State of Colorado
Post Issuance Compliance Procedures
Build America Bonds and Qualified School Construction Bonds
November 2010

The State of Colorado (the “State”) is the issuer of qualified Build America Certificates of Participation (BABs) and Qualified School Construction Bonds (QSCBs) under the American Recovery and Reinvestment Act which are considered Direct Pay Bonds under the Internal Revenue Code (IRC). These procedures ensure the State is in compliance with Internal Revenue Service (IRS) requirements concerning BABs/QSCBs and should be used by the State Representative to complete IRS Form 14127, Direct Pay Bonds Compliance Check Questionnaire. The questions in this Procedure correspond to the questions contained in IRS Form 14127. The State Representative is the State officer that executes the Continuing Disclosure Undertaking Certificate (CDU), Tax Compliance Certificate and finance documents, or their delegate.

Name of BAB or QSCB________________________________________________________
________________________________________________________________________

Issuer:  State of Colorado acting by and through ___________________________________

State Representative: ________________________________________________________

Date of Issuance: ___________________________________________________________

*Issue Price: ______________________   *CUSIP: ___________________

Final Maturity: _________________________Record Destruction Date: ________________

Issuer’s Counsel: __________________________________________________________

Bond Counsel: _____________________________________________________________

Disclosure Counsel: _________________________________________________________

Financial Advisor: __________________________________________________________

Principal Underwriter: _______________________________________________________

Trustee: __________________________________________________________________

Rebate Specialist: ___________________________________________________________

* Attach inside cover of OS
1. Procedure to ensure that none of the maturities of BAB/QSCB are issued with more than a de 
minimis amount of premium as required by IRC § 54AA(d)(2)(C).

Each maturity of BABs/QSCBs must be issued at an “issue price” that does not exceed the stated 
principal amount of the maturity by more than one-quarter of one percent of the stated redemption 
price at maturity times the lesser of (i) the number of complete years to maturity, or (ii) the number 
of complete years to the first optional call date. This rule is complex, and the IRS is still finalizing 
details.

As a part of any State BAB/QSCB closing, the underwriter or COP purchaser is required to certify 
that the “issue price” referenced in the transcript was accurate. The issue price is the initial price at 
which the underwriter sold more than 10% of each maturity of BABs/QSCBs to the public, i.e., 
persons who are not other underwriters, bond dealers, or others holding the bonds with a view 
towards distribution to the public. With respect to BABs/QSCBs, it is also common for bond 
counsel to have the underwriter provide a representation that the bonds were not issued with more 
than a de minimis amount of premium. Because of the underwriter’s unique and exclusive access to 
this information, it is the long accepted practice in bond financings for the issuer and its bond 
counsel to rely on the underwriter’s representations regarding issue price of obligations such as 
BABs/QSCBs.

The underwriter’s certification as to issue price will be included in the closing transcript either as a 
stand-alone certificate or as an exhibit to the issuer’s Tax Compliance Certificate. This certification 
(or if more than one, certifications) should be attached to the response to IRS Form 14127, and the 
State Representative should insert as the implementation date, either the closing date or the date of 
execution of the certificate.

2. Records of secondary market trading activity for State BABs/QSCBs through EMMA.

The State Representative is responsible for filing or for directing disclosure counsel to file 
the OS on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access 
(EMMA) System at http://www.emma.msrb.org. The State Representative will direct the Financial 
Advisor to obtain secondary market trading activity for State BABs/QSCBs on EMMA and review 
the records of any secondary market trading activity for State BABs/QSCBs after the sale date but 
before the COPs are delivered on the date of issue and provide a report of such trading activity to 
the State Representative. The report should be reviewed by the State Representative and Financial 
Advisor and retained in the permanent BAB records.

3. Procedures to ensure that BABs/QSCBs remain in compliance with the following 
requirements of the IRC.

a. Timely expenditure of bond proceeds?

For each BAB transaction, the State Representative, or their delegate shall prepare a draw down 
schedule that details the anticipated spending schedule which ensures compliance with the hedge 
bond rules of IRC§ 149 and allows the State Representative to determine satisfaction of the 
requirements for a three-year temporary period under Treasury Reg. 1.148-2(e) and, for QSCBs, 
allows the State Representative to determine compliance with certain arbitrage rules in IRS § 54A. 
A copy of the draw down schedule, as well as the Tax Compliance Certificate shall be attached to a 
copy of this Procedure and provided to the IRS in response to IRS Form 14127.

b. Correct calculation of Available Project Proceeds (See Section 54A(e)(4))?

The State Representative shall be responsible for ensuring the correct calculation of Available 
Project Proceeds as defined in IRC § 54A(e)(4). In calculating such amount, the State shall use the
definition of “Available Project Proceeds” as defined in the Tax Compliance Certificate. Given that
the Sale Proceeds of the BABs/QSCBs and costs of issuance are determinable as of the date of
issuance of the BABs/QSCBs, this amount is substantially determined prior to the date of issuance
and is documented in the Tax Compliance Certificate for each State BAB issuance. Investment
proceeds are tracked to the relevant BABs/QSCBs and included in the calculation of available
project proceeds.

c. Use of 100% of Available Project Proceeds less amounts in a reasonably required
reserve fund only for capital expenditures (See IRC § 54AA(g)(2)(A) and IRC § 54F(a)(2))
The State Representative shall be responsible for ensuring that “Available Project Proceeds less
amounts in a reasonably required reserve fund” will be used for capital expenditures only, and for
QSCBs that such available project proceeds are used for a proper purpose permitted by IRC § 54A
and 54F. As set forth in the attached tax compliance certificate delivered at closing, the State shall
certify and document that 100% of the Available Project Proceeds, less amounts deposited to a
reasonably required reserve fund, will be expended on capital expenditures, and for QSCBs that
such available project proceeds are used for a proper purpose permitted by IRC § 54A and 54F.

Given that the Sale Proceeds of the BABs/QSCBs, the costs of issuance of the bonds and the sizing
of the reserve fund, if any, are determinable as of the date of issuance of the BABs/QSCBs, the
State is able to verify and document compliance in the tax compliance certificate. Additionally, this
amount ties to the expected “draw down schedule” described in question 3(a) above and operates as
further confirmation that 100% of the Available Project Proceeds, less amount deposited to a
reasonably required reserve fund, will be expended on capital expenditures, and for QSCBs that
such available project proceeds are used for a proper purpose permitted by IRC § 54A and 54F.

d. Arbitrage yield restriction and rebate?
The State Representative is required to ensure that the arbitrage yield restriction rules and rebate
requirements will be complied with and they are set forth in the tax compliance certificate. In the
Trust Indenture, the State agreed to comply with such requirements. If necessary, the State
Representative will establish a reminder system of the five year deadline for rebate or retain an
independent rebate consultant to perform such calculations.

e. Costs of issuance financed by the issue do not exceed 2% of the proceeds of the sale
(See IRC § 54A(e)(4)(A)(ii))
The State Representative must ensure that the costs of issuance financed by the issue do not exceed
2% of the sale proceeds of the COPs. As set forth in the attached tax compliance certificate
delivered at closing, the State certifies as to compliance with this requirement. Given that the Sale
Proceeds of the bonds and costs of issuance of the COPs are determinable as of the date of issuance,
the State is able to verify and document compliance in the Tax Compliance Certificate. This
amount is also verified and documented in the relevant Form 8038-G (Form 8038-B for BABs and
Form 8038-TC for QSCBs) filed with the IRS to be less than 2% of the sale proceeds of the COPs.

f. Proper determination of the amount of interest payable on each interest payment date?
With respect to fixed rate COPs, at the time of the closing, the State Representative shall obtain a
debt service payment schedule which details the amount of interest due on each interest payment
date from the underwriter. The Trustee also verifies the amount of the payment due on each interest
payment date and ensures that payment is timely made to COP holders. The Trustee’s rights and
obligations are detailed in the Trust Indenture executed in connection with the issuance of the
COPs.

g. Proper amount of refundable credit reported on Form 8038-CP?
The State Representative must verify the amount of the refundable credit that the Issuer is entitled
to receive. The Trustee has been retained to prepare, on an ongoing basis, IRS Form 8038-CP. The
trustee’s rights and obligations are detailed in the Trust indenture executed in connection with the issuance of the COPs. The Trustee will send the draft Form 8038-CP to the State Representative for review and approval. The State Representative will confirm the accuracy of the Form 8038-CP, identify the State Controller as the formal IRS contact person, and provide the State Controller with a copy of the final draft at least five business days prior to the allowed 90 day advanced filing with the IRS. Upon the approval of the State Controller, the State Representative will sign the Form, provide the Controller with a copy and retain a copy in the COP permanent files. It is the State Representative’s responsibility to ensure that the Trustee has filed the 8038-CP and thereby requested payment of the interest subsidy. IRS rules preclude the IRS from paying the interest subsidy for 8038-CP filed after the allowed submission period.

h. Timely filing of Form 8038-CP?
As indicated in 3(g) above, the State has retained the Trustee to prepare, on an ongoing basis, the Form 8038-CP. The State Representative is responsible for ensuring the timely filing of Form 8038-CP. The Trustee shall not file the 8038-CP in advance of the IRS allowed submission period.

i. Payment of refundable credit will be made to the proper person?
As indicated in 3(g) above the State has retained the Trustee to verify the amount of the refundable credit that the State is entitled to receive. Individual issuance documents may authorize payment by the IRS direct to the Trustee on behalf of the issuer as a credit enhancement measure.

4. Procedures to ensure timely identification and correction of violations of Federal tax requirements
In connection with each issue of COPs including Direct Pay Bonds, the State executes and delivers a tax compliance certificate in which it covenants to comply with all Federal tax requirements applicable to the COPs. The State Representative, as part of their employment responsibilities, is to ensure that such requirements are satisfied subsequent to closing and to address any violations that may be found to have occurred. On April 1 of each year, the State Representative will send the attached Post Issuance Compliance Questionnaire to each entity that occupies or uses a facility, financed with COPs. The State Representative is responsible for completing all items in the Questionnaire and retaining the annual completed questionnaire in the COP permanent files. If any potential private use or arbitrage rebate issues are identified in the Questionnaire, the State Representative will promptly contact Bond Counsel to obtain professional advice and formulate a corrective action plan. If necessary, the State Representative will retain a rebate specialist to provide for determination of any rebatable arbitrage and timely payment of same.

5 and 6. Procedure to maintain records necessary to support the status of the COPs as qualified to receive the tax advantaged treatment described in IRC§ 54AA(g) for BABs and IRC§ 54A, 54F and 6431 for QSCBs?
For State Agencies except CDOT, an official copy of the complete transcript for each COP transaction shall be filed with the State Controller’s Office and kept in the Controller’s permanent files for the term of the COPs plus seven years. The State Representative shall ensure one complete paper copy and two CDs are filed with the Office of the State Controller along with the CMS routing sheet and other contract routing documents as may be required by State fiscal rules. The State Representative shall be the official custodian of State Agency COP transcripts both for purposes of the Colorado Open Records Act and for federal tax and security law compliance. For other State entities, the State Representative shall be responsible for retaining a paper and electronic copy of the closing transcript for the term of the COPs plus seven years.
The State Representative is responsible for maintaining a paper and electronic copy of this completed Procedure with the required attachments, including the annual completed Post Issuance Compliance Questionnaire.

This Procedure will automatically be revised to comply with any changes announced by the IRS prior to the closing date and in accordance with advice from Bond Tax Counsel at closing.

**Attachments to IRS Form 14127**
Underwriter certification of initial price
Draw Schedule

**Other Attachments and Permanent Records**
Tax Compliance Certificate
Complete Official Transcript
Distribution List
Post Issuance Compliance Questionnaire
Inside Cover of Official Statement
Record of Secondary Trading activity on EMMA
Timely expenditure of bond proceeds, calculation of available project proceeds, use of 100% of Available project proceeds
Arbitrage Yield Restrictions and rebate
Costs of Issuance
Interest Payable in Debt Service Schedule
Completion and Filing Form 8038-CP Refundable Credit Report