



REPORT TO CITY COUNCIL

DATE: JUNE 23, 2015

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: CHRISTY PINUELAS, DIRECTOR OF FINANCE 

SUBJECT: ADOPTION OF THE BALANCED BUDGET POLICY, AND APPROVAL OF THE FUND BALANCE POLICY FOR THE GENERAL FUND, THE OFFICE/EMPLOYEE/OFFICIAL RESPONSIBILITY AND FRAUD PREVENTION POLICY AND PROTOCOL, AND THE TAX ADVANTAGED BONDS POST-ISSUANCE COMPLIANCE PROCEDURES

At the June 10, 2015, Budget Workshop Council recommended adoption of a new Balanced Budget Policy. This policy formalizes the definition of a balanced budget to the City of Agoura Hills.

Additionally, the Financial Policy, adopted in May, 2014, requires that each financial policy be updated every three years. The Finance Committee reviewed the Fund Balance Policy for the General Fund; the Office/Employee/Official Responsibility and Fraud Prevention Policy and Protocol, and the Tax Advantaged Bonds Post-Issuance Compliance Procedures at their May, 2015, meeting and recommended no changes. The Council additionally reviewed the policies at the Budget Workshop, recommending amending the Office/Employee/Official Responsibility and Fraud Prevention Policy and Protocol to include that misrepresentation should be intentional misrepresentation.

RECOMMENDATION

Staff respectfully recommends the City Council adopt the Balanced Budget Policy and approve the Fund Balance Policy for the General Fund, the Office/Employee/Official Responsibility and Fraud Prevention Policy and Protocol, as amended, and the Tax Advantaged Bonds Post-Issuance Compliance Procedures.

Attachments: Balanced Budget Policy
Fund Balance Policy for the General Fund
Office/Employee/Official Responsibility and Fraud Prevention Policy and Protocol
Tax Advantaged Post-Issuance Compliance Procedures



BALANCED BUDGET POLICY

PURPOSE

This policy establishes the definition of a balanced budget for the City.

POLICY

The City will maintain a balanced budget. This means that:

1. The City's operating budget is the General Fund budget.
2. Operating revenues must fully cover operating expenditures, including debt service.
3. Under this policy, it is allowable for total expenditures to exceed revenues in a given year: however, in this situation, beginning fund balance can only be used to fund capital improvement plan projects, or other "one-time", non-recurring expenditures.
4. Ending fund balance must meet the minimum policy levels as defined by Council Resolution.

CITY OF AGOURA HILLS FUND BALANCE POLICY FOR THE GENERAL FUND

POLICY

This Fund Balance Policy establishes the procedures for reporting unrestricted fund balance in the General Fund financial statements. Certain commitments and assignments of fund balance will help ensure that there will be adequate financial resources to protect the city against unforeseen circumstances and events such as revenue shortfalls and unanticipated expenditures. The policy also authorizes and directs the Finance Director to prepare financial reports which accurately categorize fund balance as per Governmental Accounting Standards Board (GASB) Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions.

PROCEDURES

Fund balance is essentially the difference between the assets and liabilities reported in a governmental fund. There are five separate components of fund balance, each of which identifies the extent to which the City is bound to honor constraints on the specific purposes for which amounts can be spent.

- Nonspendable fund balance (inherently nonspendable)
- Restricted fund balance (externally enforceable limitations on use)
- Committed fund balance (self-imposed limitations on use)
- Assigned fund balance (limitation resulting from intended use)
- Unassigned fund balance (residual net resources)

The first two components listed above are not addressed in this policy due to the nature of their restrictions. An example of nonspendable fund balance is prepaid expenses. Restricted fund balance is either imposed by law or constrained by grantors, contributors, or laws or regulations of other governments. This policy is focused on financial reporting of unrestricted fund balance, or the last three components listed above. These three components are further defined below.

Committed Fund Balance

The City Council, as the City's highest level of decision-making authority, may commit fund balance for specific purposes pursuant to constraints imposed by formal actions taken, such as an ordinance or resolution. These committed amounts cannot be used for any other purpose unless the city Council removes or changes the specified use

through the same type of formal action taken to establish the commitment. City Council action to commit fund balance needs to occur within the fiscal reporting period; however the amount can be determined subsequently.

Assigned Fund Balance

Amounts that are constrained by the City's *intent* to be used for specific purposes, but are neither restricted nor committed, should be reported as assigned fund balance. This policy hereby delegates the authority to assign amounts to be used for specific purposes to the Finance Director for the purpose of reporting these amounts in the annual financial statements. A few examples of assigned fund balance follow:

- **Continuing Appropriations**

Fund balance levels must be sufficient to meet funding requirements for projects approved in prior years and which must be carried forward into the new fiscal year.

- **Debt Service**

Established to provide for future debt service obligations.

- **Budget Balancing Measures**

Funds set aside for the purpose of stabilizing the delivery of city services during periods of operational budget deficits and to mitigate the effects of major economic uncertainties resulting from unforeseen changes in revenues and/or expenditures.

Unassigned Fund Balance

These are residual positive net resources of the general fund in excess of what can properly be classified in one of the other four categories. An example of unassigned fund balance would be the following:

Minimum Fund Balance Policy

In June 2005, the City of Agoura Hills passed Resolution No. 05-1378 stating that the City Council and City Staff will endeavor to designate an amount equal to or greater than forty percent (40%) of each year's proposed General Fund

Operating Budget as the City's unobligated General Fund Reserve. The City Council recognizes that the unobligated General Fund reserves are needed for cash flow requirements; and contingencies such as exposure to natural disasters, exposure to economic impacts, and vulnerability to actions of the State. This resolution requires that if, in any budget year, the City Council determines that the public interest requires expending any amount remaining in General Fund Reserves to fall below forty percent (40%) of that year's General Fund Operating budget, the City council and City staff, shall, in the following budget year, present a plan for returning the General Fund Reserve to the 40% level, as soon as practicable, based on the City's then-current budget circumstances.

Fund Balance Classification

The accounting policies of the city consider restricted fund balance to have been spent first when an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available. Similarly, when an expenditure is incurred for purposes for which amounts in any of the unrestricted classifications of fund balance could be used, the city considers committed amounts to be reduced first, followed by assigned amounts and then unassigned amounts.

This policy is in place to provide a measure of protection for the city against unforeseen circumstances and to comply with GASB Statement No. 54. No other policy or procedure supersedes the authority and provisions of this policy.



OFFICER/EMPLOYEE/OFFICIAL RESPONSIBILITY AND FRAUD PREVENTION POLICY AND PROTOCOL

1. PURPOSE

The City of Agoura Hills is committed to protecting its revenue, property, information, and other assets from any attempt, either by members of the public, contractors, vendors, agents, or its own employees, to gain financial or other benefits by deceit. It is also designed to protect its staff from false allegations.

This Policy and Protocol addresses specific guidelines and responsibilities regarding appropriate actions for detecting, reporting, and investigating fraud or other similar irregularities.

2. APPLICABILITY

This Policy and Protocol applies to Councilmembers, all employees of the City of Agoura Hills, and to employees of local boards, agencies, and commissions over which Council has authority to require general procedures to be followed.

3. POLICY

The City of Agoura Hills will identify and promptly investigate any possibility of fraudulent or related dishonest activities against the City of Agoura Hills and, when appropriate, pursue legal remedies available under the law.

The City of Agoura Hills will take appropriate disciplinary and legal actions against employees and/or entities, to include the possibility of termination of employment or contract, restitution, and forwarding information to the appropriate authorities for criminal prosecution, as appropriate.

This Policy and Protocol will attempt to clarify acts that are considered to be fraudulent, and describe the steps to be taken when fraud or other related irregularities are suspected or have occurred. This statement also includes the procedures to follow in accounting for missing funds, restitution, and recoveries.

4. DEFINITION

Fraud: For the purposes of this Policy and Protocol, fraud encompasses any array of irregularities and illegal acts characterized by intentional deception. Dishonest or fraudulent activities include, but are not limited to, the following:

- Forgery or alteration of documents (checks, promissory notes, time sheets, independent contractor agreements, purchase orders, etc.)
- Intentional misrepresentation of information by an individual
- Intentional misrepresentation of information on documents
- Misappropriation of funds, securities, supplies, or any other asset
- Unauthorized use, disappearance, or destruction of City property, equipment, materials or records
- Improprieties in the handling or reporting of money transactions
- Authorization or receipt of payments for goods not received or services not performed
- Authorization or receipt of payment for hours not worked
- Any claim for reimbursement of expenses that are not made for the exclusive benefit of the City
- Any apparent violation of Federal, State, or local laws related to dishonest activities or fraud
- Any similar or related activity

5. MANAGEMENT RESPONSIBILITY

Each department head is responsible for instituting and maintaining a system of internal control to provide reasonable assurance for the prevention and detection of fraud, misappropriations, and other irregularities.

Management should be familiar with the types of improprieties that might occur in their area and be alert to any indication that improper activity, misappropriation, or dishonest activity is or was in existence in his or her operational area.

Upon notification from an employee of suspected fraud, or if management has reason to suspect that a fraud has occurred, he/she will contact their immediate supervisor and the department head. The department head will contact the Assistant City Manager. If the Assistant City Manager position does not exist, the City Manager will designate an alternate position. If the Assistant City Manager is suspected of fraud, the employee should contact the City Manager, and the City Manager will conduct the investigation. If the City Manager is suspected of fraud, the City Attorney on behalf of the City Council, will conduct the investigation. If a City Councilmember is suspected, the City Manager will conduct the investigation. The department head will also immediately contact the

Sheriff's Department if he/she feels the situation warrants such action (for example, obvious theft has taken place, security is at risk, or immediate recovery is possible). After informing the Assistant City Manager of the matter, management will not attempt to conduct individual investigations, interviews, or interrogations.

Management will support and co-operate with the Assistant City Manager, other involved departments, and law enforcement agencies in the detection, reporting, and investigation of criminal acts, including prosecution of offenders.

The Assistant City Manager will have full and unrestricted access to all necessary City records and personnel. Upon completion of the investigation, including all legal and personnel actions, any records, documents, and other evidentiary material will be returned by the Assistant City Manager to the appropriate department(s).

All furniture and contents, including employee desks and computers, are open to inspection when there is a reasonable suspicion of a dishonest or fraudulent activity, which makes such inspection appropriate. There is no assumption of privacy in such cases. Every effort will be made to effectively recover any of the City's losses.

Great care must be taken in dealing with suspected dishonest or fraudulent activities to avoid the following:

- Incorrect accusations;
- Alerting suspected individuals/companies that an investigation is underway;
- Treating employees/third parties unfairly; or
- Making statements that could lead to claims of false accusations or other offenses. Employees who knowingly or negligently make false accusations may be subject to disciplinary action.

All participants in a fraud investigation will keep the details and results of the investigation confidential. However, the Assistant City Manager, in consultation with City Attorney, may disclose particulars of the investigation with potential witnesses/personnel if such disclosure would further the investigation.

Responsibilities of the manager in handling dishonest or fraudulent activities include the following:

- Do not contact the suspected individual to determine facts or demand restitution.
- Do not discuss the case, facts, suspicions, or allegations with anyone outside the City, unless specifically directed to do so by the Assistant City Manager or City Attorney.
- Do not discuss the case with anyone inside the City other than employees who have a need to know, such as the Assistant City Manager.

- Direct all inquiries from the suspected individual/company or his/her/its representative/attorney to the City Manager.
- Direct all inquiries from the media to the City Manager's Office. A proper response to such an inquiry might be, "I'm not at liberty to discuss this matter. Let me refer you to the City Manager's Office". The City Manager's Office will determine the appropriate media messages and identify an appropriate City spokesperson, as required.
- Take appropriate corrective and disciplinary action after consulting with the City Manager.

6. EMPLOYEE RESPONSIBILITIES

When suspected fraudulent incidents or practices are observed by, or made known to, an employee, the following will be done:

- The incident or practice must be reported to his/her supervisor for reporting to the proper management official. When the employee believes the supervisor may be involved in the inappropriate activity, the employee will make the report directly to a higher level of management and/or the Sheriff's Department.
- The reporting employee will refrain from further investigation of the incident, confrontation with the alleged violator, or further discussion of the incident with anyone other than his/her supervisor, the Assistant City Manager/City Manager, and/or law enforcement personnel.

7. INVESTIGATION

The Assistant City Manager will carry out an initial review. If the Assistant City Manager is suspected of fraud, the City Manager will conduct the initial review. After this review is completed, a determination of whether the suspected fraud warrants additional investigation by the Assistant City Manager will be made. As warranted, the Assistant City Manager will inform Risk Management of a pending investigation.

A prompt investigation will be conducted to include detailed analyses of available records. The audit investigation requires the full co-operation of the departmental personnel. The Assistant City Manager will proceed as follows, if evidence is uncovered showing possible dishonest or fraudulent activities:

- The Assistant City Manager will discuss the findings and recommendations for prevention of future similar occurrences with management and appropriate administrators. Management is responsible for taking appropriate corrective actions to ensure adequate controls exist to prevent reoccurrence of improper actions.

- The Assistant City Manager will meet with Human Resources to determine if disciplinary actions should be taken.
- The Assistant City Manager will notify the City Manager.
- The Assistant City Manager will notify the Finance Committee as appropriate.
- If illegal activity appears to have occurred, the Assistant City Manager, in consultation with the City Attorney, will report the findings to the Sheriff's Department.
- The Assistant City Manager will contact Risk Management to coordinate the notification of insurers and the filing of insurance claims.
- The Assistant City Manager will report to the external auditors of the City all information relating to investigations of actual frauds.

The Assistant City Manager is available and receptive to receiving relevant information on a confidential basis to the extent allowed by law. Individuals have the right to contact the Assistant City Manager directly whenever a dishonest or fraudulent activity is suspected.

8. RELATED POLICIES

This Policy and Protocol is designed to augment any other corporate policies containing related information. It does not replace or preclude them. To the extent that this Policy and Protocol may conflict with any other corporate policies containing related information, this Policy and Protocol will take precedence to the extent only of such conflict.

9. COMPLIANCE

Failure of staff to comply with this Fraud Policy and Protocol could result in disciplinary action.

TAX-ADVANTAGED BONDS POST-ISSUANCE COMPLIANCE PROCEDURES

1. BACKGROUND AND TRAINING

Bonds that receive preferential treatment under federal law are commonly referred to by the Internal Revenue Service as “tax-advantaged bonds”. These bonds are issued by or on behalf of state and local governments, including the City of Agoura Hills and any related public entity, such as the Agoura Hills Financing Authority. These bonds are subject to federal tax requirements both at the time the bonds are issued and for as long as they remain outstanding. An issuer’s (or other party’s) failure to comply with any applicable federal tax requirement with respect to these bonds jeopardizes their tax-advantaged treatment.

While compliance with applicable federal tax requirements normally occurs at closing, other federal tax requirements require on-going monitoring after the issuance of the bonds. These requirements include filing a Form 8038 information return (8038-G for fully tax-exempt bonds, 8038-GC for fully tax-exempt bonds with an issue price of less than \$100,000, 8038 for qualified private activity bonds, or 8038-B for Build America Bonds) and the issuer having reasonable expectations of on-going, post-issuance compliance.

Post-issuance federal tax requirements generally fall into two categories: (1) the use of proceeds and the use of bond-financed property; and (2) arbitrage yield restriction on investments and rebate. Use requirements require monitoring of the various direct and indirect uses of bond-financed property over the life of the bonds and calculations of the percentage of nonqualified uses. Arbitrage requirements also require monitoring over the life of the bonds to determine whether both the yield on investments acquired with bond proceeds are properly restricted and whether the City must file a Form 8038-T to pay a rebate or a yield reduction payment.

Post-issuance compliance procedures will help the City monitor compliance as long as the bonds remain outstanding and improve the City’s ability to identify noncompliance and prevent violations from occurring, or timely correct identified violations, to ensure the continued tax-advantaged status of the bonds.

The designated officer or employee (described in Section 2.A, below) and anyone assigned particular responsibilities in connection with the procedures described below must read the certificate regarding compliance with certain tax matters (commonly referred to as the “tax certificate”) that is executed by the City (or a related public entity) in connection with each bond issue for a more complete explanation of the matters described in these procedures. In addition, the designated officer or employee and anyone assigned particular responsibilities should discuss these matters with bond counsel.

2. GENERAL ADMINISTRATION

A. Responsible Officers or Employees. The City Manager will designate the officer (e.g., the Finance Director) or employee who will be responsible for compliance with each of the procedures set forth below. The City Manager will notify the current holder of that office, or the employee, of the responsibilities and provide that person a copy of these procedures. The holder of the office, or the employee, may in turn designate other officers or employees and assign to

them particular responsibilities for certain of these procedures. Qualified consultants may also assist in conducting the compliance procedures. The City Manager must be notified in writing of all such designations and assignments.

B. Reassignment of Responsibilities. Upon the transition of a designated officer or employee, the City Manager will advise the new officer or employee of the responsibilities under these procedures. If officer or employee positions are restructured or eliminated, the City Manager, or his or her designee will reassign responsibilities as necessary to ensure that all of the procedures listed below have been appropriately assigned.

C. Periodic Reviews. The designated officer or employee will conduct periodic reviews of compliance with these procedures and with the terms of any existing tax certificate relating to outstanding tax-advantaged bonds, such as fully tax-exempt bonds or Build America Bonds, to determine whether any violations have occurred. Such periodic reviews will occur at least once every six months. In the event that violations have occurred, bond counsel will be contacted immediately so that violations can be remedied through the remedial actions set forth in Section 1.141-12 of the Treasury Regulations, the Voluntary Closing Agreement Program described in IRS Notice 2008-31, or further guidance as may be provided by the IRS. Where necessary, violations will be reported to the IRS by submitting a VCAP request within 90 days after identification of the violation.

D. Changes or Modifications to Bond Terms. If any change or modification to the terms of tax-advantaged bonds is contemplated, the designated officer or employee will immediately contact bond counsel (a change or modification could result in a reissuance, which in the case of BABs, for example, would constitute a refunding of the BABs and thereby jeopardize their preferential tax status).

E. Recordkeeping. For each issue of tax-advantaged bonds, the designated officer or employee will:

- (1) maintain a copy of the transcript of the documents relating to the bonds.
- (2) maintain records of all facilities and other costs (e.g., issuance costs, credit enhancement fees and capitalized interest) and uses (e.g., deposits to project funds and reserve funds) for which bond proceeds were spent or used (in the case of a qualified private activity bond, the conduit borrower will be responsible for providing the City with this information);
- (3) maintain records of investments and expenditures of bond proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and yield reduction payments, and any other records relevant to compliance with arbitrage restrictions (in the case of a qualified private activity bond, the borrower will be responsible for providing the City with this information in the event it is not otherwise available to the City);
- (4) maintain all records described in these procedures while any bonds of the issue are outstanding and during the three-year period following the final maturity or redemption of the bond issue or, if later, while any bonds that refund bonds of that original issue are outstanding and for the three year period following the final maturity or redemption date of the latest refunding bond issue; and

(5) maintain copies of all of the following contracts or arrangements with non-governmental persons or organizations or with the federal government: (a) the sale of any bond-financed facility; (b) the lease of any bond-financed facility (other than individual tenant leases in the case of qualified private activity multifamily rental housing bonds); (c) management or service contracts relating to a bond-financed facility (other than those entered into in connection with qualified private activity bonds); (d) research contracts involving research undertaken in a bond-financed facility (other than those entered into in connection with qualified private activity bonds); and (e) any other contracts involving “special legal entitlements” (such as naming rights or exclusive provider arrangements) with respect to a bond-financed facility (other than those entered into in connection with qualified private activity bonds).

3. IRS INFORMATION RETURN FILING

In cooperation with bond counsel, the designated officer or employee will ensure that the Form 8038-G (or other applicable Form 8038) is timely filed (on or before the 15th day of the second calendar month after the end of the quarter in which the bonds were issued) with respect to each tax-advantaged bond issue, including any required schedules and attachments.

4. INVESTMENT AND EXPENDITURE OF BOND PROCEEDS AND REBATE

A. Track Investments and Expenditures. The designated officer or employee will ensure the existence of an established accounting procedure for tracking the investment and the timely expenditures of bond proceeds, including investment earnings.

B. Reimbursement. Upon issuance of the bonds, the designated officer or employee will allocate bond proceeds to reimbursement of prior expenditures (assuming, if required, an appropriate declaration of intent to reimburse has been adopted). In the case of qualified private activity bonds, the designated officer or employee will rely on information provided by the conduit borrower.

C. Final Allocations. The designated officer or employee will ensure that a final allocation of bond proceeds (including investment earnings) to qualifying expenditures is made if bond proceeds are to be allocated to project expenditures on a basis other than “direct tracing” (direct tracing means treating the bond proceeds as spent as shown in the accounting records for bond draws and project expenditures). This allocation must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years and 60 days after the issuance date of the bonds or 60 days after the bond issue is retired. In the case of qualified private activity bonds, the designated officer or employee shall rely on information provided by the conduit borrower, which shall be required to provide such information within the timeframe described in the preceding section.

D. Timely Expenditure of Bond Proceeds. Mindful of the expectations regarding the timing of the expenditures of bond proceeds set forth in the tax certificate, the designated officer or employee will monitor expenditures of bond proceeds, including investment earnings, against issuance date expectations for satisfaction of three-year (or five-year) temporary period from yield restriction on investment of bond proceeds, and to assure that proceeds and investment earnings are allocated to expenditures for the public improvements or other qualified

expenditures described in the tax certificate. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

E. Yield. The designated officer or employee will make note of the “yield” of the bond issue, as shown on the Form 8038-G, 8038-B or other applicable Form 8038.

F. Temporary Periods and Yield Restriction. The designated officer or employee will review the tax certificate to determine the “temporary periods” for the bond issue, during which periods various categories of gross proceeds of the bond issue may be invested without restriction as to yield. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

G. Investment of Proceeds and Yield Restriction. The designated officer or employee will ensure that bond proceeds are not invested in investments with a yield above the bond yield following the end of the applicable temporary period unless yield reduction payments are to be made. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

H. Bidding Requirements. If purchasing investments other than publicly traded securities for immediate delivery (for example, a guaranteed investment contract or certificates of deposit), the designated officer or employee will consult with bond counsel to ensure that investments of bond proceeds satisfy IRS regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintain records to demonstrate satisfaction of such safe harbors. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

I. Credit Enhancement and Hedging Transactions. The designated officer or employee will consult with bond counsel before engaging in credit enhancement or hedging transactions with respect to a bond issue. The designated officer or employee will maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions.

J. Debt Service Fund. After all proceeds of a bond issue have been spent, the designated officer or employee will ensure that the debt service fund meets the requirements of a “bona fide debt service fund,” i.e., one used primarily to achieve a proper matching of revenues with debt service that is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of (i) the investment earnings on the fund for the immediately preceding bond year; or (ii) one-twelfth of the debt service on the bond issue for the immediately preceding bond year. To the extent that a debt service fund qualifies as a bona fide debt service fund for a given bond year, the investment of amounts held in that fund is not subject to yield restriction for that year. The designated officer or employee will consult with bond counsel before creating separate additional funds that are expected to be used to pay debt service on the bonds. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

K. Reserve Fund. The designated officer or employee will ensure that amounts of bond proceeds invested in any reasonably required reserve fund do not exceed the least of (each determined at the time of issuance of the bonds): (i) ten percent of the stated principal amount of

the bonds (or the sale proceeds of the bond issue if the bond issue has original issue discount or original issue premium that exceeds two percent of the stated principal of the bond issue plus, in the case of premium, reasonable underwriter's compensation); (ii) maximum annual debt service on the bond issue; or (iii) 125 percent of average annual debt service on the bond issue. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

L. Escrow Fund. For an advance refunding escrow (where the escrow is established 90 or more days before the refunded bonds are to be redeemed) funded with taxable open market securities earning yields higher than the yield of the advance refunding bonds, assure that all or part of the escrow is invested in zero interest rate SLGS issued by the United States Treasury Department if needed to blend down the yield.

M. Gifts for Bond-Financed Projects. Before beginning a campaign that may result in gifts that will be restricted for use relating to a bond-financed facility (or, in the absence of such a campaign, upon the receipt of such restricted gifts), the designated officer or employee will consult with bond counsel to determine whether replacement proceeds may result.

N. Performance of Rebate Calculations. Subject to the small issuer exception and the exceptions described in the tax certificate, investment earnings on bond proceeds at a yield in excess of the bond yield generally must be rebated to the United States. The designated officer or employee will ensure that rebate calculations will be timely performed and payment of rebate amounts, if any, will be timely made. Rebate payments are generally due 60 days after the fifth anniversary of the issuance date of the bond issue, then in succeeding installments every five years. The final rebate payment is due 60 days after retirement (or early redemption) of the last bond of the issue. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

O. Rebate Consultant. The designated officer or employee will engage the services of an experienced rebate consultant to undertake rebate calculations described above for each bond issue. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

P. Spending Exceptions. If the six-month, 18-month, or 24-month spending exceptions from the rebate requirement (as described in the tax certificate) apply to the bond issue, the designated officer or employee will ensure that the spending of bond proceeds is monitored prior to semi-annual spending dates for the applicable exception.

Q. Follow-up on Rebate. After all bond proceeds have been spent, the designated officer or employee will ensure compliance with rebate requirements for any reserve fund and any debt service fund that is not exempt from the rebate requirement. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

R. Filing of 8038-T. The designated officer or employee will make rebate and yield reduction payments timely and file Form 8038-T.

5. PRIVATE BUSINESS USE

A. Private Business Use. Use of bond proceeds or bond-financed property by a nongovernmental person (including the federal government) in furtherance of a trade or business activity is considered private business use. Any activity carried on by other than a natural person (individual acting as a member of the general public) is treated as a trade or business. Indirect uses of bond proceeds must also be considered in determining whether the proceeds of a bond issue will be for a private business use. For example, a facility is treated as being used for a private business use if it is sold or leased to a nongovernmental person and the nongovernmental person's use is in a trade or business. The designated officer or employee will analyze any private business use of bond-financed facilities and, for each issue of bonds, determine whether the ten percent limit on private business use (five percent in the case of "unrelated or disproportionate" private business use) is exceeded and immediately contact bond counsel if either of these limits is exceeded. This paragraph does not apply to qualified private activity bonds.

B. Management and Service Agreements. Management agreements between governmental entities and certain private parties under which private parties receive compensation for services provided with respect to a bond-financed facility may result in private business use. Before entering into any new management agreement or service agreement relating to bond-financed facilities, the designated officer or employee will immediately contact bond counsel to review any such agreement to determine whether it may result in private business use. This paragraph does not apply to qualified private activity bonds.

C. Special Legal Entitlements. Before entering into any agreement providing special legal entitlements relating to a bond-financing facility, the designated officer or employee will immediately contact bond counsel to review such agreement. This paragraph does not apply to qualified private activity bonds.

6. PROCEDURES RELATING ONLY TO BUILD AMERICA BONDS AND TAX CREDIT BONDS

A. Limit on Premium. The designated officer or employee will consult with the financial advisor to ensure that the premium on each maturity (stated as a percentage of principal amount) does not exceed one-quarter of one-percent multiplied by the number of complete years to the earlier of the final maturity or, generally, the earliest optional redemption date for the bonds.

B. Two Percent Costs of Issuance Limitation. The designated officer or employee will consult with the financial advisor to ensure that the excess of the issue price (*i.e.*, the stated principal amount of the bonds plus the original issue premium or less the original issue discount) over the price at which the bond issue is sold to the investors at the initial bond offering, when combined with other issuance costs paid from bond proceeds, does not exceed two percent of the sale proceeds.

C. Review of Market Availability. The designated officer or employee will ensure that the financial advisor reviews the market trading activity after their sale date but before their

issuance date to determine whether the market pricing is consistent with the issue price reported by the underwriter or original purchaser as of their sale date. Market trading information is generally available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (EMMA) (<http://www.emma.msrb.org>). A record of such determination, including copies of the market trading information, will be maintained.

D. Monitor Interest For Refundable Credit. In the case of BABs or tax credit bonds, the designated officer or employee will monitor the amount of interest payable on each interest payment date to ensure that the proper amount of direct payment (refundable credit) is requested on each Form 8038-CP.

E. Filing of 8038-CP. In the case of BABs or tax credit bonds, the designated officer or employee will ensure that IRS Form 8038-CP is timely filed with respect to each interest payment date (or each quarter in the case of certain variable rate bond issues).

F. Refundable Credit Payments to Proper Person. In the case of BABs or tax credit bonds, if the direct payments (refundable credits) to be made by the federal government with respect to the bonds will be paid to a person other than the issuer (*e.g.*, the bond trustee or the state or local government entity on whose behalf an authority issued the bonds, such as the California Statewide Communities Development Authority), the designated officer or employee will obtain and record the contact information of that person, and ensure that it is properly shown on Form 8038-CP so that the direct payment (refundable credit) will be made to the proper person.

G. Follow-up on Two Percent Costs of Issuance Limitation. In the case of BABs or tax credit bonds, in cooperation with the financial advisor, the designated officer or employee will ensure that no more than two percent of the sale proceeds are used to pay issuance costs.

H. Available Project Proceeds. In the case of BABs or tax credit bonds, the designated officer or employee will ensure that all of the sale proceeds and investment earnings, other than (i) sale proceeds used to pay issuance costs (up to the two percent limit described above) or (ii) deposited in a reasonably required reserve fund, are allocated to capital expenditures.