

## **CAPITAL OUTLAY FUND DEBT PROCEDURE**

Rapid City Area School District 51-4  
Pennington and Meade Counties, South Dakota  
(the "Issuer")  
Compliance Procedures  
For Tax-Exempt Bonds,  
Direct Pay Build America Bonds  
and Qualified School Construction Bonds  
Dated: July 2010

### **Purpose**

To ensure (1) that interest on tax-exempt bonds of the Issuer (or "TEBs") remains excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"); (2) that bonds, the interest on which would otherwise be excludable from gross income under Section 103 of Code, intended to be issued as Build America Bonds (Direct Payment) under Section 54AA of the Code (or "BABs") will be qualified, and will continue to be qualified, as such, with the result that the Issuer shall be entitled to the credit provided in Section 6431 of the Code; and (3) that bonds, the interest on which would otherwise be excludable from gross income under Section 103 of Code, intended to be issued as Qualified School Construction Bonds under Section 54F of the Code (or "QSCBs"), will be qualified, and will continue to be qualified, as such, with the result that either: (i) the Issuer shall be entitled to a credit, as provided in Section 6431 of the Code, or (ii) the purchaser of the bonds is entitled to a federal income tax credit at a rate determined pursuant to Section 54A of the Code.

These written procedures are intended to memorialize certain practices and procedures of the Issuer previously adopted or followed by the Issuer in connection with its issuance of TEBs, BABs, or QSCBs (collectively, "Bonds").

The Issuer's procedures for compliance are as follows:

### **BABs/QSCBs Designations & Elections**

- A. A BAB "Bond Resolution" or a certificate of an authorized officer of the Issuer dated and executed not later than the date of issue of the BABs, shall irrevocably designate the BABs as such and irrevocably elect to have Section 54AA(g) of the Code apply to the BABs.
- B. A QSCB Bond Resolution, or a certificate of an authorized officer of the Issuer dated and executed not later than the date of issue of the QSCBs, shall, within the bond limitation allocated to the Issuer under Section 54F(d) of the Code,

irrevocably designate the QSCBs as such, and irrevocably elect to have Section 54F of the Code apply to the QSCBs. In the Bond Resolution, the Issuer shall irrevocably elect whether to receive federal payments under Section 6431 of the Code, or whether the Bonds shall provide individual federal income tax credits for bondholders under Section 54A of the Code.

- C. Where the federal tax credit is pledged to pay principal of and interest on BABs or QSCBs, the Issuer shall, by the Bond Resolution, covenant and agree with the registered owners from time to time of the BABs/QSCBs that it will not take or permit to be taken by any of its officers, employees or agents, any action which would cause the BABs/QSCBs to lose their status as such under the Code and applicable Treasury Regulations, and shall covenant to take any and all actions within the Issuer's powers to ensure that the BABs/QSCBs will remain such under the Code and Treasury Regulations.
- D. In an Official Statement for BABs/QSCBs, as applicable, the Issuer shall state that (a) interest on the BABs/QSCBs is includible in gross income for federal income tax purposes (or they are "taxable"), (b) the BABs and, in the event that federal direct payments to the Issuer are elected, the QSCBs are "direct payment," and (c) holders of the BABs, and, in the event that federal direct payments to the Issuer are elected, holders of the QSCBs, are not entitled to a tax credit as a result of ownership such bonds.

II. BABs/QSCBs *De Minimis* Premium and Bond Yield Calculation

- A. Each Notice of Sale distributed for BABs and, in the event that federal direct payments to the Issuer are elected, for QSCBs, shall clearly state that (i) the expected reoffering price of such BABs/QSCBs must be specified for each maturity, (ii) each such reoffering price cannot exceed the par amount of the maturity by more than 0.25% multiplied by the number of complete years to the earlier of the maturity date or the first optional redemption date for the maturity of such BABs/QSCBs, and (iii) in the initial offering, no such BABs/QSCBs may be sold for a price in excess of such limit unless the Internal Revenue Service provides authoritative guidance to the contrary.
- B. Each Notice of Sale distributed for BABs and, in the event that federal direct payments to the Issuer are elected, for QSCBs, shall include a table listing the maximum permitted reoffering price for each maturity of such BABs/QSCBs.
- C. Prior to acceptance of a proposal for the purchase of BABs and, in the event that federal direct payments to the Issuer are elected, of QSCBs, the Business Manager shall be responsible for computations to verify that the expected reoffering price, as certified by the purchaser, does not exceed the par amount of

the maturity by more than 0.25% multiplied by the number of complete years to the earlier of the maturity date or the first optional redemption date for the maturity of such BABs/QSCBs, which computation shall be confirmed by the Issuer's financial advisor.

- D. The Certificate of Purchaser shall include certifications that: (a) the Bonds of each maturity were initially reoffered to the public at the prices shown therein or in the final Official Statement and (b) as of the date of sale of the Bonds, the purchaser reasonably expected that at least 10% of each maturity of the Bonds would be sold to members of the public (other than bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at said public offering prices.
- E. The Certificate of Purchaser shall provide a certification that, as of the date of issue of the Bonds, the purchaser has actually sold at least 10% of each maturity of the Bonds to members of the public at the public offering prices expected as of the date of sale; provided, however, that if the purchaser cannot provide this certification, the Issuer's financial advisor or bond counsel shall inquire as to the circumstances preventing sales at such prices and, for negotiated sales, the purchaser may be required to put an explanation in writing.
- F. The Issuer's Tax Certificate for BABs/QSCBs shall certify that the "issue price" of the BABs/QSCBs is the initial reoffering price of the BABs/QSCBs to the public, and as shown in the Certificate of Purchaser, the issue price of the BABs and, in the event that federal direct payments to the Issuer are elected, of the QSCBs, does not include more than a *de minimis* amount of premium within the meaning of Section 54AA(d)(2)(C) of the Code.
- G. The Business Manager shall coordinate with its financial advisor to take reasonable steps as necessary to enable records of secondary market trading activity for Issuer Bonds to be available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System ("EMMA").
- H. The Business Manager and the Issuer's financial advisor shall review records available through EMMA (or through other readily accessible and available sources) of the secondary market trading activity for Bonds between the sale date and the date of issue of the Bonds to determine if there is reason to question the reasonableness of the expectations of the purchaser as of the date of sale of the Bonds.
- I. Financial advisors shall be advised that the yield on BABs and, in the event that federal direct payments to the Issuer are elected, on QSCBs, is to be computed in

accordance with Section 148 of the Code and reduced as required by Section 6431(c) of the Code to reflect the federal credit allowed to the Issuer.

- J. Financial advisors shall certify to the Issuer that the offer accepted by the Issuer for the purchase of Bonds is a reasonable offer under customary standards applicable in the municipal bond market for similar bonds and that, based upon their review of publicly available information relating to secondary market trades of the Bonds between the date of sale and the date of pre-closing and their knowledge of the conditions generally prevailing in the municipal bond market between such dates, nothing has come to their attention that would lead them to question the representations of the purchaser contained in the Certificate of Purchaser.

III. Expenditure/Use of Bond Proceeds

- A. Expenditure of Bond proceeds will be reviewed by the Business Office.
- B. The Issuer has separately established forms and procedures for preparation and review of requisitions of BAB/QSCB proceeds.
- C. All requisitions of Bond proceeds shall be submitted to the Business Manager and such requisitions must identify the financed property in conformity with the Issuer's Tax Certificate executed at closing of the Bonds, including certifications as to the character and average economic life of the Bond-financed property.
- D. None of the proceeds of the Bonds will be used to reimburse the Issuer for costs of a capital project paid prior to the date of issuance of the BABs unless the Issuer shall have fully complied with the provisions of Section 1.150-2 of the Treasury Regulations, and for BABs/QSCBs, the Act, with respect to such reimbursed amounts.
- E. "Available Project Proceeds" for a BABs/QSCBs issue shall be calculated as (a) the excess of the proceeds from the sale of the issue, over the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and (b) the proceeds from any investment of the excess described in (a).
- F. The amount of sale proceeds applied to finance issuance costs of the BABs/QSCBs shall not in any case exceed 2% of the sale proceeds of the BABs/QSCBs.
- G. 100% of the Available Project Proceeds for a BAB issue, less an amount in a reasonably required reserve fund (within the meaning of Section 150(a)(3) of the

Code) with respect to such issue, will be used for capital expenditures. No portion of any proceeds will be used for working capital.

- H. 100% of the Available Project Proceeds for a QSCB issue will be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue.
- I. The Issuer shall acknowledge in its Tax Certificate that a failure to use proceeds of the BABs/QSCBs for purposes specified in such certificate may result in the retroactive loss of the federal tax credit that the Issuer or bondholder, as applicable, otherwise would be entitled to receive.
- J. Requisitions will be summarized in a "final allocation" of Bond proceeds to uses not later than 18 months after the in-service date of the Bond-financed property (and in any event not later than 5 years and 60 days after the issuance of the Bonds or not later than 60 days after earlier retirement of issue) in a manner consistent with allocations made to determine compliance with arbitrage yield restriction and rebate requirements.
- K. Expenditure of proceeds of TEBs/BABs will be measured against the Issuer's Tax Certificate expectation to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the capital project and fully spend the net sale and investment proceeds. In the case of QSCBs, 100% of the Available Project Proceeds must be spent within three years from the date of issuance and the Issuer must also enter into a binding commitment with a third party to spend at least 10% of the available project proceeds within six months of the date of issuance.
- L. If there are any TEB proceeds remaining in the Construction Account established pursuant to the Bond Resolution after completion of the project, such proceeds shall be applied to defeasance of the TEBs.
- M. If there are any BAB/QSCB proceeds remaining in the Construction Account established pursuant to the Bond Resolution after completion of the project that has not been applied to capital expenditures, the Business Manager shall consult with bond counsel.
- N. The Issuer's Tax Certificate for BABs and, in the event that federal direct payments to the Issuer are elected, for QSCBs shall provide, and the Business Manager shall ensure, if the credit is deposited in the Certificate Account created by the Bond Resolution, that such BABs/QSCBs proceeds deposited in the Certificate Account

shall be applied to the payment of the portion of the interest due on such BABs/QSCBs that is not paid by the IRS on the first interest payment date.

IV. Use of Bond-Financed Property

- A. Use of Bond-financed property when completed and placed in service will be reviewed by the Business Office, which office is generally aware of the restrictions on the use of the proceeds and the facilities financed thereby and instructed to consult with bond counsel regarding any third-party contract concerning use of the facilities, including without limitation leases, use, management or service contracts, and research contracts.
- B. Upon issuance of Bonds, there shall be no expectation that the Bond-financed property will be sold or otherwise disposed of by the Issuer during the term of the Bonds.
- C. Agreements with business users for lease, use, management, or any other service with respect to, or non-governmental use of, Bond-financed property will be reviewed prior to execution for compliance with the Code. Such agreement will be approved by bond counsel, who will be responsible for determining whether the proposed agreement (1) results in private business use of the facilities, and (2) if applicable, meets the compensation, term and other requirements under Revenue Procedures 97-13 and 2007-47; all upon advice of bond counsel, as necessary.
- D. No item of Bond-financed property will be sold or transferred by the Issuer without approval of the Business Office and the Board of Education upon advice of bond counsel or advance arrangement of a "remedial action" under the applicable Treasury Regulations.

V. Investments

- A. Investment of Bond proceeds in compliance with the arbitrage and rebate requirements of the Code and applicable Treasury Regulations will be supervised by the South Dakota Public Funds Investment Trust.
- B. At closing, the Issuer will consult with the purchaser or financial advisor to the Issuer as to an estimate of the reasonably expected investment earnings on the sale proceeds of the BABs/QSCBs, and such estimate shall be included in the Issuer's Tax Certificate.
- C. Investment of the gross proceeds of BABs/QSCBs s prior to expenditure thereof and of moneys from time to time on hand in a sinking fund for the payment of BABs/QSCBs will be made only as permitted by the Bond Resolution and Tax

Certificate (and, if applicable, a custodial agreement for the sinking fund for the payment of QSCBs), and all investments will be purchased only at fair market value, as determined under applicable Treasury Regulations. Deposits to the sinking fund for the payment of QSCBs in each year will be reviewed by the Business Manager to assure that the funding of the sinking fund complies with the requirements of the Bond Resolution, Tax Certificate and any custodial agreement.

- D. Guaranteed investment contracts (“GICs”) will be purchased only according to the fair market value provisions of applicable Treasury Regulations, including bid requirements and fee limitations. Certificates of deposit (“CDs”) will be purchased only according to the fair market value provisions of applicable Treasury Regulations.
  - E. Calculations of rebate liability will be performed by outside consultants and reviewed by the Business Manager of the Issuer. Such calculations shall be made annually and prior to each 5 year anniversary of the date of issue of the Bonds.
  - F. Upon final expenditure of the gross proceeds of Bonds, and in any event promptly following the fifth anniversary of the date of issuance of the Bonds or earlier retirement of the Bonds, the Business Manager will consult a qualified professional to prepare a spending exception report or an arbitrage rebate computation (as applicable) for the issue of Bonds.
  - G. Rebate payments, as required based upon the advice of a qualified professional, will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance of the Bonds and (b) the final retirement of the Bond issue.
- VI. Requests for Credit for BABs/QSCBs
- A. Requests for the refundable credit for BABs/QSCBs, including the calculation of the credit payable and timely filing of requests for payment pursuant to Form 8038-CP and in accordance with the closing letter of bond counsel, shall be the responsibility of the Business Manager of the Issuer, who shall verify eligibility for the credit.
  - B. For fixed rate BABs/QSCBs, interest payments calculated by the purchaser shall be verified by the Business Manager and the Issuer’s financial advisor.
  - C. For variable rate BABs/QSCBs, interest payments shall be as calculated pursuant to the Bond Resolution and shall be verified by the Business Manager and the Issuer’s financial advisor.

- D. For QSCBs where the Issuer elects to forego direct pay federal credit and instead provide bondholders with an individual federal income tax credit, the Issuer is not entitled to a refundable credit.
- E. Payment of the credit shall be directed to the Issuer or to such other party as provided in the Bond Resolution.

VII. Record Management and Retention

- A. Management and retention of records related to Bond issues will be supervised by the Business Office.
- B. Records for Bonds will be retained for the life of the Bonds, plus any refunding bonds, plus three years. Such records may be in the form of documents or electronic copies of documents, appropriately indexed to specific Bond issues and compliance functions.
- C. Retainable records pertaining to Bond issuance shall include a transcript of documents executed in connection with the issuance of the Bonds and any amendments; copies of requests for refundable credits for BABs/QSCBs; and copies of rebate calculations and records of payments, including Forms 8038-T.
- D. Retainable records pertaining to expenditures of Bond proceeds include requisitions; trustee statements, if applicable; and final allocation of proceeds.
- E. Retainable records pertaining to use of Bond-financed property include all third-party contracts concerning use of the facilities, including (without limitation) leases, use, management or service contracts, and research contracts.
- F. 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.

VIII. Overall Responsibility

- A. Overall administration and coordination of these procedures are the responsibility of the Business Manager.
- B. Review of compliance with this policy and the procedures set forth herein shall be undertaken periodically.

- C. The Issuer understands that failure to comply with these policies and procedures could result in the retroactive loss of (1) the exclusion of interest on TEBs from federal gross income, and (2) the federal tax credit with respect to BABs and, in the event that federal direct payments to the Issuer are elected, to QSCBs, and (3) the loss of the individual federal tax credit for bondholders for QSCBs where such individual income tax credit was elected; and, thus, it would be advisable to consult with bond counsel in advance regarding deviations from the facts and expectations as set forth in the closing certifications relating to any issue of Bonds.
  
- D. The Business Manager will promptly engage qualified consultants and bond counsel to investigate any potential violations of federal tax requirements or undertake appropriate remedial actions, which actions shall be approved by the governing body of the Issuer.

Adopted 09/02/10  
Reviewed 06/30/15