

**The Metropolitan Government of Nashville and Davidson County
Direct Payment Build America Bond Issue
Tax Compliance Policies and Procedures**

Purpose

In order to qualify to receive direct subsidy payments from the U.S. Treasury with respect to direct payment Build America Bonds (“BABs”) issued pursuant to Section 54AA of the Internal Revenue Code of 1986, as amended (the “Code”), The Metropolitan Government of Nashville and Davidson County (Metro) must comply with federal tax rules regarding expenditure of BABs proceeds, use of BABs-financed property, investment of BABs proceeds in compliance with arbitrage rules, retention of records and filings with the Internal Revenue Service. This Tax Compliance Policy sets forth Metro’s policies for compliance with such rules.

I. Establishment of Issue Price

In order to ensure that no maturity of any BABs issue is issued with more than a de minimis amount of premium, as required by Section 54AA(d)(2)(C) of the Code, the ***Metropolitan Treasurer with the assistance of the Financial Advisor and/or Bond Counsel*** will follow the following procedures:

- In a competitively sold BABs issue, review the notice of sale and other offering documents to determine that the winning bidder will be required to deliver written certifications regarding the making of a bona fide public offering of all of the BABs and that the issue price of each maturity does not include more than a de minimis amount of premium as required by Section 54AA(d)(2)(C) of the Code.
- Prior to pricing a negotiated BABs issue, arrange for a meeting or conference call with Metro’s financial advisor and bond counsel and representatives of the underwriter(s) to ensure that the underwriter understands the requirements of Section 54AA(d)(2)(C) of the Code, the certifications that will be requested of the underwriter with respect to those requirements and the information and explanations that Metro and its bond counsel and financial advisor will seek from the underwriter with respect to those requirements.
- At the pricing of a negotiated issue, determine, with the assistance of Metro’s financial advisor, that that the proposed purchase price for the BABs issue to be paid by the underwriter and the issue prices for each maturity of the BABs proposed by the underwriter represent market prices.
- Between the pricing and the closing of a BABs issue:
 - direct Metro’s financial advisor to monitor the trading prices of each maturity of the BABs on EMMA and determine whether, based on such trading prices, the underwriter actually made a bona fide public offering of each maturity of the BABs at the stated issue prices and
 - inquire of underwriter whether any BABs were purchased in the initial offering by affiliates or affiliated accounts of the underwriter.

- At the closing of the BABs issue, obtain a certification from the underwriter, in form acceptable to Metro's bond counsel, establishing that the requirements of Section 54AA(d)(2)(C) were met.

II. Expenditure of Proceeds

Expenditure of bond proceeds as set forth below will be reviewed and managed by Metro's **Chief Accountant** as needed to ensure compliance with the requirements with tax certificate executed in connection with the BABs. In connection with such review and management, the Chief Accountant will undertake the following:

- Establish form and procedure for documenting expenditures of BABs proceeds, including a description of the property financed with each expenditure.
- Only permit BABs proceeds to be expended for capital expenditures or costs of issuance of the BABs issue.
- Not permit more than 2% of proceeds to be applied to payment of costs of issuance of BABs.
- Not permit amounts to be expended to pay capitalized interest on the BABs issue except during actual construction period of BABs-financed property.
- Monitor costs that were paid prior to the issuance of the bonds are limited to costs paid subsequent to, or not more than 60 days prior to, the date a "declaration of intent" to reimburse the costs was adopted by Metro or as is otherwise approved by bond counsel.
- Prepare a "final allocation" of proceeds to uses, which will be made and retained with the records of the BABs issue, not later than 18 months after the placed-in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the BABs).
- Monitor the expenditure of proceeds against the tax certificate expectation to (i) spend or commit 5% of net sale proceeds within 6 months, (ii) spend 85% of net sale proceeds within 3 years, and (iii) proceed with due diligence to complete the project and fully spend the net sale proceeds.
- Monitor the expenditure of proceeds against the schedule for the arbitrage rebate exception or exceptions identified in the tax certificate.
- Determine the amount of "available project proceeds" under Section 54(e)(4) of the Code.

III. Use of BABs-Financed Property

Use of BABs-financed property, when completed and placed in service, will be reviewed by the **Chief Accountant** on at least an annual basis.

Metro will not do any of the following with respect to the BABs-financed property without prior discussion with bond counsel regarding potential effect of such action on the ability of Metro to be eligible for direct payments:

- Enter into a management, service or incentive payment contract with any non-governmental person or entity (including the federal government) (a “Non-Governmental Person”).
- Enter into a lease with any Non-Governmental Person.
- Sell or otherwise transfer such property to any Non-Governmental Person.
- Grant special legal entitlements with respect to such property to any Non-Governmental Person.

IV. Investment of Proceeds

Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the ***Metropolitan Treasurer***.

All proceeds of BABS will be deposited and maintained in a separate account or accounts. The investment of bond proceeds shall comply with the following:

- Investments will be purchased only in market transactions at fair market value.
- Calculations of rebate liability as to BABs will be performed periodically as set forth in the tax certificate by outside consultants unless Metro is eligible for an exception to rebate liability with respect to BABs.
- Rebate payments, if required, will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the issuer.
- Metro will identify date for first rebate payment at time of issuance if rebate payments are expected.

V. Form 8038-CP Filings

Periodic Filing of Form 8038-CP will be supervised by the ***Metropolitan Treasurer***. Such Supervisory responsibilities will include:

- File a Form 8038-CP at least 45 days' prior to each interest payment date on the BABs, requesting the direct payment for such interest payment date.
- Ensure a proper determination of the amount of interest payable on each interest payment date and the proper amount of the refundable credit.

VI. Records

Management and retention of records related to BABs issues will be supervised by the ***Metropolitan Treasurer and the Chief Accountant***

- Records will be retained for the life of the BABs plus any refunding bonds plus three years. Records may be in the form of documents or electronic copies of

documents, appropriate indexed to specific bond issues and compliance functions.

- Retainable records pertaining to bond issuance include transcript of documents executed in connection with the issuance of the bonds and any amendments, and copies of rebate calculations and records of payments including Form 8038-T.
- Retainable records pertaining to expenditures of bond proceeds include requisitions, trustee statements (if any) and final allocation of proceeds.
- Retainable records pertaining to use of property include all agreements reviewed for nonexempt use and any reviewed documents relating to unrelated business activity.
- Retainable records pertaining to investments include GIC documents under the Treasury regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

VII. Identification of Violations

Based on the foregoing procedures, the **Metropolitan Treasurer** will monitor whether any violations of applicable federal tax requirements have occurred and, upon determination that any such violations may have occurred, promptly consult with appropriate counsel.

VIII. Overall Responsibility

Overall administration and coordination of this policy is the responsibility of **Finance Director**. Such person shall be responsible for identifying any violations of federal tax requirements relating to BABs and shall consult with **bond counsel** as to best method for the timely correction of any identified violations either through available remedial actions or through the IRS's Voluntary Closing Agreement Program.

Approvals

Approval of the Director of Finance –

I, Richard M. Riebeling, hereby approve this Policy Statement of the Department of Finance and as such agree with and authorize the actions necessary to implement its requirements



Director of Finance
June 1, 2010