



POST-ISSUANCE COMPLIANCE PROCEDURES For Tax-Exempt Bonds and Build America Bonds

STATE OF OHIO

The federal tax laws impose a number of requirements for bonds to constitute tax-exempt bonds or Build America Bonds (“BABs”) that are “qualified bonds” within the meaning of Section 54AA of the Internal Revenue Code of 1986, as amended (the “Code”).¹ BABs that are “qualified bonds” entitle the issuer to interest-subsidy payments from the federal government and are referred to herein as “Direct Payment BABs.” Many of the requirements applicable to tax-exempt bonds address circumstances at the time the tax-exempt bonds are issued. Others require the issuer to monitor various attributes of the Bonds, the Proceeds² of the Bonds, and the bond-financed facilities throughout the term of the Bonds. All of these requirements are set forth in the Tax Compliance Certificate or Tax Certificate and Agreement (“Tax Certificate”) executed upon the issuance of the Bonds, which should be consulted in addition to the procedures set forth herein.

The procedures that follow are designed to ensure consistent compliance with the tax laws over the term of each issuance by the State of Ohio (the “State”) of tax-exempt bonds and Direct Payment BABs that are outstanding at the time of adoption of these procedures and those that are issued after the adoption of these procedures (the Bonds of each respective issue referred to herein as the “Bonds”). Throughout the term of each Bond issuance, the federal tax law requirements on which the following procedures are based may change and may necessitate revisions to these procedures.

1. GENERAL MATTERS

1.1. Identify the responsible party for the procedures contained herein, advise the current employees of that office of the responsibilities under these procedures, and provide a copy of these procedures.

1.1.1. Responsibilities for the procedures outlined are generally as follows:

<u>Responsible Party</u>	<u>Section(s)</u>
Issuer ³	3, 4, 6.2, 8, 9
Office of Budget and Management	2, 5, 6, 8
Treasurer of State	3.4, 7
Agency	5.6, 5.7, 5.8, 8

1.2. If offices are restructured or eliminated, identify the responsible party for the procedure(s) under the new structure and repeat 1.1 above.

¹Authorization for the issuance of BABs expired December 31, 2010; therefore, the procedures do not include the requirements applicable to BABs at the time BABs are issued.

² All capitalized terms used but not defined herein have the meanings provided in the Treasury Regulations issued under Code Sections 54AA, 103, 141 through 150, and 6431, and as generally provided in the Tax Compliance Certificate or Tax Certificate and Agreement for the bond issue.

³ Applicable issuers include the Ohio Public Facilities Commission and the Treasurer of State

- 1.3. If any changes to the terms of the Bonds are contemplated (e.g., change in maturity, interest rate or redemption terms), consult the appropriate legal counsel (henceforth referred to as bond counsel but may include the Issuer’s legal counsel). Such modifications could result in a reissuance (i.e., a deemed refunding) of the Bonds and thereby impose additional requirements on tax-exempt bonds and jeopardize the tax status of Direct Payment BABs.

2. STRUCTURING THE BOND ISSUE - PRE-ISSUANCE MATTERS

- 2.1. Setting the Par Amount of the Bonds
 - 2.1.1. Obtain a schedule of projected disbursements from the State agency or State agencies administering the applicable bond fund(s). This schedule should detail projected expenditures from the Bond-funded program on a monthly basis beginning in the then current month and extending for two years, or a period sufficiently long to enable full expenditure of the Bond Proceeds.
 - 2.1.2. Analyze the historical rate of spending for the Bond-funded program to see if historical trends are consistent with the schedule of projected disbursements. If they deviate significantly, follow up with the State agency to understand what factors are causing that deviation.
 - 2.1.3. Set the par amount of the Bonds such that there is a reasonable expectation that the Bond Proceeds will be fully expended within 24 months to facilitate satisfaction of exception to rebate spend-down requirements. (In certain situations, Bond issues may be sized in an amount that is expected to take more than 24 months to fully expend. In those cases, the par amount will be set to ensure compliance with the applicable Temporary Period requirements.)
- 2.2. Setting the Sale Date of the Bonds. The Sale Date will be set based on a reasonable expectation that at least 10% of the Bond Proceeds will be spent within six months of the Issuance Date. (In certain situations, the Sale Date may not be set based on a reasonable expectation that at least 10% of the Bond Proceeds will be spent within six months of the Issuance Date. In those cases, the Sale Date will be set to ensure compliance with the applicable rebate spending exception and/or Temporary Period requirement.)

3. FINAL CASH FLOWS, ISSUE PRICE/YIELD, PREMIUM/DISCOUNT, COSTS OF ISSUANCE

- 3.1. Ensure that the final cash flows include calculations with respect to the Bond Proceeds, Issuance Costs and original issue premium/discount of the Bonds.
 - 3.1.1. Confirm the final cash flows provided by the senior book-running manager by checking them against a duplicate set of cash flows prepared by the financial advisor or the Issuer.
- 3.2. For negotiated issuances, the Issuer, or its financial advisor or other representative, identifies primary market offerings and/or secondary market trades of size from issuers of comparable structure and credit quality. Pricing data from comparable transactions along with other market factors are used to inform pricing negotiations.
- 3.3. With respect to costs of issuance, expend those Bond Proceeds applied to Issuance Costs within six months of the Issuance Date. This ensures prompt payment and enhances the State’s ability to meet the 6-month exception to rebate spend-down requirement. Once

issuance costs are fully paid, apply remaining funds, if any, to the applicable bond fund or bond service fund.

- 3.4. Ensure that the Tax Certificate includes a determination that the Bonds comply with the requirement that the issuer expects at least 85% of the Bond Proceeds (i.e., the excess of the Proceeds of the Bond issue over the Issuance Costs financed by the Bond issue, plus Investment Proceeds, less any amount deposited in a reasonably required reserve fund) to be allocated to capital expenditures within 3 years (unless a longer Temporary Period is applicable).

4. IRS INFORMATION RETURN FILING

4.1. Issuance of Bonds

- 4.1.1. Ensure that IRS Form 8038-G is completed and timely filed with respect to tax-exempt bond issuance.
- 4.1.2. Monitor for receipt of acknowledgement of Form 8038-G from the IRS and maintain it as part of the transcript for the Bond issue.

5. USE OF PROCEEDS

- 5.1. As part of the capital budget process, provide guidance to all State agencies on the eligible capital expenditures for State Bond-funded programs.
- 5.2. Review each capital bill prior to introduction to determine if the capital appropriations to be funded from Bonds are consistent with:
 - 5.2.1. The authorized purposes set forth in the applicable State constitutional and statutory authorization provisions.
 - 5.2.2. The federal tax law definitions of ‘Capital Expenditures’ and ‘Qualified Administrative Costs.’
- 5.3. Once Bonds are issued, monitor spending via Ohio Administrative Knowledge System (“OAKS”) accounting reports of State Bond funds at least quarterly to ensure that the rate of spending is generally consistent with projected expenditures. If significant deviations occur, contact the State agency administering the bond funds to determine the cause and, to the extent possible, assist in remediation so that spending can resume at expected levels.
- 5.4. After the Bonds are issued and within the allowable reimbursement timelines, allocate Proceeds of the Bonds to reimbursement (if any) of prior Capital Expenditures as set forth in Reimbursement Declarations or permitted in Federal reimbursement regulations.
- 5.5. Ensure that a final allocation of Bond Proceeds (including Investment Proceeds) 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). Consult bond counsel with respect to the timeframes and other requirements related to allocations other than “direct tracing.”
- 5.6. Review and approve each capital release request to ensure that the release is a qualified expenditure under Federal tax law and State law.
 - 5.6.1. With limited exceptions described in the immediately following subsection, prior to the release of capital funds, capital release requests must be submitted to and approved by the State Controlling Board (“CB”) or the Director of the State Office of Budget and Management (“OBM”). The CB is housed within OBM

and capital release requests must be approved through an internal OBM process prior to being placed on the CB agenda. If a capital release request is determined not to be a qualifying expenditure, the request is rejected and sent back to the State agency to explore alternative funding options.

- 5.6.2. For certain State agencies, processes have been established to ensure appropriate use of capital funds, and as a result, capital funds may be approved for release outside of the CB/OBM approval process. With respect to bond programs administered by the Ohio Public Works Commission and the Ohio School Facilities Commission for the benefit of local government infrastructure and school facility projects, respectively, project agreements set qualified capital expenditure parameters and Commission staff reviews each disbursement request for compliance prior to the release of funds. With respect to State road and bridge transportation projects administered by the Ohio Department of Transportation, only qualified capital projects are programmed for bond funding and ODOT staff regularly reviews Bond-funded spending to ensure compliance.
- 5.7. For each Bond issue, maintain sufficient records of expenditures and other costs (e.g., Issuance Costs, credit enhancement, and capitalized interest) and uses (e.g., deposit to reserve fund) for which Bond Proceeds were spent or used.
- 5.8. For each Bond issue, in the case of projects financed with tax-exempt bond proceeds *in addition to* funds other than tax-exempt bond proceeds (including taxable bond proceeds), maintain, to the extent possible, sufficient records to substantiate the amount and use of such additional funds.

6. MONITORING PRIVATE ACTIVITY

- 6.1. Before releasing Bond Proceeds for expenditure, review and approve each requested capital release to confirm a reasonable expectation that, for the applicable issue of bonds, both the private business use and private payment or security limits are not exceeded.
 - 6.1.1. Request entities administering bond funded projects that may involve private business use to complete a Private Activity Bond Report, when necessary, to document and analyze that private business use and any private payment or security.
 - 6.1.2. Contact bond counsel when both private business use and private payment or security are involved in any capital release request to determine if such expenditures violate the applicable federal tax limits. Discuss and document any applicable safe-harbor provisions that may mitigate any private business use and/or private payment (e.g. private management contracts)⁴. In no event can the proceeds of an issue be used for projects containing more than \$15 million of private business use and private payment or security.
- 6.2. Periodically educate and train entities administering bond funded projects to monitor and provide timely notification to the Issuer of any private use post-expenditure and throughout the term of the bonds. Contact bond counsel when both private business use

⁴ The management contract safe-harbors from Private Business Use have recently been expanded through published guidance from the IRS (incl. Rev. Proc. 2016-44 and Rev. Proc. 2017-13). The State is permitted to apply the expanded safe-harbors to any management contract, although the previous safe-harbors described in Rev. Proc. 97-13 and Notice 2014-67 can be utilized for management contracts entered into before (and not materially modified after) August 18, 2017.

and private payment or security are identified to determine compliance with applicable federal tax limits.

7. **ARBITRAGE**

The following provides an overview of arbitrage responsibilities. Complete procedures are contained in the State’s *Arbitrage Policies and Procedures* available at http://ohiotreasurer.gov/Investor/Arbitrage_Policies_and_Procedures.

- 7.1. Review with bond counsel the Tax Certificate to determine the Temporary Periods for the various uses to which Bond Proceeds will be applied, during which Periods various categories of Gross Proceeds of the Bond issue may be invested without Yield restriction.
- 7.2. Do not invest Proceeds of the Bond issue in investments with a Yield above the Bond Yield (as shown on the applicable IRS Form 8038) following the end of the available Temporary Period unless Yield reduction payments may be made (see Tax Certificate).
- 7.3. Ensure that investments acquired with Bond Proceeds satisfy IRS regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures where applicable), and maintain records to demonstrate satisfaction of such safe harbors, all of which should be set forth in or attached to the Tax Certificate if the investment is made at or before the issuance of the Bonds.
- 7.4. Monitor expenditure of Bond Proceeds, including Investment Proceeds, at least quarterly relative to expenditure expectations as of the Issuance Date for satisfaction of the applicable requirements for Temporary Period from yield restriction on investment of Bond Proceeds and to avoid “Hedge Bond” status.
- 7.5. Consult with bond counsel prior to entering into any credit enhancement or hedging transaction with respect to a Bond issue, and before creating separate funds that are reasonably expected to be used to pay or to secure Debt Service on the Bonds.
- 7.6. Ensure (including by working with a contracted arbitrage rebate consultant) that the debt service fund meets the requirements of a “Bona Fide Debt Service Fund” (i.e. one used 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 earnings on the fund for the immediately preceding Bond Year; or (ii) one-twelfth of the Debt Service on the 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.
- 7.7. Ensure that amounts invested in any reasonably required debt service reserve fund do not exceed the least of: (i) 10% 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 2% 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% of average annual Debt Service on the Bond issue.
- 7.8. Contract with a rebate consultant to perform applicable spend-down test and rebate exception calculations, provide analysis for commingled funds, advise on arbitrage rebate compliance matters, calculate the arbitrage rebate and yield restriction liability, and provide advice on other special circumstances that arise.
 - 7.8.1. If the 6-month, 18-month, or 24-month spending exceptions from the rebate requirement (as described in the Rebate Instructions attached to the Tax

Certificate) may apply to the Bonds, ensure that the spending of Proceeds is monitored prior to semi-annual benchmark spending dates for the applicable exception.

- 7.8.2. Coordinate with the rebate consultant to perform rebate spending exception analysis and rebate calculations on a proactive basis to ensure compliance and timely payments of rebate amounts.
 - 7.8.2.1. Perform periodic reviews (at least annually) with the State’s contract rebate consultant of both new Bond issues that may require rebate calculations and existing Bond issues that may require further calculations.
- 7.8.3. In the event payment of a Rebate Amount or a yield reduction payment is due, the Treasurer of State’s Office should coordinate with OBM and the rebate consultant to make such payments and file IRS Form 8038-T in a timely manner.
- 7.9. Even after all other Proceeds of a given Bond issue have been spent, ensure compliance with rebate requirements for any debt service reserve fund and any debt service fund that is not exempt from the rebate requirement (see the rebate instructions attached to the Tax Certificate).
- 7.10. Ensure that records of investments and expenditures of Bond Proceeds, rebate exception analyses, rebate calculations, IRS Forms 8038-T, and rebate and Yield reduction payments, and any other records relevant to compliance with the arbitrage restrictions are retained as part of the official file and according to the applicable records retention schedule.

8. RECORD RETENTION

- 8.1. For each Bond issue, maintain sufficient records and documents described in these procedures in physical and/or electronic form while any of the 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 (or re-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.
- 8.2. Subject to the extended retention period in the case of a refunding noted above, after the Bonds are retired plus three years thereafter, all official issuance documents are to be retained.

9. TIMELY IDENTIFICATION OF VIOLATIONS OF FEDERAL TAX LAW REQUIREMENTS

- 9.1. These procedures which are intended to result in compliance with federal income tax law requirements also facilitate timely identification of possible violations.
- 9.2. Upon discovery of a possible violation of federal tax law, promptly engage bond counsel to examine remediation options including the “remedial action” regulations (Treasury Regulations §1.141-12), IRS Revenue Procedure 97-15, or the Voluntary Closing Agreement Program described in IRS Notice 2008-31 and the pertinent sections of the Internal Revenue Manual.