

SISKIYOU UNION HIGH SCHOOL DISTRICT

RESOLUTION NO. 20-21-09

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**RESOLUTION APPROVING POST-ISSUANCE TAX COMPLIANCE POLICY  
FOR TAX-EXEMPT DEBT OBLIGATIONS**

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**WHEREAS**, the Siskiyou Union High School District (“District”), from time to time, incurs “tax-exempt” indebtedness, the interest on which, received by the holder of such indebtedness, is excluded from such holder’s gross income for personal income tax purposes. Such indebtedness includes, but is not limited to, bonds, notes, lease financings, or certificates of participation (“COPs”) (collectively referred to herein as “Bonds”);

**WHEREAS**, so long as the District complies with federal tax laws at the time the Bonds are issued and during the entire period the Bonds are outstanding, the Bonds maintain tax-exempt status; and

**WHEREAS**, the Board of Trustees (“Board”) of the District desires to adopt formal policies and procedures for tax-exempt bonds in order to establish due diligence practices to monitor tax compliance through the period that Bonds are outstanding and record-keeping compliance periods.

**NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE SISKIYOU UNION HIGH SCHOOL DISTRICT HEREBY FINDS, RESOLVES, DETERMINES, ADOPTS, AUTHORIZES, AND DIRECTS AS FOLLOWS:**

*Section 1. Recitals.* The above recitals are true and correct and the Board so finds and determines.

*Section 2. Post-Issuance Tax Compliance Policy.* The Board hereby adopts the Post-Issuance Tax Compliance Policy for Tax-Exempt Government Obligations in the form attached hereto as Exhibit A.

*Section 3. Official Actions.* The Superintendent, the Chief Business Official, the President of the Board, the Clerk of the Board, and any and all other officers of the District (the “Authorized Officers”), are hereby authorized and directed, for and in the name and on behalf of the District, to do any and all things and take any and all actions, including execution and delivery of any and all certificates, notices, consents and other documents which the Authorized Officers, or any of them, may deem necessary or advisable in furtherance of the intent of this Resolution and the Post-Issuance Tax Compliance Procedures For Tax-Exempt Government Obligations hereby approved.

*Section 4. Effective Date.* This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Board of Trustees of the Siskiyou Union High School District at a meeting held by the Board on June 24, 2020, by the following votes:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

SISKIYOU UNION HIGH SCHOOL  
DISTRICT

By:

\_\_\_\_\_  
President, Board of Trustees

I, \_\_\_\_\_, Clerk of the Board of Trustees of the Siskiyou Union High School District, do hereby certify that the foregoing Resolution was regularly introduced, passed, and adopted by the Board of Trustees during its meeting held on June 24, 2020.

ATTEST:

By: \_\_\_\_\_  
Clerk, Board of Trustees

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## EXHIBIT A

### POST-ISSUANCE TAX COMPLIANCE POLICY FOR TAX-EXEMPT DEBT OBLIGATIONS

**BP 3470.2**

**Adopted** \_\_\_\_\_

**Revised** \_\_\_\_\_

#### **I. In General**

This post-issuance compliance policy (“Policy”) of the Siskiyou Union High School District (the “District”) is designed and intended to provide for the effective management of the District’s post bond issuance compliance program for tax-exempt and other tax-benefited bonds in a manner consistent with state and federal laws applicable to such obligations.

#### **II. Post-Issuance Tax Compliance**

The Chief Business Official of the District shall be the primary compliance officer (“Bond Compliance Officer”) responsible for each issuance by the District of tax-exempt bonds, notes, financing leases, or other obligations collectively referred to as “Bonds”). All information related to each bond issue and the assets financed by such issue shall be maintained by or on behalf of the Bond Compliance Officer. The actions taken under this Policy shall be taken by or on behalf of the Bond Compliance Officer, or other officers or employees of the District, at the direction of the Bond Compliance Officer.

##### A. Tax Certificate; IRS Form 8038/8038-G/8038-GC; and Continuing Education

*1. Tax Certificate.* The Bond Compliance Officer shall review the Tax Certificate prepared by the District’s bond counsel prior to closing each bond issuance and confirm that the factual statements regarding the District are accurate and complete and the expectations regarding the project and the use of proceeds are reasonable and in accord with the District’s intent as of the closing date for the bond issuance. Immediately upon issuing any Bonds, the Bond Compliance Officer, in conjunction with the District’s bond counsel, tax counsel, or other qualified counsel (collectively, the “District’s counsel” or “counsel”) shall prepare a post-issuance compliance plan (“Plan”) specific to the Bonds, based on the requirements of the related Tax Certificate, this Policy, any additional notes taken by the Bond Compliance Officer in connection with its discussions with counsel (including any supplemental materials that bond counsel may give the District relating to ongoing compliance). The Plan will define the roles and responsibilities relating to the ongoing compliance activities for the Bonds and will identify specific compliance requirements.

2. *IRS Form 8038/8038-G/8038-GC.* The Bond Compliance Officer shall confirm that it has timely filed, or has caused bond counsel to timely file, the IRS Information Return (Form 8038, 8038-G or 8038-GC, as applicable) for each issue of Bonds. The IRS Informational Return Form 8038 is due to be filed for each issue of Bonds not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued.

3. *Continuing Education* - The Bond Compliance Officer (or designee) shall actively seek out advice from the District's counsel on any matters that appear to raise ongoing compliance concerns under a Plan. The Bond Compliance Officer (or designee) may attend or participate in seminars, webinars or teleconferences that address compliance issues and developments relating to issuance of, or post-issuance compliance for, Bonds.

## B. Tax-Exempt Bonds Compliance Monitoring

1. *Restrictions Against Private Use* - The Bond Compliance Officer will monitor the expenditure of the proceeds of Bonds and the use of assets financed or refinanced with Bonds to ensure compliance with Section 141 of the Internal Revenue Code (the "Code"). This section generally establishes limitations on the use of Bond-financed assets by non-state or local governmental entities, such as individuals using Bond-financed assets on a basis other than as a member of the general public, corporations and the federal government and its agencies and instrumentalities.

a. *Use of Bond Proceeds.* The Bond Compliance Officer will monitor and maintain records with respect to expenditures to ensure that Bond proceeds are being used on capital expenditures for governmental purposes in accordance with the bond documents, and record the allocation of all Bond proceeds.

b. *Use of the Bond-Financed Facility or Equipment*

i. Equipment assets financed with Bonds will be listed in a schedule for each bond issue, which schedule may be included in the Tax Certificate. Equipment assets generally are not to be disposed of prior to the earlier of: (a) the date the Bonds and all subsequent refundings of such bonds are fully paid; or (b) the end of the useful life of such equipment. The Bond Compliance Officer will maintain the list of all Bond-financed equipment for each issue of Bonds, together with the equipment's expected useful life.

ii. In order to ensure that assets constructed or acquired using Bond proceeds are not leased, sold or disposed of prior to the end of the term of the bonds and of all subsequent refundings of such bonds, assets shall be flagged in the District's records to indicate that they

are allocated a share of the proceeds of a Bond issue (with reference to the particular issue of Bonds and allocable amounts) and monitored by the Bond Compliance Officer.

iii. If there is any proposal to change the use of a bond-financed facilities from a governmental purpose to a use in which a private entity may have the use or benefit of said asset that is different from the rest of the general public – including a contract for use of bond-financed facilities, a lease, license, sale or other disposition/abandonment of the bond-financed facilities – the Bond Compliance Officer will consult with counsel prior to the occurrence of the proposed change in use.

## *2. Qualification for Initial Temporary Periods and Compliance with Investment Restrictions*

### *a. Expectations as to Expenditure of “New Money” Bond Proceeds*

i. In order to qualify under the arbitrage rules for an initial temporary period of 3 years for “new money” issues during which bond proceeds can be invested without regard to yield (but potentially subject to rebate), the District must reasonably expect to spend at least 85% of “spendable proceeds” by the end of the temporary period. In general under Code Section 149, in order to avoid classification of an issue of bonds as “hedge bonds,” the District must both: (1) reasonably expect to spend 85% of the “spendable proceeds” of the bond issue within the 3 year period beginning on the date the bonds are issued (unless the project cannot be completed within 3 years, in which case the District’s reasonable expectations may be extended to 5 years upon provision of supporting certifications of the qualified project architect or other qualified expert); and (2) invest not more than 50% of the proceeds of the issue in investments having a substantially guaranteed yield for 4 years or more. These expectations shall be documented for the District’s outstanding Bonds in the related tax certificate executed in connection with each issue of Bonds.

ii. If, for any reason, the District’s expectations concerning the period over which the Bond proceeds are to be expended change from what was documented in the applicable tax certificate, the Bond Compliance Officer will consult with bond counsel.

*b. Bond Proceeds Expenditure Schedule Compliance Monitoring* - While there are unspent proceeds of bonds, the Bond Compliance Officer will compare and analyze the bond proceeds expenditure schedule to the actual investment earnings and expenditures incurred on each project, on an

annual or more frequent basis. The purpose of this analysis is to determine any variances from the expected expenditure schedule and to document the reasons for these variances.

### *3. Arbitrage Rebate Compliance*

*a.* Bonds may lose their tax-favored status, retroactive to the date of issuance, if they do not comply with the arbitrage restrictions of Section 148 of the Code. Two general sets of requirements under the Code must be applied in order to determine whether governmental bonds are arbitrage bonds: (1) the yield restriction requirements of Section 148(a); and (2) the rebate requirements of Section 148(f).

*b. Yield Restriction Requirements.* The yield restriction requirements provide, in general terms, that gross proceeds of a bond issue may not be invested in investments earning a yield higher than the yield of the bond issue, i.e., the District cannot earn interest on unspent bond proceeds at rates higher than the rates of interest the District is paying on the bonds, except for investments: (i) during one of the temporary periods permitted under the regulations; (ii) in a reasonably required reserve or replacement fund; or (iii) in an amount not in excess of the lesser of 5% of the sale proceeds of the Bonds or \$100,000 (the “minor portion”). Under limited circumstances, the yield on investments subject to yield restriction can be reduced through payments to the IRS known as “yield reduction payments.” The tax certificate shall identify a particular issue of Bonds known, as of the date of issuance, to be subject to yield restriction.

#### *c. Rebate Requirements*

*i.* If, consistent with the yield restriction requirements, amounts treated as Bond proceeds are permitted to be invested at a yield in excess of the yield on the Bonds (pursuant to one of the exceptions to yield restriction referred to above), rebate payments may be required to be made to the U.S. Treasury. Under the applicable regulations, the aggregate rebate amount is the excess of the future value of all the receipts from bond funded investments over the future value of all the payments to acquire such investments. The future value is computed as of the computation date using the bond yield as the interest factor. At least 90% of the rebate amount calculated for the first computation period must be paid no later than 60 days after the end of the first computation period. The amount of rebate payments required for subsequent computation periods (other than the final period) is that amount which, when added to the future value of prior rebate payments, equals at least 90% of the rebate amount. For the final computation period, 100% of the calculated amount must be paid. Rebate exceptions and expectations

are documented for each Bond issue in the tax certificate executed at the time of such bond issue.

ii. While there are unspent proceeds of bonds, the District will determine whether to engage an experienced independent rebate analyst to annually calculate any rebate that may result for that year and annually provide a rebate report to the Bond Compliance Officer. Bond counsel can assist with referrals to qualified rebate analysts.

*d. Timing of Rebate Payments* - The Bond Compliance Officer will work with the rebate analyst to ensure the proper calculation and payment of any rebate payment and/or yield-reduction payment at the required time:

i. First installment due no later than 60 days after the end of the fifth anniversary of each Bond issuance date;

ii. Succeeding installments at least every five years;

iii. Final installment no later than 60 days after retirement of last Bond in the issue.

#### *4. Refunding Requirements*

*a. Refunded Projects* - The Bond Compliance Officer will maintain records of all Bond financed assets for each bond issue, including assets originally financed with a refunded bond issue.

*b. Yield Restriction* - The Bond Compliance Officer will work with its financial advisor and bond counsel to maintain records of allocation of bond proceeds for current and advance refundings of prior Bond issues to ensure that such bond proceeds are expended as set forth in the applicable tax certificate executed at the time the refunding Bonds are issued. Any yield restricted escrows will be monitored for ongoing compliance.

#### C. Record Retention

1. Section 6001 of the Code provides the general rule for the proper retention of records for federal tax purposes. The IRS regularly advises taxpayers to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of Bonds, the primary taxpayers are the bondholders. In order to ensure the continued exclusion of interest to such bondholders, it is important that the District retain sufficient records to support such exclusion.

## 2. *In General*

a. All records associated with any Bonds shall be stored electronically or in hard copy form at the District's offices or at another location conveniently accessible to the District.

b. The Bond Compliance Officer (or designee) will ensure that the District provides for appropriate storage of these records.

c. If storing documents electronically, the District shall conform with Rev. Proc. 97-22 (as the same may be amended, supplemented or superseded), which provides guidance on maintaining books and records by using an electronic storage system. The Bond Compliance Officer (or designee) shall request a copy of this Revenue Procedure from bond counsel if needed.

3. *Bonds* - The District shall maintain the records of the Bonds as defined in this section for the longer of the life of the Bonds plus 6 years or the life of Bonds which refunded the Bonds plus 6 years. The records shall include at least the following documents:

### *a. Pre-Issuance Documents:*

i. *SLGS/Open Market Securities.* When applicable, the Bond Compliance Officer shall retain all documentation regarding the procurement of the State and Local Government Series (SLGS) subscription or other open market securities subscription for any advance refunding of Bonds.

ii. *Project Draw/Expenditure Schedule.* The Bond Compliance Officer shall retain all documentation and calculations relating to the draw schedule used to meet the "reasonable expectations" test and use of proceeds tests (including copies of contracts with general and sub-contractors or summaries thereof).

iii. *Issue Sizing.* The Bond Compliance Officer shall maintain a copy of all financial advisor's or underwriter's structuring information.

iv. *Bond Insurance.* The Bond Compliance Officer shall maintain a copy of insurance quotes and calculations supporting the cost benefit of bond insurance, if any.

v. *Costs of Issuance documentation.* The Bond Compliance Officer shall retain all invoices, payments and certificates related to costs of issuance of the Bonds.

*b. Issuance Documents* - The Bond Compliance Officer shall retain the bound Bond transcript delivered from bond counsel.

*c. Post-Issuance Documents:*

i. Records of Investments for the Bonds shall be retained by the Bond Compliance Officer.

ii. Investment Activity Statements shall be retained by the Bond Compliance Officer.

iii. The Bond Compliance Officer shall maintain or shall cause to be maintained all invoices and purchase orders relating to equipment purchases and constructed or acquired projects using Bond proceeds, either electronically or in hard copy.

iv. Records of Compliance:

(A) Qualification for Initial Temporary Periods and Compliance with Restrictions Documentation - The Bond Compliance Officer shall prepare the annual analysis described in Section II(B)(2) above and maintains these records.

(B) Arbitrage Rebate Reports may be prepared by the Bond Compliance Officer or a third party as described in section II (B)(3) of this document and retained by the Bond Compliance Officer.

(C) Returns and Payments to the IRS shall be prepared at the direction of the Bond Compliance Officer and filed as described in Section II(B)(3) of this document.

(D) A list of contracts under which any bond proceeds are spent (consulting engineering, acquisition, construction, etc.).

*d. General*

i. Audited Financial Statements. The Bond Compliance Officer will maintain copies of the District's annual audited Financial Statements.

- ii. Reports of any prior IRS Examinations. The Bond Compliance Officer will maintain copies of any written materials pertaining to any IRS examination of any issue of Bonds.

### **III. Voluntarily Correcting Failures to Comply with Post-Issuance Compliance Activities**

If, in the effort to exercise due diligence in complying with applicable federal tax laws, a potential compliance issue is discovered, the District may address the compliance issue through the applicable method listed below. The District shall work with its bond counsel (and consult with its financial advisor, and underwriter, as appropriate) to determine the appropriate way to proceed:

1. to take remedial actions as described in Section 141 of the Internal Revenue Code;
2. to utilize the Voluntary Closing Agreement Program (VCAP) - Section 7.2.3 of the Internal Revenue Manual establishes the voluntary closing agreement program for tax-exempt bonds (TEB VCAP), whereby issuers of tax-exempt bonds can resolve violations of the Internal Revenue Code through closing agreements with the Internal Revenue Service; and/or
3. to take such additional or different actions as may be required to comply with the Internal Revenue Code and other applicable law, regulations or IRS rulings.

### **IV. Post Issuance Tax Compliance Policy Review**

The Bond Compliance Officer shall review this Policy from time to time, as needed, and implement revisions or updates as deemed appropriate, in consultation with bond counsel.