

# AP 6324 Disclosure Procedures for Public Debt Obligations

## Reference:

*Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.); Rule 10b-5 (17 C.F.R. 240.10b-5.); Rule 15c2-12 (17 C.F.R. 240.15c2-12(b)(5).)*

## Introduction

### 1. Purpose

These administrative procedures (the "Procedures") of the WEST KERN COMMUNITY COLLEGE DISTRICT (the "District"), are intended to (1) ensure that the District's Initial Disclosure Documents and Continuing Disclosure Documents (as such terms are defined in Section I (B) of these Procedures) are accurate, timely filed, and comply with all applicable federal and state securities laws, and (2) promote best practices regarding the preparation, review, and delivery of the District's Initial Disclosure Documents and Continuing Disclosure Documents.

### 2. Definitions

For purposes of these Procedures, the following capitalized terms have the following meanings.

- A. "Continuing Disclosure Documents" means (i) annual continuing disclosure reports filed with EMMA, and (ii) event notices and any other filings with EMMA, each as may be required by the District's continuing disclosure undertaking pursuant to Rule 15c2-12.
- B. "Disclosure Consultant" has the meaning set forth in Article II, section (B).
- C. "Disclosure Coordinator" has the meaning set forth in Article II, section (A).
- D. "EMMA" means the Electronic Municipal Market Access, a web site maintained by the MSRB and currently located at <http://emma.msrb.org>. Effective July 1, 2009, and until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through EMMA. EMMA also means any successor repository designated by the MSRB or the SEC.
- E. "Initial Disclosure Documents" means one or more official statements, placement memoranda, or other disclosure documents describing the Obligations for use in connection with the offering and sale of such Obligations.

- F. "Material Event" means any of the events listed in the District's continuing disclosure undertakings for the Obligations.
- G. "MSRB" means the Municipal Securities Rulemaking Board or any other repository designated or authorized by the Securities and Exchange Commission to receive reports pursuant to Rule 15c2-12.
- H. "Obligation" or "Obligations" means, individually or collectively (as applicable), the District's indebtedness, including, without limitation, general obligation bonds (GOBs), general obligation bond anticipation notes (BANs), tax and revenue anticipation notes (TRANS), lease financings, COPs, or refundings of any of the foregoing.
- I. "Official Statements" means preliminary and final official statements, private placement memoranda and remarketing memoranda relating to Obligations, together with any supplements.
- J. "Rule 10b-5" means Rule 10b-5 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.
- K. "Rule 15c2-12" means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.
- L. "SEC" means the U.S. Securities and Exchange Commission.

## **Key Participants**

### **1. Disclosure Coordinator**

- A. *Appointment.* The Chief Fiscal Officer shall select and appoint a person to serve as disclosure coordinator (the "Disclosure Coordinator"). The Disclosure Coordinator shall have general oversight over the entire initial and continuing disclosure process and may consult with District staff, District counsel, other finance team members for each applicable Obligation, or other interested parties as the Disclosure Coordinator determines is advisable, related to such disclosure issues and practices. The Chief Fiscal Officer shall serve as the initial Disclosure Coordinator until such time as the Chief Fiscal Officer shall make such selection and appointment.
- B. *Responsibilities.* The Disclosure Coordinator is responsible for:
  - 1. Serving as administrator for collection of disclosure issues or information to be considered by the Disclosure Coordinator for

inclusion in any Initial Disclosure Document or Continuing Disclosure Document.

2. In preparing Initial Disclosure Documents and in anticipation of preparing Continuing Disclosure Documents, soliciting and collecting “material” information (as defined in Rule 10b-5) from District departments and other relevant District staff.
3. Facilitating the preparation and dissemination of Initial Disclosure Documents and Continuing Disclosure Documents to ensure that Continuing Disclosure Documents are filed on a timely basis and are accurate.
4. In cooperation with District Counsel, Disclosure Counsel, other attorneys, and the District’s financial advisor, preparing any Initial Disclosure Document, coordinating with other District staff members with knowledge of the subject matter of the respective Obligation being marketed and sold under the Initial Disclosure Document, (i) reviewing each Initial Disclosure Document, in consultation with such other parties the Disclosure Coordinator deems necessary or desirable, and (ii) presenting the Initial Disclosure Document, in preliminary form, as required by Rule 15c2-12, to the Board of Trustees for its approval, before it is disseminated to the public or prospective purchasers of the related obligation or posted to EMMA, all in order to ensure compliance with federal and state securities laws, including Rule 10b-5 and Rule 15c2-12.
5. Reviewing, preparing and filing the required Continuing Disclosure Documents, to the extent such filings are not prepared and filed by the Disclosure Consultant.
6. Monitoring compliance by the District with these Procedures, including timely dissemination of annual report and Material Event filings as described in Sections III (B) and III (C) of these Procedures.
7. Recommending changes to these Procedures to the President/Superintendent as necessary or appropriate.
8. Together with the Chief Fiscal Officer (if other than the Disclosure Coordinator), coordinating the timely provision of information to the Disclosure Consultant as needed to fulfill its responsibilities to the District.
9. Maintaining records documenting the District's compliance with these Procedures.

10. Reviewing, at least annually, compliance with and providing appropriate certifications in connection with (i) continuing disclosure obligations (including filing Continuing Disclosure Documents in accordance with Section III of these Procedures).

a. The various covenants in documents for Obligations.

11. Insuring that appropriate District staff receive periodic training regarding disclosure responsibilities and practices.

C. *Consultation.* The Disclosure Coordinator shall consult with District Counsel and/or the Disclosure Consultant to the extent the Disclosure Coordinator considers appropriate to perform its responsibilities.

2. Disclosure Consultant

A. *Appointment.* The Chief Fiscal Officer shall, from time to time, designate or hire, as applicable, a Disclosure Consultant (who may be the District's financial advisor, dissemination agent, or other appropriate consultant). The Disclosure Consultant shall have significant expertise and experience related to ongoing disclosure requirements for municipal securities. The initial Disclosure Consultant shall be Capitol Public Finance Group.

B. *Responsibilities.* The Disclosure Consultant is responsible for:

1. Communicating to the Disclosure Coordinator its information needs, reviewing Initial Disclosure Documents, Continuing Disclosure Documents and other relevant information, consulting with appropriate District staff or interested parties needed to confirm that the District is meeting its disclosure obligations.

2. Reviewing the documents comprising the Obligations to determine which covenants require an annual or regular certification and maintain a list of those with the Disclosure Coordinator.

3. From time to time, making recommendations to the Disclosure Coordinator regarding ways the District may improve these Procedures and methods of meeting District continuing disclosure obligations.

3. Others With Responsibility for Initial Disclosure Documents.

A. *Responsibilities of District Attorney.* The District Counsel (or a designee) shall review Initial Disclosure Documents and shall draft for Initial Disclosure

Documents descriptions of (a) any material current, pending or threatened litigation, (b) any material settlements or court orders and (c) any other legal issues that are material information for purposes of any respective Initial Disclosure Document.

- B. *Responsibilities of Chief Fiscal Officer.* The Chief Fiscal Officer shall review each Initial Disclosure Document, identify any material difference in presentation of financial information from the District's most recent financial statements and ensure there are no misstatements or omissions of material information in any sections that contain descriptions of information prepared by the Chief Fiscal Officer (or the Chief Fiscal Officer's staff) or of relevance to the finances of the District. In addition, the Chief Fiscal Officer shall determine whether the District's then-available financial statements are appropriate to be included in the respective Initial Disclosure Document and whether to seek the consent of the District's auditor to including financing statements in the respective Initial Disclosure Document.

## **CONTINUING DISCLOSURE FILINGS**

### **1. Overview of Continuing Disclosure Filings**

Pursuant to the District's continuing disclosure undertakings for the Obligations, evidenced by the execution of each "continuing disclosure certificate," the District may be required to file annual reports with EMMA in accordance with such undertakings in each year. Such annual reports are required to include certain updated financial and operating information (or may refer to a publicly-available document), which varies among the different obligations issued by the District, the District's audited financial statements and other information deemed "material" (within the meaning of Rule 10b-5) to investors.

The District is also required under the continuing disclosure undertakings to timely file notices of certain Material Events with EMMA. In accordance with Rule 15c2-12, such notices must be filed timely and within 10 business days of the occurrence of the event.

### **2. Annual Reports**

The Disclosure Coordinator shall ensure that the preparation of the District's annual reports commences as required to satisfy the filing requirements under each specific continuing disclosure obligation. Before any annual report is submitted to EMMA, the Disclosure Coordinator shall confer with the Chief Fiscal Officer, District staff and the District Counsel, as needed, regarding the content and accuracy of any annual report. Prior to each filing, the Disclosure Coordinator will review each report with the Disclosure Consultant, and the

Disclosure Consultant will confirm in writing (which may be by email) that such report appears to comply with the requirements of the applicable continuing disclosure undertaking.

### 3. Event Filings

The Superintendent, the Chief Fiscal Officer, the District Counsel, or any other District staff person shall notify the Disclosure Coordinator if he or she becomes aware of any Material Events the existence of which may require a disclosure. The Disclosure Coordinator may convene an internal staff meeting to discuss the Material Event and to determine, in consultation with the Disclosure Consultant, whether a filing is required or is otherwise desirable. Prior to any Material Event filing, to the extent practicable, the Disclosure Coordinator will review each notice with the Disclosure Consultant, and the Disclosure Consultant will confirm in writing (which may be by email) that such notice appears to comply with the requirements of the applicable continuing disclosure undertaking.

### 4. Questions Regarding Disclosure Issues

The Disclosure Coordinator or the Chief Fiscal Officer may direct questions regarding the disclosure to the Disclosure Consultant, disclosure counsel, bond counsel or the District Counsel or such other counsel or consultant he/she deems appropriate.

## **CONTINUING DISCLOSURE DOCUMENTS TO BE RETAINED**

The Disclosure Coordinator shall be responsible for retaining records demonstrating compliance with the Continuing Disclosure Documents. The Disclosure Coordinator shall retain an electronic or paper file (“Disclosure File”) for each continuing disclosure annual report that the District completes. Each Disclosure File shall include the final version of the applicable Initial Disclosure Document and all related Continuing Disclosure Documents; written confirmations, certifications, letters and legal opinions described herein; copies of these Disclosure Procedures and a list of individuals to whom they have been distributed and the dates of such distributions. The Disclosure File shall be maintained in a central depository for a minimum period of ten (10) years from the later of (i) the date of delivery of the Obligation referenced in the Continuing Disclosure Document, or (ii) the date the Continuing Disclosure Document is published, posted, or otherwise made publicly available, as applicable.

## **AMENDMENTS**

Any provision of these Procedures may be waived or amended at any time by action of the Superintendent/President.