintained for federal income tax purposes so long as any Bonds remain outstanding.

The CFO and/or other designated District personnel 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 that tax-exempt status of interest will be maintained. Those requirements and procedures shall be documented in a Tax



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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 CFO and/or other designated District personnel 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 (and in some cases beyond) the term of the Bonds.

- b. **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 District, 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.
- c. **Information Reporting.** The CFO and/or other designated District personnel will assure filing of information returns on IRS Form 8038-G no later than the 15th day of the second calendar month in the calendar quarter following the calendar quarter in which an issue of Bonds is issued. The CFO 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) of IRS Notice CP152, will be included as part of the closing transcript for each Bond issue, or kept in the records related to the appropriate issue of Bonds.

3. **Application of Bond Proceeds:**

a. **Use of Bond Proceeds.**

The CFO and/or other designated District staff shall:

- 1) monitor the use of Bond proceeds and the use of the Bond-financed assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds (and in some cases beyond the term of the Bonds) to ensure compliance with covenants and restrictions set forth in the applicable Tax Certificate;



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- 2) maintain records identifying the assets or portion of assets that were financed or refinanced with proceeds of each issue of Bonds;
- 3) 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;
- 4) 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
- 5) 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.

b. Timely Expenditure of Bond Proceeds. At the time of issuance of any Bonds issued to fund original expenditures, the District 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.¹ In addition, for such Bonds, the District must have incurred or expect to incur within six months after issuance original expenditures of not less than 5% of such amount of proceeds, and must expect to complete the Bond-financed project (the “Project”) and allocate Bond proceeds to costs with due diligence.² Satisfaction of these requirements allows Project-related Bond proceeds to be invested at an unrestricted yield for three (3) years.³ 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 CFO or designee will monitor the appropriate capital project accounts (and, to

¹ In the case of short-term working capital financings (*e.g.*, TRANs), the District’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.

² These requirements do not apply to short-term working capital financings (*e.g.*, TRANs).

³ These requirements do not apply to short-term working capital financings (*e.g.*, TRANs).



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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.

- c. **Capital Expenditures.** In general, proceeds (including earnings on original sale proceeds) of tax-exempt Bonds issued to fund original expenditures, other than proceeds deposited in a reasonably required reserve fund or used to pay costs of issuance, should be spent on capital expenditures.⁴ 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 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. Although not detailed within this policy, any expenditure of the proceeds of any District borrowing must also comply with all State law limitations on the uses of such proceeds. For example, the proceeds of general obligation bonds may only be used for “capital costs” as defined in the Oregon Constitution. Other types of borrowings may have different restrictions.

4. Use of Bond-Financed Assets:

- a. **Ownership and Use of Project.** For the life of a Bond issue, the Project must be owned and operated by the District (or another state or local governmental entity). At all times while the Bond issue is outstanding, no more than 10% (or \$15,000,000, if less) of the Bond proceeds or the Project 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”).⁵ 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 governmental persons. Generally, Private Use consists of any contract or other arrangement, including leases, management contracts, operating agreements, guarantee contracts, take or pay contracts, output 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. The 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.

⁴ These requirements do not apply to short-term working capital financings (e.g., TRANs).

⁵ These requirements do not apply to short-term working capital financings (e.g., TRANs).



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- b. **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 Project that fit within the allowable private use limitations or the contracts must meet the IRS safe harbor requirements for 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. The CFO 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.
- c. **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. Additional state law limitations may apply as well.

5. **Investment Restrictions; Arbitrage Yield Calculations; Rebate.**

- a. **Investment Restrictions.** Investment restrictions relating to Bond proceeds and other moneys relating to the Bonds are set forth in the Tax Certificate. The CFO or designee will monitor the investment of Bond proceeds to ensure compliance with applicable yield restriction rules.
- b. **Use and Control of Bond Proceeds.** Unexpended Bond proceeds (including reserves) may be held directly by the District or by the trustee for the Bond issue under an indenture or trust agreement. The investment of Bond proceeds shall be managed by the District. The CFO or designee shall maintain appropriate records regarding investments and transactions involving Bond proceeds. The trustee, if appropriate, shall provide regular statements to the District regarding investments and transactions involving Bond proceeds.
- c. **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 District 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).
- d. **Rebate.** The CFO or designee 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 District that the Bonds are exempt from the rebate requirements described in this



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section, the CFO or designee 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 CFO or designee 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.

- 1) The reports and calculations provided by the arbitrage rebate consultant are intended to assure compliance with rebate requirements, which require the District to make rebate payments, if any, no later than the fifth (5th) anniversary date and each fifth (5th) 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.
- 2) The CFO or designee 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 CFO or designee will review the Tax Certificate and/or consult with the arbitrage rebate consultant or Bond Counsel for more details regarding the rebate spending exceptions.
- 3) In the case of short-term working capital financings, such as tax and revenue anticipation notes, if there is concern as to whether or not the District has met its requisite maximum cumulative cash flow deficit with respect to its short-term working capital notes, the services of a rebate analyst should be engaged 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.
- 4) 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 District described in Subsection A of this Part II 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.



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6. Record Retention:

- a. **Allocation of Bond Proceeds to Expenditures.** The District 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.
- b. **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 District for the term of a Bond issue (including refunding Bonds, if any) plus six (6) years, including the following documents and records:
 - 1) Bond closing transcripts;
 - 2) Copies of records of investments, investment agreements, credit enhancement transactions, financial derivatives (e.g., an interest rate swap), arbitrage reports and underlying documents, including trustee statements;
 - 3) Copies of material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) purchase orders, invoices, 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;
 - 4) All contracts and arrangements involving private use, or changes in use, of the Bond-financed property;
 - 5) All reports and documents relating to the allocation of Bond proceeds and private use of Bond-financed property; and
 - 6) Itemization of property financed with Bond proceeds, including placed in service dates.
 - 7) In the case of short-term working capital financings, such as tax and revenue anticipation notes, information regarding the District's revenue, expenditures and available balances sufficient to support the District's maximum cumulative cash flow deficit.



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C. POST-ISSUANCE COMPLIANCE

1. In General.

- a. The CFO or designee 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 CFO or designee will consult Bond Counsel. The District 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.
- b. The CFO or designee 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.
- c. Whenever necessary or appropriate, the CFO or designee will engage an expert advisor as arbitrage rebate consultant to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds.

2. Monitoring Private or Other Use of Financed Assets.

- a. The CFO or designee 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 CFO or designee will promptly contact and consult with Bond Counsel to ensure that there is no adverse effect on the tax-exempt status of the Bonds and, where appropriate, will remedy any violations through the “remedial action” regulations (Treas. Reg. Section 1.141-12),



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the Voluntary Closing Agreement Program (VCAP) described in IRS Notice 2008-31 (or successor guidance), or as otherwise prescribed by Bond Counsel.

3. Ongoing Training.

- a. Training shall be made available to the CFO to support the CFO'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 OMFOA and/or OASBO, 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 District's Bond Counsel and/or arbitrage rebate consultant.

4. Annual Checklist of Tax-Exempt Bond Compliance Checklist.

- a. The CFO will complete the required "Annual Tax-Exempt Bond Compliance Checklist" with respect to all outstanding Bonds on or before the anniversary date of each bond issuance. The CFO 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 B.6.b., above.

II. Federal Securities Procedures:

A. Definitions

1. *Alternate Compliance Officer* means the Sr. Director of Accounting & Payroll.
2. *Annual Reports* means the financial information and operating data (including audited financial statements) required to be filed on an annual basis pursuant to the CDAs.
3. *CDA's* means the District's continuing disclosure certificates, continuing disclosure agreements and undertakings relating to its outstanding securities entered into pursuant to the Rule.
4. *Compliance Officer* means the Chief Financial Officer (CFO).
5. *Disclosure Group* means the group described in Section D of these Procedures that assists the District in complying with these Procedures.



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6. *EMMA* means the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board.
7. *Filing* means the filings of Annual Reports, Specified Events and other information that the District submits to EMMA in accordance with the District's CDAs, in accordance with the Rule or other applicable law, or voluntarily.
8. *Procedures* mean these Continuing Disclosure Controls and Procedures of the District.
9. *Rule* means Rule 15c2-12 of the Securities and Exchange Commission, adopted under the Securities Exchange Act of 1934, 17 CFR § 240.15c2-12.
10. *Specified Events* means the list of specific events that the District is required by each CDA to report on EMMA very promptly, usually within ten days. Specified Events are often referred to as material events.

B. Components of CDAs

1. The Compliance Officer and the Alternate Compliance Officer will review the exact language of each CDA at least once each fiscal year and after each new CDA is executed. Each CDA is different and the exact language in each governs the District's contractual obligations under that CDA.
2. Most CDAs require the District to make two kinds of filings: Annual Reports and Specified Events.
 - a. Annual Reports. Annual Reports usually must be filed on EMMA within a certain period of time after the end of each fiscal year. The nature of the Annual Report that is required by each CDA is described in that CDA, but Annual Reports generally consist of:
 - (i) the District's audited financial statements,
 - (ii) additional financial information and operating data of the type specifically described in each CDA.
 - b. Specified Events. Recent CDAs require the District to report certain Specified Events within ten business days, although older CDAs may only require notice in a timely manner. These procedures assume that filing for a Specified Event must be made within ten business days after the Specified Event occurs.
3. Compliance officers and members of the Disclosure Group must bear in mind that any filings must be accurate in all material respects.



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C. Roles of Parties

1. The Compliance Officer is primarily responsible for ensuring that the District complies with its CDAs and follows these procedures.
2. The Alternate Compliance Officer shall assist the Compliance Officer and shall act as the Compliance Officer if the Compliance Officer is not available to perform the Compliance Officer's functions under these Procedures.
3. The Disclosure Group includes other officers or employees of the District who may assist the Compliance Officer and the Alternate Compliance Officer in ensuring that the District complies with its CDAs and these Procedures.
4. The Compliance Officer and the Alternate Compliance Officer shall each report their actions under these Procedures to each other and to any members of the Disclosure Group. Reports shall be made promptly and in writing.

D. Disclosure Group

1. The Disclosure Group shall include:
 - a. Compliance Officer,
 - b. Alternate Compliance Officer,
 - c. General Ledger Sr. Manager, and
 - d. Bond Accountant.
2. Not later than sixty days after the beginning of each Fiscal Year the Compliance Officer shall determine whether additional members should be appointed to the Disclosure Group to assist the District in carrying out these Procedures. The Compliance Officer may appoint anyone the Compliance Officer believes would assist the District in carrying out these procedures. If District officers or employees have special knowledge relating to matters that the District is required by its CDAs to report on EMMA, the Compliance Officer should consider appointing those people to the Disclosure Group.
3. The District may create distinct Disclosure Groups for each matter as they arise if necessary.



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4. When the Compliance Officer appoints a person as a member of the Disclosure Group, the Compliance Officer shall provide that person with a written copy of these Procedures and a copy of all then-outstanding CDAs, and shall notify all other members of the Disclosure Group of the appointment.

E. Annual Reports:

1. Promptly after adoption of these Procedures the Compliance Officer shall review all existing CDAs and draft a chart outlining the filing deadlines, the material to be included with each Annual Report filing for each CDA, and the Specified Events for each CDA. The chart shall be updated every time the District enters into a CDA, and each time a CDA ceases to be in effect. A copy of the updated chart shall be provided to each member of the Disclosure Group for review before the updated chart is finalized. When each chart is finalized a copy shall be provided to each member of the Disclosure Group promptly.
2. Each fiscal year the Compliance Officer shall calendar the deadlines for each Annual Report filing, with appropriate reminder notifications for each member of the applicable Disclosure Group. The calendar and notifications will be maintained by the Compliance Officer administrative staff who will send email notifications to all members of the Disclosure Group as necessary.
3. Not less than twenty-five (25) days before each filing deadline, the Compliance Officer shall circulate a draft filing for review by the Disclosure Group.
4. The members of the Disclosure Group shall review the draft Filing, and shall advise the Compliance Officer of any changes the member recommends.
5. The Compliance Officer shall take any recommended changes into account, finalize and timely make the Filing, and provide a copy of the final Filing to each member of the Disclosure Group.

F. Specified Event Filings.

1. If any member of the Disclosure Group becomes aware of the occurrence of an event that may qualify as a Specified Event, that member shall notify the Disclosure Group immediately.
2. Each member of the Disclosure Group shall provide a recommendation to the Compliance Officer regarding the reporting of that event. If the Compliance Officer determines that the event is a Specified Event, the Compliance Officer shall circulate a draft Specified Event Filing to the Disclosure Group for review within two business days.
3. All available members of the Disclosure Group shall provide comments to the Compliance Officer on the draft Specified Event filing within two business days after the Compliance Officer circulates the draft filing.



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4. The Compliance Officer shall consider any recommendations of the Disclosure Group, finalize the Specified Event filing, and file it on EMMA. Unless the Compliance Officer determines that the applicable CDAs do not require the filing to be made within ten business days, the Compliance Officer shall file the Specified Event Filing within ten business days after the Specified Event occurs.

G. Omissions and Voluntary Submissions.

1. If any member of the Disclosure Group becomes aware of the occurrence of an event that is not a Specified Event, but that the member believes should be disclosed promptly on EMMA and not as part of the Annual Report, including notice of a failure of the District to comply with its obligations under a CDA or the Rule, that member shall notify the Disclosure Group immediately.
2. Each member of the Disclosure Group shall provide a recommendation to the Compliance Officer regarding the reporting of that event. If the Compliance Officer determines that the District should disclose the event on EMMA promptly and not as part of the Annual Report, the Compliance Officer shall circulate a draft filing to the Disclosure Group for review within 15 business days.
3. All members of the Disclosure Group shall provide comments to the Compliance Officer on the draft Filing within ten business days after the Compliance Officer circulates the draft filing.
4. The Compliance Officer shall consider any recommendations of the Disclosure Group finalize the voluntary submission filing, and file it on EMMA within ten business days after recommendations on the filing are due to the Compliance Officer from the Disclosure Group.

H. Training

1. The Compliance Officer shall be responsible for familiarizing the Disclosure Group and any other appropriate District officials and employees with these Procedures and the District's continuing disclosure obligations.
2. The Compliance Officer or Alternate Compliance Officer shall arrange for a training session to be conducted at least once each fiscal year for all members of the Disclosure Group and for any other District employee identified by the Compliance Officer or Alternate Compliance Officer as having significant responsibility for collecting or analyzing information included in the filings. The Compliance Officer or Alternate Compliance Officer shall provide appropriate training to any new member of the Disclosure Group who is appointed during a fiscal year after the annual training session for that fiscal year has been held, not later than three months after the person is appointed as a member of the Disclosure Group. To the extent practical, training shall be provided with the assistance of an outside party experienced in the responsibilities of municipal issuers under federal securities laws.



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3. Training sessions shall cover, at a minimum:
 - a. these Procedures;
 - b. the District's disclosure obligations under its CDAs; and
 - c. any changes in laws or regulations and significant new cases or enforcement actions since the date of the most recent prior training session.

History: Adopted 4/2013; Amd 4/2015