

Department of Administrative Services, Capital Investment Section
 Arbitrage Compliance Procedures: Build America Bonds
 Effective: January 17, 2012

This document establishes the general operating procedures for Build America Bonds (BABs) issued by the Capital Investment Section (CIS) on behalf of the State and its agencies. This guidance helps assure continuing compliance with Internal Revenue Code and GASB Statements as well as conformity with generally accepted accounting principles.

Responsible Party	Action	Time Frame
CIS Staff	Review proposed financing structure from underwriter (negotiated sale) or financial advisor (competitive sale) and take any action necessary to ensure no premiums are included beyond de minimis amounts.	Prior to sale of BABs
Bond Counsel / CIS Staff	Obtain and review the re-offering certificate from underwriters regarding bond pricing methodology. Counsel and CIS Staff will rely on its representations to ensure that BABs will not trade at a higher price between sale date and issue date unless such increase is a result of market conditions, including but not limited to: <ul style="list-style-type: none"> ➤ Changes in the price of Treasury bonds/notes; ➤ Relative demand for the specific BABs issued; ➤ State of Oregon debt securities or credit instruments generally; ➤ Unique value of BABs issued to a particular buyer for hedging; or ➤ Other portfolio needs. 	Prior to sale of BABs
CIS Staff	Maintain re-offering certificates as part of the transcripts documentation.	Prior to sale of BABs
State Agencies	Obtain appraisals when acquiring real property and submit to CIS Staff. Document that use of BAB proceeds for acquisition price is commensurate with market value. Explain any significant variances between market and purchase price, and submit to CIS Staff.	Prior to sale of BABs
Bond Counsel / CIS Staff	CIS Staff will request Bond Counsel to perform necessary due diligence to ensure that any potential private users are identified in advance and excluded from BAB or other tax-exempt financings. CIS Staff will ensure all relevant information is made available to Bond Counsel.	Prior to sale of BABs

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CIS Staff / State Agencies / Grantees	CIS Staff will execute interagency agreements or grant agreements with all entities who will receive BAB proceeds directly from the Department of Administrative Services (DAS).	Prior to sale of BABs
CIS Staff	Work with finance team to estimate issuance costs. Include Cost of Issuance (COI) in sizing of bond sale as necessary. Allocate COI between series as appropriate.	Prior to sale of BABs
CIS Staff	Review structuring proposals and final closing documents to ensure that cost of issuance (COI) on BABs does not exceed 2% of BAB sale proceeds. COI records are maintained in electronic format three (3) years beyond final maturity of outstanding bonds.	Two-week period post BAB sale date
State Agencies / Grantees	<p>Interagency/grant agreements will require State Agencies and grants, at a minimum, to comply with:</p> <ul style="list-style-type: none"> ➤ Requirements regarding restriction of proceeds to capital assets only; ➤ Timely expenditure of proceeds within IRS guidelines; ➤ Identification of available project proceeds and debt service requirements; ➤ Required submission of Completion Certificate to CIS Staff; ➤ Reporting responsibilities to maintain compliance with all State and Federal laws; and ➤ Recordkeeping requirements to maintain all records for three (3) years after final maturity of BABs. 	Ongoing
DAS Operations / State Agencies / Grantees	<p>DAS Operations will review agency reimbursement requests with accompanying documentation for adequacy and legal compliance as prescribed in Exhibit G of the Interagency Agreement. Reimbursement requests with documentation will be retained for three years after final maturity of BABs. Documentation accompanying reimbursement requests should include detailed invoices, or payroll information for state-constructed assets to sufficiently demonstrate expenditures were necessary for the construction of asset(s). Include explanatory notes where appropriate describing how asset(s) qualifies as a capital expenditure under GAAP. Any agency or grantee requesting payroll expense reimbursement will document the process for capturing capital expenditures in the interagency agreement.</p>	Ongoing

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CIS Staff / State Agencies / Grantees	Periodically follow-up with entities receiving proceeds to monitor spending in accordance with IRS requirements. Once Completion Certificate has been provided, CIS Staff will rely on agency/grantee assertions that no “private use” will occur relative to BAB-funded assets, unless information to the contrary is brought to CIS Staff’s attention. For grants to entities external to the State, CIS Staff may request quarterly reporting of activity.	Ongoing
CIS Staff / DAS Operations / Trustee	CIS Staff will work with DAS Operations and Trustee to monitor that expenditures of proceeds are for allowable capital expenditures only, as required by State and Federal law. Documentation of such expenditures will be maintained for three years after final maturity of BABs.	Ongoing
CIS Staff / Financial Advisor / Bond Counsel	CIS Staff will work with Financial Advisor and Bond Counsel to calculate “available project proceeds” under the Internal Revenue Code. Ensure those amounts are not exceeded in project funding.	Ongoing
CIS Staff	Retain correspondence including but not limited to communications regarding investment of proceeds, change in use, unanticipated return of proceeds, and changes in projected spending plans.	Ongoing
State Agencies / Grantees	The State Agency shall not change the use of the Project, or in any manner alter its design, structure, or configuration in any way inconsistent with the State Agency’s currently approved plan, without first requesting and receiving the written consent of DAS.	Ongoing
State Agencies / Grantees	Interagency agreements require State Agencies and grantees to receive CIS permission prior to conducting any disposition of obsolete or sale of BAB-financed assets.	Ongoing
CIS Staff	Maintain in permanent file information regarding disposition of obsolete or sale of BAB-financed assets.	Ongoing
State Agencies / Grantees	As required by the Interagency Agreement, State Agencies/Grantees will submit completion certificate to CIS Staff upon project(s) completion. Upon completion of capital asset, State Agencies will remove expenditures from construction in progress and place the asset into service in	Ongoing

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	accordance with generally accepted accounting principles and the Oregon Accounting Manual.	
CIS Staff / Department of Justice Counsel / Bond Counsel	CIS Staff will work with Department of Justice counsel and Bond Counsel to indentify and implement any corrective action should any instances of non-compliance with State or Federal law be identified.	Ongoing
CIS Staff	Federal arbitrage compliance procedures for BABs will be done in accordance with CIS Arbitrage Compliance procedures.	Ongoing
CIS Staff / Bond Counsel	Coordinate with Bond Counsel the filing for Form 8038-G and other reporting required by the Internal Revenue Service. CIS Staff will contract with Bond Counsel to maintain all necessary documentation pertaining to required IRS (US Treasury Department) filings.	Ongoing
CIS Staff	<p>Ensure records retention policies require maintaining BAB and compliance documents for three (3) years after final maturity of BABs. Documentation to be retained includes, but is not limited to:</p> <ul style="list-style-type: none"> ➤ Transcripts ➤ Appraisals, feasibility studies, demand surveys and similar documentation, for projects ➤ Documents related to purchase or construction of BAB-financed facilities, including any grant funds used if applicable ➤ Trustee statements ➤ Correspondence ➤ Project budgets, projected cash flows and other similar documentation ➤ Reimbursement and draw requests with appropriate documentation of expenditure detail through DAS Operations Unit ➤ All other relevant documentation that is in electronic form in external format such as CDs, and filed on DAS Data Center Servers 	Ongoing
	<p>Refer to archives schedules for detailed information. In the event of a discrepancy with federal regulations, the guidelines established by the Internal Revenue Code shall prevail. The index for records retention schedules can be found at:</p>	

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State Agencies / Grantees	<p data-bbox="358 279 1243 317">http://arcweb.sos.state.or.us/pages/recmgmt/sched/index.html.</p> <p data-bbox="358 352 1243 501">State Agencies/Grantees are responsible for maintaining the list of capital assets and associated depreciation throughout the life of the asset in accordance with generally accepted accounting principles and the Oregon Accounting Manual.</p>	Ongoing after asset is placed in service