



## Public Finance Bulletin

### BUILD AMERICA BONDS – NEW GUIDANCE FROM THE IRS

On April 3, 2009, the IRS issued Notice 2009-29, which provides guidance on Build America Bonds authorized by the American Recovery and Reinvestment Tax Act of 2009 (the “Recovery Act”).

#### What are Build America Bonds?

- Build America Bonds are certain taxable bonds issued by any state and local governments in 2009 and 2010 that receive federal funding to subsidize the interest cost on the bonds. These subsidies are in the form of either tax credits provided to the holder of the bonds (Tax Credits) or, at the issuer’s election, subsidies paid directly to the issuer of the bonds (Direct Payment).

#### What may Build America Bonds be issued for?

- **Build America Bonds (Tax Credit):** These bonds may be issued to finance any projects for which tax-exempt governmental bonds may be issued, except private activity bonds.
  - **Refundings:** These bonds may refund existing issues.
- **Build America Bonds (Direct Payment):** These bonds may be used to finance projects for which tax-exempt bonds may be issued in which 100% of proceeds are spent for capital expenditures (plus certain issuance costs and reserve funds).
  - **Refundings:** These bonds may only refund interim financings issued after February 17, 2009.

#### Who receives the federal subsidy for the interest cost?

- **Build America Bonds (Tax Credit):** The holder of the bonds receives a tax credit equal to 35% of the interest paid by the issuer.
- **Build America Bonds (Direct Payment):** The issuer receives a direct subsidy for the Treasury Department equal to 35% of the interest paid.
  - **Recovery Zone Economic Development Bonds (Direct Payment):** Recovery Zone Economic Development Bonds are a specific type of Build America Bonds in which the issuer receives a direct subsidy from the Treasury Department equal to 45% of the interest paid.

#### How does a governmental issuer issuing Build America Bonds (Direct Payment) request the direct federal subsidy payment?

- **Fixed rate bonds:** The governmental issuer must file the new IRS Form 8038-CP at least 45 days before an interest payment date.
- **Variable rate bonds:** The governmental issuer must file the new IRS Form 8038-CP at least 45 days after the last interest payment date within the quarter for which reimbursement is requested.

#### When will the IRS make the subsidy payments?

- The IRS will begin making these payments on July 1, 2009.
  - **Fixed rate issues:** Payments will be made contemporaneously with each interest payment date.
  - **Variable rate issues:** Payments will be made quarterly.

**Is there a limit to the amount of Build America Bonds that a state or local government may issue?**

- No, unlike most other bond programs provided for in the Recovery Act, there is no limitation to the amount of Build America Bonds that may be issued.

**What are some other considerations regarding Build America Bonds?**

- **Net interest rate:** Build America Bonds can provide a cost-effective way for local governments to issue bonds. Because of historical taxable bond rates, Build America Bonds may allow governmental issuers to obtain interest rates lower than the tax-exempt rate.
- **Premium:** Premium on Build America Bonds must not be more than a de minimus amount.
- **Yield:** The yield on the Build America Bonds will be reduced by the amount of the credit for purposes of the arbitrage rules.

**Additional Information**

The Benesch Public Finance group has discussed Build America Bonds and other provisions of the Recovery Act with dozens of state and local government officials and are ready to assist with Build America Bond issues. If you are interested in learning more about Build America Bonds or the Benesch Public Finance Group can be of any further service, please to contact any of the following:

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