



# TACOMA HOUSING AUTHORITY

## RESOLUTION 2013-4-17 (1)

**DATE:** April 17, 2013  
**TO:** THA Board of Commissioners  
**FROM:** Michael Mirra, Executive Director  
**RE:** Adoption of Post-Issuance Compliance for Tax-Exempt Bonds Policy

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### **Background**

Effective September 2011 the IRS required that tax-exempt debt issuers indicate on bond forms to be submitted to the IRS if written post-issuance compliance policies and procedures are in place. Based on their audits of local government's compliance with post-issuance requirements, the IRS identified to the tax-exempt debt issuer community clear expectations of what policies and procedures should be in place to ensure compliance with IRS requirements. The IRS has made it clear that the absence of such policies will be considered a red flag that would likely result in an audit of post-issuance compliance for a portion or all of a local government's tax-exempt bonds issued.

THA has issued several tax-exempt bonds in the past for its own projects (e.g. Wedgewood, Stewart Court, 9 Homes, Windstar and Salishan), as well as tax-exempt conduit debt issued for other entities (e.g. Parkland Apartments owned by Metropolitan Development Council and Crown Assisted Living Development owned by Life Manor). THA also just issued tax-exempt bonds to finance the construction of the first phase of the Hillside Terrace development (2500 Yakima LLLP) and is very likely to issue tax-exempt debt for other future capital projects.

During contract negotiations for 2500 Yakima LLLP THA was provided with model policies drafted by Foster Pepper attorneys. These model policies were integrated into a THA policy that management adopted before the closing of 2500 Yakima LLLP to ensure the required bond forms could be submitted to the IRS indicating that THA had written policies and procedures in place at the time of the debt issuance. Per advice of Foster Pepper attorneys this policy should be ratified by the Board at the next scheduled regular meeting.

### **Recommendation**

Approve Resolution No. 2013-4-17(1) adopting the draft Post-Issuance Compliance for Tax-Exempt Bonds policy, previously adopted by management.



# TACOMA HOUSING AUTHORITY

## RESOLUTION 2013-4-17 (1)

### ADOPTION OF POST-ISSUANCE COMPLIANCE POLICY FOR TAX-EXEMPT BONDS

**Whereas**, the Authority desires to meet the requirements of the Internal Revenue Code of 1986, as amended, and Treasury Regulations (the "Tax Code") concerning tax-exempt and other obligations ("tax-exempt bonds") for which federal tax exemption is provided by the Tax Code; and

**Whereas**, non-compliance with the Tax Code may result in fines and/or loss of preferential status of tax-exempt bonds; and

**Whereas**, use of tax-exempt bonds plays an important role in funding a significant portion of THA's capital projects; and

**Whereas**, the Internal Revenue Service ("IRS") recently began requiring issuers of tax-exempt bonds to identify if they have written policies and procedures on the initial IRS forms submitted; and

**Whereas**, Authority management adopted the Post-Issuance Compliance Policy for Tax-Exempt Bonds pending Board ratification at the next scheduled meeting and approval of this resolution will help ensure compliance of the Authority with the applicable requirements of the Code.

***Resolved by the Board of Commissioners of the Housing Authority of the City of Tacoma, Washington as follows:***

The Board adopts the "Post-Issuance Compliance for Tax-Exempt Bonds" policy in substantially the form set forth in attached draft, allowing for changes to format and procedures, and other changes pursuant to THA Policy G-01 on the Adoption, Amendment and Promulgation of Policies.

Approved: April 17, 2013

  
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Janis Flauding, Chair



# TACOMA HOUSING AUTHORITY

**Policy No.** F-35  
**Policy** Post-Issuance Compliance for Tax-Exempt Bonds  
**Date** April 2, 2013

## 1. Purpose

The purpose of these policies and procedures for tax-exempt bonds and other obligations (sometimes collectively referred to herein as “tax-exempt bonds” or “TEB”) for which federal tax exemption is provided by the Internal Revenue Code of 1986, as amended (the “Code”) is to facilitate compliance by the Housing Authority of the City of Tacoma (the “Housing Authority”) with the applicable requirements of the Code that must be satisfied after the issue date of the TEB to maintain the tax exemption for the TEB after the issue date.

## 2. Sources for Policy

- ▶ Internal Revenue code of 1986, as amended (the “Code)

## 3. Scope of Policy

This policy sets forth the Housing Authority’s methodology for ensuring continued post-issuance compliance with Internal Revenue Service (IRS) requirements pertaining to TEBs.

## 4. Who is Responsible for Implementing Policy

Who	Responsibilities
<i>Board of Commissioners and Executive Director</i>	Overall and final responsibility for monitoring compliance with post-issuance federal tax requirements for the Housing Authority’s TEBs.
<i>Finance Director</i>	Compliance Officer (CO) with responsibility for ensuring and monitoring post-issuance compliance with TEB regulations. Certain specific compliance responsibilities may be assigned by the CO to a designated Authorized Representative of the Housing Authority.

## 5. Definitions

<i>Arbitrage</i>	The price differential or profit made from investing lower yielding TEB proceeds in higher yielding taxable investments.
<i>Arbitrage Bond</i>	A bond is an arbitrage bond if the yield on the acquired investment property is materially higher (“excess yield”) than the yield on the bond.
<i>Arbitrage Rebate</i>	The positive or negative amount that must be paid (rebated) to the IRS.
<i>Authorized Representative</i>	The CO, the Finance Manager and any consultant or staff of the Housing Authority designated by the CO to perform any of

	the functions described in this post-issuance compliance policy.
<i>Bond Counsel</i>	Any nationally recognized bond counsel engaged by or on behalf of the Housing Authority to review or opine on matters covered by these post-issuance compliance policies and procedures.
<i>Investment Property</i>	Any security, obligation, annuity contract or investment-type property.
<i>Tax-Exempt Bonds</i>	One or more series of governmental purpose or qualified private activity bonds or other form of tax-exempt obligations that the Housing Authority has previously issued or may in the future issue the interest on which is excluded from gross income of the owners thereof pursuant to Sections 103 and 141-150 of the Code.
<i>Yield Reduction Payment</i>	For certain investments with excess yield, a yield reduction payment to the IRS is taken into account in computing the yield on that investment.
<i>Yield Restriction</i>	Requirements identified for each TEB that generally provide that in the absence of an applicable exception, bond issue proceeds may not be invested at a yield in excess of the bond yield.

<b>6. Forms Associated with this Policy</b>
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<i>IRS Form 8038</i>	Information Return for Tax-Exempt Private Activity Bond Issues (used to report initial Private Activity Bonds issuance)
<i>IRS Form 8038-G</i>	Information Return for Tax-Exempt Governmental Obligations (used to report initial TEB issuance of \$100,000 or more)
<i>IRS Form 8038-GC</i>	Information Return for Tax-Exempt Governmental Obligations (used to report initial TEB issuance of less than \$100,000)
<i>IRS Form 8038-T</i>	Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (used to pay arbitrage rebate, yield reduction payments and penalties)
<i>IRS Form 8703</i>	Annual Certification of a Residential Rental Project (with TEBs)

<b>7. Policy and Procedures</b>
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**7.1 Arbitrage Yield Restriction and Rebate Requirements**

The CO shall maintain or cause to be maintained records of:

- a) purchases and sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code) and receipts of earnings on those investments;
- b) expenditures made with bond proceeds (including investment earnings on bond proceeds) in a timely and diligent manner for the governmental

purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;

- c) information showing, where applicable for a particular calendar year, that the Housing Authority was eligible to be treated as a “qualified small issuer” for purposes of Section 265(b)(3) of the Code in respect of bonds issued in that calendar year because the Housing Authority did not reasonably expect to issue more than \$10,000,000 of TEBs in that calendar year;
- d) calculations that will be sufficient to demonstrate to the Internal Revenue Service (“IRS”) upon an audit of a bond issue that, where applicable, the Housing Authority has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;
- e) calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement was applicable, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and
- f) information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

## **7.2 Restrictions on Private Business Use and Private Loans**

This portion applies to TEBs issued for a governmental purpose, and which are not private activity bonds (as further described in 7.3 below). The CO will adopt procedures that are designed to educate and inform the principal operating officials of those departments of the Housing Authority (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of TEBs about the restrictions on private use that apply to that property after the bonds have been issued, and of the restriction on the use of the proceeds of TEBs to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the CO shall provide to the users of the property a copy of these Compliance Procedures and other appropriate written guidance advising that:

- a) “private business use” means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and the United States of America

and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;

- b) under section 141 of the Code, no more than 10% of the proceeds of any TEB issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the TEB issue (including the property financed with the bonds) may be used for any “unrelated” private business use—that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than the lesser of \$5,000,000 or 5% of the proceeds of a TEB issue may be used to make or finance a loan to any person other than a state or local government unit;
- c) before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the user must consult with the CO, provide the CO with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;
- d) in connection with the evaluation of any proposed nongovernmental use arrangement, the CO should consult with nationally recognized bond counsel to the Housing Authority as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under section 141 of the Code may be taken by the Housing Authority as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds that financed the property; and
- e) the CO and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.

### **7.3 Special Compliance Policies and Procedures for Private Activity Bonds**

This portion of the Compliance Procedures applies to tax-exempt facility bonds issued as “conduit bonds” to finance multifamily residential rental projects

for taxable nongovernmental entities under section 142 of the Code and qualified 501(c)(3) bonds issued as “conduit bonds” to finance housing projects for tax-exempt qualified 501(c)(3) organizations under section 145 of the Code (“private activity bonds”). The CO shall adopt procedures that are designed to educate and inform the borrowers of the proceeds of these types of private activity bonds, which are the “users” of the bond-financed “property” (each as defined above), about the applicable requirements and restrictions that apply to the operation and used of the bond-financed property after the bonds have been issued. These requirements and restrictions are generally set forth in covenants made by the borrower in the loan agreement with the Housing Authority and in representations of the borrower in the tax certificate supporting issuance of the bonds to finance the property. In particular, following the issuance of private activity bonds for the financing of property, the CO shall provide to the conduit borrower or users of the property a copy of appropriate written guidance advising that no more than 5% of the proceeds of the private activity bonds (including the property financed with the bonds) may be used for a private business use other than as required or specifically permitted by the governing documents with respect to such issue of private activity bonds.

#### **7.4 Records to be Maintained for Tax-Exempt Bonds**

It is the policy of the Housing Authority that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained (or which the Housing Authority will cause to be maintained) are to include:

- a) the official Transcript of Proceedings for the original issuance of the bonds;
- b) records showing how the bond proceeds were invested, as described in 7.1 a) above;
- c) records showing how the bond proceeds were spent, as described in 7.1 b) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;
- d) information, records and calculations showing that, with respect to each bond issue, the Housing Authority was eligible for one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate

amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 7.1 c), d) and e) above;

- e) with respect to bonds described in 7.2 above, records showing that special use arrangements, if any, affecting bond-financed property made by the Housing Authority with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of TEBs and restrictions on the use of proceeds of TEBs to make or finance loans to any person other than a state or local government unit, as described in 7.2 above; and
- f) with respect to bonds described in 7.3 above, records showing that special use arrangements, if any, affected bond-financed property, are consistent with applicable restrictions on private business use of property financed with proceeds of TEBs.

The basic purpose of the foregoing record retention policy for the Housing Authority's TEBs is to enable the Housing Authority to readily demonstrate to the IRS upon an audit of any TEB issue that the Housing Authority has fully complied with all federal tax requirements that must be satisfied after the issue date of the bonds so that those bonds continue to be eligible for the tax-exemption under the Code.

#### **7.5 Identification and Remediation of Potential Violations of Federal Tax Requirements for Tax-Exempt Bonds**

So long as any of the Housing Authority's TEB issues remain outstanding, the CO will periodically consult with the users of the Housing Authority's bond-financed property (or the borrowers of the proceeds of conduit bonds issued by the Housing Authority) to review and determine whether current use arrangements involving that property continue to comply with applicable federal tax requirements as described in these Compliance Procedures. This may be accomplished, for example, by periodically meeting with users or conduit borrowers, as applicable, providing questionnaires to users about current use arrangements, or adopting other protocols reasonably calculated to ensure compliance with applicable federal tax requirements on a continuing basis. This periodic review may be scheduled, for example, at or before the times that the Housing Authority and/or conduit borrower is required to file with the Municipal Securities Rulemaking Board the annual financial information and operating data pursuant to the undertaking to provide continuing disclosure with respect to outstanding bond issues.

If at any time during the life of an issue of TEBs, the Housing Authority discovers that a violation of federal tax requirements applicable to that issue may have occurred, the CO will consult with bond counsel to determine whether any such



violation actually has occurred and, if so, take prompt action to accomplish an available remedial action under applicable Internal Revenue Service regulations or to enter into a closing agreement with the Internal Revenue Service under the Voluntary Closing Agreement Program described under IRS Notice 2008-31 or other future published guidance.

**7.6 Education Policy With Respect to Federal Tax Requirements for Tax-Exempt Bonds**

It is the policy of the Housing Authority that the CO and his or her staff, as well as the principal operating officials of those departments of the Housing Authority for which property is financed with proceeds of TEBs should be provided with education and training on federal tax requirements applicable to TEBs. The Housing Authority recognizes that such education and training is vital as a means of helping to ensure that the Housing Authority remains in compliance with those federal tax requirements in respect of its bonds. The Housing Authority therefore will enable and encourage those personnel to attend and participate in appropriate educational and training programs with regard to the federal tax requirements applicable to TEBs, including a review of the Code and the IRS's web site set up for the TEB community (<http://www.irs.gov/Tax-Exempt-Bonds>).