

# OREGON STATE TREASURY

## DIVISION 63

### OREGON SCHOOL BOND GUARANTY PROGRAM

**170-063-0000**

#### **Oregon School Bond Guaranty Program**

(1) Definitions. For purposes of this rule, the following definitions shall apply:

(a) "OST" means the Office of the State Treasurer.

(b) The "Act" means the Oregon School Bond Guaranty Act set forth in ORS 328.321 to 328.356.

(c) "Authorized District Official" means the chairperson of the board, the superintendent, president, or business administrator for the School District, or other designee of the board.

(d) "Business Day" means any day on which the offices of the State Treasurer are open to the public for the conduct of substantially all of the powers and duties of the agency. Saturdays, Sundays, or state holidays or any other day recognized by state government as a holiday or a day on which the State Treasurer's offices are officially closed to the public shall not be considered a Business Day.

(e) "Certificate of Qualification" means a letter from OST pursuant to ORS 328.331(3).

(f) "Determination of Ineligibility" means a letter from OST pursuant to ORS 328.336.

(g) "Guaranty Program" means the school bond guaranty program established by the Act.

(h) "Nationally Recognized Bond Counsel Firm" means a bond counsel firm listed in the most recent publication of The Bond Buyer's Municipal Market Place.

(i) "Qualified Bonds" means bonds that are originally issued as tax credit bonds under the Internal Revenue Code and any bonds resulting from a conversion of such tax credit bonds to an interest bearing format over and above interest payments that may be due and payable under the original terms of such tax credit bonds.

(j) "Qualified Paying Agent" means a paying agent acceptable to OST who agrees to comply with the applicable requirements of the Act and provides a letter to OST acknowledging as much.

(k) "School District" or "District" means a common or union high school district, an education service district, or a community college district.

(l) "State School Aid" means the State School Fund Grant described in ORS 327.008(2), plus amounts received from the Common School Fund under 327.410, plus amounts received from federal forest revenues under 294.060, plus amounts received from state managed forests under 530.115.

(m) "Repayment Assurance Agreement" means an agreement between the State of Oregon, acting by and through its Office of the State Treasurer and its Department of Education (the "State") and a "District" in which the District agrees that if the State pays under the guaranty the District will enter into a subsequent repayment agreement with respect to the amount(s) paid by OST.

(n) Terms not otherwise specifically defined herein shall have the meanings given in the Act. For purposes of calculating outstanding bonds or other outstanding borrowings as required under this rule, any borrowings that are defeased as provided in ORS 287A.195(1)(d)(B) shall be excluded and shall not be included in the amount of an outstanding borrowing.

(2) Request for Certificate of Qualification to Participate in Guaranty Program. School Districts may request a Certificate of Qualification at any time during the year by filing a Request for Certificate of Qualification. Such requests, however, must be submitted no less than 30 days prior to sale of the bonds for which the guaranty, if granted, will apply. Requests, and all other written communications pursuant to the Guaranty Program, shall be submitted to OST as provided in OAR 170-055-0001(4), and shall include:

- (a) The name, county, and district number (if applicable) of the requesting School District;
- (b) The name of the business administrator or other contact person for the requesting School District;
- (c) The mailing address, phone number, e-mail address, and fax number (if applicable) of the requesting School District;
- (d) A statement of whether any of the School District's previously issued and outstanding debt is covered by the Guaranty Program;
- (e) A copy of the requesting School District's most recent audited financial statements, audit opinion, and management letter; and a statement by an Authorized District Official that they have not been contacted and are not participating in any investigation by an oversight agency or, alternatively, documentation of any conclusions reached by such agency regarding their activities.
- (f) A listing of outstanding general obligation debt and associated debt service schedules, for debt issued by the School District since the date of its most recent financial audit;
- (g) A copy of the School District's Board adopted policy or internal procedure that addresses post issuance compliance with federal tax and securities laws.
- (h) A certificate, signed by an Authorized District Official:
  - (A) Stating whether the requesting School District has ever failed to pay debt service on any of its bonds, certificates of participation, or other financial obligations when due, and explaining the circumstances and resolution of any such defaults or failures;
  - (B) Describing current lawsuits against the School District challenging the ability or authority of the School District to issue bonds or that may materially affect the ability of the School District to make scheduled debt service payments on its bonds when due;
  - (C) Stating that the requesting School District has filed its current budget document(s) with the Oregon Department of Education, and in accordance with Oregon Local Budget Law;
  - (D) Stating the amount of debt the School District is authorized by law to incur, and stating that the requesting School District is within this limit;
  - (E) Describing the possible repayment structure of all bonds the School District may issue during the period of the requested Certificate of Qualification, including any Qualified Bonds. Such repayment structure shall cover the estimated debt service schedule and, for Qualified Bonds, include any scheduled deposits to a sinking fund and the interest rate to which such bonds may be converted, if they may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of such bonds;
  - (F) Attesting to the accuracy and completeness of the materials provided; and

(G) Stating that the School District has engaged a Qualified Paying Agent, who, under the terms of the agreement between the two parties (the "Paying Agent Agreement"), has agreed to provide the School District with a written notification by January 15 of each year of the required debt service amounts (including any scheduled deposits to a sinking fund for Qualified Bonds) which are due in the then-current fiscal year and the following two fiscal years, such that the School District may have the proper information to levy adequate amounts for such payments coming due in the following fiscal years.

For example, a notification provided by January 15, 2010 shall include information on debt service due in the current FY 2010 year (July 1, 2009 through June 30, 2010), the FY 2011 year (July 1, 2010 through June 30, 2011), and FY 2012 year (July 1, 2011 through June 30, 2012).

(i) A non-refundable application processing fee as set forth in OAR 170-061-0015;

(j) An authorizing resolution of the District that expressly authorizes the District to participate in the Guaranty Program and that affirmatively pledges the taxing power and full faith and credit of the District to payment of any payments made by the State Treasurer pursuant to ORS 328.341; and

(k) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program.

(3) Review of Request for Certificate of Qualification. Upon receipt of a request for a Certificate of Qualification, OST shall determine whether all items listed in section (2) of this rule have been provided, whether such items are current, and whether such items demonstrate that the requesting School District is likely to be able to repay any amounts paid by OST under ORS 328.341. To make its determination, OST may request additional information from the School District, as well as from any other person or entity that collects information pertaining to the financial well-being of the requesting School District.

(4) Issuance of Certificate of Qualification. Upon determining that a School District is eligible to participate in the Guaranty Program, OST shall issue a Certificate of Qualification to the School District, if the District has entered into a Repayment Assurance Agreement with OST. A Certificate of Qualification will not apply to Qualified Bonds unless the School District indicated in its request for a Certificate of Qualification that it planned to issue Qualified Bonds under the Certificate of Qualification. OST shall act upon a School District's request for a Certificate of Qualification within 10 business days after receipt of a request under section (2) of this rule. The Certificate of Qualification:

(a) Shall evidence the School District's immediate qualification for the Guaranty Program contingent upon compliance with section (6) and all other sections of this rule for each bond issue contemplated for guaranty under the Act;

(b) Be valid for one year from the date of its issuance;

(c) May be applied to any or all general obligation bonds or general obligation refunding bonds issued by the School District during such one-year period that comply with this rule and the Act, except Qualified Bonds for which specific approval must be noted as set forth in OAR 170-061-0015(4)(d). A bond shall be considered issued as of its dated date.

(d) Will specifically state whether it applies to Qualified Bonds issued by the School District during the period of its validity.

(5) A School District that has received a Certificate of Qualification, but did not request Qualified Bonds to be included under the Certificate of Qualification, may submit an amended request at least one month prior to the scheduled issuance date for any Qualified Bonds requesting an amended Certificate of Qualification that specifically covers the Qualified Bonds, which request shall include the information required for such bonds in OAR 170-063-0000(2). OST shall act upon such request within 5 business days.

(6) School Districts to Provide Information Specific to Each Bond Issued Under the Program. A School District which has received a Certificate of Qualification may, while the Certificate of Qualification is in effect, obtain the state's guaranty of a series of its bonds under the Guaranty Program, by:

(a) Fully complying with Oregon Administrative Rule 170-061-0000 (Notice and Reporting Requirements by Public Bodies When Issuing Bonds), including providing notification on MDAC Form 1 to OST at least 10 business days prior to the marketing of any bonds referencing participation in the Guaranty Program, for the bonds which will be guaranteed (this may be submitted simultaneously with information described in section (2) of this rule);

(b) Submitting the following documents to OST at least 5 business days prior to the closing of the bonds to which the guaranty will apply:

(A) A copy of a resolution adopted by the board or governing body of the School District, authorizing the School District to issue the bonds and participate in the Guaranty Program;

(B) An opinion from a Nationally Recognized Bond Counsel Firm that the bonds, when issued, will be general obligation bonds as defined in the Act, and will be valid and binding obligations of the issuer;

(C) A certificate stating that no litigation is pending or threatened against the School District, questioning the authority of the School District to issue the bonds or levy taxes to pay the bonds;

(D) A specific statement as to whether any of the bonds will be Qualified Bonds; and

(E) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program, including but not limited to, any information or agreement requested by OST with respect to creation of sufficient debt service funds, assurance that any bond insurance, pledge of security or other credit enhancement required for issuance of the Certificate remains in effect and available, or other repayment mechanisms to pay any outstanding bonds, including Qualified Bonds or to repay OST when payment is due.

(7) Letter of Confirmation. No later than the day on which the bonds are scheduled to close, OST shall, if the Certificate of Qualification is in effect and the School District has complied with section (6)(a) and (6)(b) of this rule, issue a Letter of Confirmation identifying the series of bonds to which the guaranty shall apply, and stating that the guaranty shall apply to that series of bonds if the series of bonds closes within 15 business days after the date of the letter, and there is filed with bond counsel a certificate, signed by an Authorized District Official and dated the date of the closing, stating that no litigation is pending or threatened against the School District which questions the authority of the District to issue the bonds or levy taxes to pay the bonds. If the series of bonds described in the letter of confirmation is closed within that 15 business day period, and the non-litigation certificate is filed with bond counsel as required by this Section, the series of bonds shall be guaranteed under the Guaranty Program, and the guaranty shall not be affected by any denial or revocation pursuant to section (10) of this rule.

(8) Guaranty Fees. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee as set forth in OAR 170-061-0015.

(9) Ratings. OST will undertake to have the Oregon School Bond Guaranty Program rated by one or more of the major debt rating agencies. School Districts may contact the Debt Management Division of OST to determine which agencies have rated the program. School Districts proposing to issue bonds under the Guaranty Program may:

(a) Engage, at their own expense, one or more of the rating agencies to apply the rating of the Guaranty Program to their bonds; and

(b) At their discretion, and at their own expense, choose to obtain an underlying rating on the bonds.

(10) Denial or Revocation of Qualification/Determination of Ineligibility. OST may deny a School District's request for a Certificate of Qualification, or revoke a previously issued Certificate of Qualification, and issue a Determination of Ineligibility in accordance with the Act, if:

(a) The School District fails to meet the provisions outlined in the Act or any of the requirements outlined in this rule;

(b) The State has ever paid, pursuant to the Guaranty Program, any principal of or interest on any of the School District's bonds; or

(c) OST has reason to question the financial integrity of the School District, including but not limited to, whether sufficient funds exist to repay any outstanding Bonds, including Qualified Bonds, when payment is due or to repay the State of Oregon for any payments made by OST under ORS 328.341.

(11) Guaranty Final Upon Issuance. Pursuant to ORS 328.336, issuance of a Determination of Ineligibility shall not affect the validity of the state's guaranty of any outstanding bonds issued under a Letter of Confirmation pursuant to section (7) of this rule.

(12) Reference to Guaranty. School Districts with a valid Certificate of Qualification, and that have complied with section (6) and all other sections of this rule, shall evidence the State's guaranty of the School District's bonds by:

(a) Referencing the guaranty on the cover of the preliminary official statement(s) and official statement(s), or other offering document(s), for the applicable bond(s);

(b) Referencing the guaranty on the face of the School District's applicable bond(s); and

(c) Including language describing the guaranty (to be provided by OST) in the School District's preliminary official statement(s) and official statement(s), or any other offering document(s), for the applicable bond(s). Language supplied by OST must be used in its entirety and may not be modified or amended.

(13) School Districts to Report Changes Affecting Qualification. School Districts who have had bonds guaranteed under the Guaranty Program shall promptly notify OST if at any time there are material changes or occurrences that might affect the School District's eligibility to qualify or maintain its qualification to participate in the Guaranty Program, including but not limited to:

(a) Failure to adopt a resolution or ordinance that formally adopts the budget, sets appropriations, and if needed, levies property taxes in accordance with Oregon local budget law;

(b) Failure to pay debt service on any outstanding bond, certificate of participation, or similar financial obligation; or

(c) Failure to establish or levy for debt service scheduled (including any sinking fund deposits) for any outstanding bonds, including Qualified Bonds, or a material change in any other repayment mechanism for outstanding bonds, including Qualified Bonds.

(14) Notice to OST of debt service payments. School Districts who are unable to transfer scheduled debt service payments to a Qualified Paying Agent 15 days prior to the payment date and Qualified Paying Agents who have not received sufficient funds 10 days prior to the payment date, shall provide notice to OST as provided in OAR 170-055-0001(4) and by telephone to (503) 378-4930 or email to [DMD@ost.state.or.us](mailto:DMD@ost.state.or.us).

(15) Notice to OST of sinking fund deposits. School Districts shall provide written verification that they have made any required sinking fund deposits for Qualified Bonds by May 1 of each year to their Qualified Paying Agents and such Qualified Paying Agent shall promptly notify OST if they do not receive such annual verification.

(16) Repayment. Respective School Districts are responsible for paying all of their obligations guaranteed by the State under the Guaranty Program and for the advance funding of any debt service fund established for such obligations. Any funds paid by the State on behalf of a School District under the Guaranty Program shall be recovered by OST in a manner consistent with the Act.

(17) Reporting on Debt Service Fund. Any School District with outstanding Qualified Bonds guaranteed under the Guaranty Program shall report to the OST at least annually the amount of moneys paid into the School District's debt service fund to pay the Qualified Bonds together with a calculation demonstrating that such advance payments are scheduled to be fully funded and sufficient to repay the Qualified Bonds in full when payment is due. To the extent moneys are not scheduled to be paid into the debt service fund on an annual basis, the School District in its notification shall demonstrate that current balances in the debt service fund, along with any future deposits, will be sufficient to repay the Qualified Bonds in full when due. School Districts with outstanding Qualified Bonds that are subject to conversion to taxable interest bearing bonds and any Qualified Paying Agents for such Qualified Bonds shall promptly notify OST of such conversion as provided in OAR-170-055-0001(4) and by telephone to (503) 378-4930 or email to [DMD@ost.state.or.us](mailto:DMD@ost.state.or.us).

(18) Interest. OST will charge interest in connection with the recovery of funds under the Act. Any interest charged will be in a manner consistent with the Act.

(19) Penalty. In addition to charging interest, OST may impose a penalty on a School District for which the State made a payment under the Guaranty Program. Any penalty imposed will be consistent with the Act.

(20) Exceptions. OST may waive any or all provisions of this rule to the extent provided by law.

This rule shall be effective on the date it is adopted by OST and filed with the Secretary of State and its requirements shall apply to any Certificates of Qualification that are in effect on such date.

Stat. Auth.: ORS 328.321 - 328.356

Stats. Implemented: ORS 328.321 - 328.356 & 328.331

Hist.: OST 3-1998(Temp), f. 12-14-98, cert. ef. 1-2-99 thru 6-30-99; OST 2-1999, f. 6-22-99, cert. ef. 7-1-99; OST 1-2000(Temp) f. 10-31-00, cert. ef. 10-31-00 thru 4-27-01, Administrative correction 6-7-01; OST 7-2008, f. & cert. ef. 12-29-08; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010 f. & cert. ef. 1-15-10; OST 1-2014(Temp), f. & cert. ef. 1-15-14 thru 7-14-14; OST 2-2014, f. & cert. ef. 4-11-14