

**THE STIMULUS ACT:  
BUILD AMERICA BONDS,  
RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS  
AND  
RECOVERY ZONE FACILITY BONDS**

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# **THE STIMULUS ACT: BUILD AMERICA BONDS AND RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS**

## **I. INTRODUCTION**

## **II. THE STIMULUS ACT**

- A.** The American Recovery and Reinvestment Act of 2009 – the “Stimulus Act” (also known as the “Recovery Act” or “ARRA”) was enacted on February 17, 2009 to respond to the financial crisis and to stimulate the American economy.
- B.** The Stimulus Act contains a number of new or expanded public finance programs, including Build America Bonds, Recovery Zone Economic Development Bonds, Recovery Zone Facility Bonds, tax credits and new energy programs. We are focusing only on Build America Bonds, Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds.

## **III. BUILD AMERICA BONDS**

### **A. WHAT ARE BUILD AMERICA BONDS?**

- 1.** Build America Bonds (BABs) are taxable municipal bonds that can be issued by a state or local government in 2009 and 2010 for their capital improvements which receive federal funding to subsidize the issuer’s interest cost on the bonds.
- 2.** There are two types of BABs: Tax Credits to the Bondholder and Direct Payments to the Issuer.
- 3.** The issuer must designate such bonds as BABs in the authorizing legislation.
- 4.** Even though BABs are taxable bonds, many of the rules governing tax-exempt bonds also apply to BABs.

### **B. BUILD AMERICA BONDS – DIRECT PAYMENT TO THE ISSUER**

- 1.** These are, to date, the majority of BABs issued.
- 2.** The proceeds of Direct Payment BABs can be used to finance any type of governmental purpose for which tax-exempt bonds may be issued (e.g., capital projects such as roads, sewers, public buildings, correctional facilities).

3. These bonds are for new capital projects, but may refund interim financings issued after February 17, 2009.
4. The Issuer receives a direct subsidy payment from the U.S. Treasury equal to 35% of the interest paid on or around each interest payment date.
  - a. Paid to issuer.
  - b. Paid to trustee, bond registrar or paying agent.
5. Any taxes owed to the federal government can be offset with this direct payment.
6. Fixed rate issues: An IRS 8038-CP must be filed at least 45 days prior to the interest payment date and the subsidy payment should arrive on or around the interest payment date
7. Variable rate issues: An 8038-CP must be filed at least 45 days after the last interest payment date on a quarterly basis.
8. The IRS recently stated that direct wire payments will be made beginning in 2010. As of now, checks are issued.
9. Federal law does not restrict the use of the subsidy payments received from the U.S. Treasury.
  - a. Rating agency restrictions – revenue issues.
  - b. Coverage tests – revenue issues.
  - c. Fund accounting.

**C. BUILD AMERICA BONDS – TAX CREDITS TO THE BONDHOLDER**

1. The bondholder receives a tax credit in the amount of 35% of the interest cost of the bond.
2. There has not been much interest from investors for this type of BAB.
3. Tax Credit BAB Proceeds can be used to finance any type of project for which tax-exempt governmental bonds may be issued. Tax Credit BABs may be used to refund existing bond issues.

**D. ALLOCATIONS ON LIMITATION FOR BUILD AMERICA BONDS**

1. There are no limitations on the amount of BABs that an issuer can issue during 2009 and 2010.

2. The Stimulus Act provides a sunset date for BABs – all BABs must be issued prior to January 1, 2011.

**E. WHY ISSUE BUILD AMERICA BONDS?**

1. The issuer could have a new revenue stream with 35% direct subsidy payments.
2. BABs may provide a cost-effective way for local governments to issue debt. BABs have been providing issuers with a more favorable net interest cost than tax-exempt bonds for certain maturities.
  - a. Most issues are combination of BABs and traditional tax-exempt debt.
3. BABs give state and local governments access to the conventional taxable debt markets.
  - a. Purchasers who have no need for tax-exempt income (such as tax-exempt entities, foreign investors) are potential investors.
  - b. Volume of BABs may be stabilizing factor on rates on tax-exempt issues.

**IV. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS**

**A. WHAT ARE RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS?**

1. Recovery Zone Economic Development Bonds – “RZEDBs” (also known as “Super BABs”) are a specific type of BAB and are taxable municipal bonds that can be issued by a state or local government in 2009 and 2010 which receive federal funding to subsidize the issuer’s interest cost on the bonds.
2. There is only one type –direct subsidy payments from the U.S. Treasury. Payment is 45% of interest cost instead of the 35% for BABs.
3. RZEDBs are intended to stimulate economic recovery in “recovery zones.” A recovery zone is any area that has been designated by a county or large municipality as having significant poverty, unemployment, home foreclosure or general distress, or any area affected by military realignment, or any area that has been designated as an empowerment zone or renewal community.

**B. ALLOCATIONS OR LIMITATIONS FOR RZEDBs**

1. There is a national limitation of \$10 billion for issuance of RZEDBs. That amount has been allocated by the U.S. Treasury to counties and large municipalities. A large municipality is defined as a municipality with a population of more than 100,000 (in Ohio, Akron, Cincinnati, Cleveland, Columbus, Dayton and Toledo). (See allocations attached as Exhibit A.)
2. If a county or a large municipality determines that it will not use all or a part of its allocation, it can waive any portion of its allocation and such allocation reverts to the state in which the county or large municipality is located. The state may use those allocations in any reasonable manner as it shall determine in good faith in its discretion.
3. The Stimulus Act provides a sunset date for the RZEDBs – all RZEDBs must be issued prior to January 1, 2011.

**C. HOW ARE RZEDBs ISSUED?**

1. A large municipality or county must formally designate recovery zones in which the RZEDB proceeds may be spent.
  - a. Multiple zones are permitted.
  - b. Some counties and large municipalities have designated entire jurisdiction as a recovery zone.
2. The issuer must designate such bonds as RZEDBs in the authorizing legislation.
3. RZEDB proceeds can be used for “qualified economic development purposes” which are expenditures for purposes of promoting development or other economic activity in a recovery zone, including (a) capital expenditures paid or incurred with respect to property located in a recovery zone, (b) expenditures for public infrastructure and construction of public facilities and (c) expenditures for job training and educational programs.
4. RZEDB are generally for new capital projects, but may refund interim financings issued after February 17, 2009.
5. Davis-Bacon (federal) wages apply to workers on projects financed by RZEDBs.
6. Even though RZEDBs are taxable bonds, many of the rules governing tax-exempt bonds also apply to RZEDBs.

**D. WHY ISSUE RZEDBs?**

1. The same reasons for issuing BABs applies to the issuance of RZEDBs except that RZEDBs have an more appealing subsidy of 45%.
2. Proceeds of RZEDBs may be used to finance “qualified economic development purposes” – expenditures for purposes of promoting development or other economic activity.

**IV. RECOVERY ZONE FACILITY BONDS**

**A. WHAT ARE RECOVERY ZONE FACILITY BONDS?**

1. Recovery Zone Facility Bonds – “RZFBs” are tax-exempt “exempt facility bonds” issued by an issuer in 2009 and 2010 to finance recovery zone property.
2. Recovery zone property is essentially (a) any property within a recovery zone constructed, reconstructed, renovated or acquired by purchase by a taxpayer after the date of the designation of the recovery zone, (b) the original use of which in the recovery zone commences with the taxpayer, and (c) substantially all of the use of the property is in the recovery zone and is the active conduct of a qualified business.
3. A qualified business means any trade or business except (a) rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property and (b) private or commercial golf courses, country club, massage parlor, hot tub facility, suntan facility, racetrack, gambling facility or store the principal business is sale of alcoholic beverages for consumption off premises.
4. Pre-1986 tax-exempt provisions.

**B. ALLOCATIONS OR LIMITATIONS FOR RZFBs**

1. There is a national limitation of \$15 billion for issuance of RZFBs. That amount was also allocated to counties and large municipalities. (See allocation attached as Exhibit A.)
2. If a county or large municipality determines that it will not use all or a portion of its allocation, it can waive any portion of its allocation and its allocation reverts to the State in which the county or large municipality is located. The state may use those allocations in any reasonable manner as it shall determine in good faith and in its discretion.

3. The Stimulus Act provides a sunset date for RZFBs – all RZFBs must be issued prior to January 1, 2011.

**C. HOW ARE RZFBs ISSUED?**

1. A county or large municipal corporation must formally designate recovery zones in which RZFB proceeds may be spent.
  - a. Multiple zones permitted
  - b. Not required to be zones for RZEDBs.
  - c. Some counties and large municipalities have designated entire jurisdiction as recovery zone.
2. The county or large municipality must designate the “ultimate beneficiary” of the RZFBs.
3. Any qualified issuer can then issue the RZFBs.
  - a. Property is located within jurisdiction of issuer.

**D. WHY ISSUE RZFBs?**

1. To provide tax-exempt financing to private entities to stimulate economic development, the creation or retention of jobs and employment opportunities, or to increase tax base of governments (real property, sales or income taxes).

# EXHIBIT A

Area	Recovery Zone		
	Residual	Economic Development Bond	Recovery Zone Facility Bond
Ohio		422,637,000	633,955,000
Akron city, OH		7,377,000	11,065,000
Cincinnati city, OH		9,151,000	13,727,000
Cleveland city, OH		16,590,000	24,885,000
Columbus city, OH		16,333,000	24,500,000
Dayton city, OH		5,693,000	8,539,000
Toledo city, OH		17,975,000	26,963,000
Adams County, OH		1,831,000	2,746,000
Allen County, OH		5,315,000	7,972,000
Ashland County, OH		1,867,000	2,801,000
Ashtabula County, OH		6,942,000	10,414,000
Athens County, OH		243,000	364,000
Auglaize County, OH		2,550,000	3,825,000
Belmont County, OH		262,000	394,000
Brown County, OH		1,199,000	1,798,000
Butler County, OH		10,644,000	15,965,000
Carroll County, OH		801,000	1,202,000
Champaign County, OH		1,554,000	2,332,000
Clark County, OH		4,471,000	6,707,000
Clermont County, OH		5,927,000	8,890,000
Clinton County, OH		4,404,000	6,605,000
Columbiana County, OH		3,518,000	5,277,000
Coshocton County, OH		1,966,000	2,949,000
Crawford County, OH		2,071,000	3,106,000
Cuyahoga County, OH	Residual	42,726,000	64,089,000
Darke County, OH		1,760,000	2,640,000
Defiance County, OH		2,389,000	3,584,000
Delaware County, OH	Residual	3,442,000	5,162,000
Erie County, OH		0	0
Fairfield County, OH	Residual	2,731,000	4,096,000
Fayette County, OH		2,375,000	3,563,000
Franklin County, OH	Residual	8,198,000	12,297,000
Fulton County, OH		2,937,000	4,405,000
Gallia County, OH		1,171,000	1,756,000
Geauga County, OH		4,745,000	7,117,000
Greene County, OH		6,601,000	9,902,000
Guernsey County, OH		2,474,000	3,711,000
Hamilton County, OH	Residual	15,298,000	22,947,000
Hancock County, OH		4,251,000	6,377,000
Hardin County, OH		2,268,000	3,402,000
Harrison County, OH		671,000	1,007,000
Henry County, OH		2,025,000	3,038,000
Highland County, OH		3,670,000	5,505,000
Hocking County, OH		677,000	1,016,000
Holmes County, OH		1,171,000	1,756,000
Huron County, OH		1,537,000	2,306,000
Jackson County, OH		2,014,000	3,021,000
Jefferson County, OH		488,000	732,000
Knox County, OH		1,543,000	2,315,000
Lake County, OH		12,251,000	18,377,000
Lawrence County, OH		1,904,000	2,856,000
Licking County, OH		3,236,000	4,853,000
Logan County, OH		1,743,000	2,615,000
Lorain County, OH		14,477,000	21,716,000
Lucas County, OH	Residual	10,150,000	15,225,000
Madison County, OH		779,000	1,168,000
Mahoning County, OH		6,971,000	10,456,000
Marion County, OH		3,044,000	4,566,000
Medina County, OH		8,796,000	13,194,000
Meigs County, OH		728,000	1,092,000
Mercer County, OH		0	0
Miami County, OH		4,570,000	6,855,000
Monroe County, OH		268,000	402,000
Montgomery County, OH	Residual	16,553,000	24,830,000
Morgan County, OH		536,000	804,000

Area	Recovery Zone		
	Residual	Economic Development Bond	Recovery Zone Facility Bond
Morrow County, OH		694.000	1.041.000
Muskingum County, OH		1.532.000	2.298.000
Noble County, OH		621.000	931.000
Ottawa County, OH		2.717.000	4.075.000
Paulding County, OH		891.000	1.337.000
Perry County, OH		1.332.000	1.997.000
Pickaway County, OH		942.000	1.413.000
Pike County, OH		1.165.000	1.748.000
Portage County, OH		6.347.000	9.521.000
Preble County, OH		1.786.000	2.679.000
Putnam County, OH		855.000	1.282.000
Richland County, OH		2.071.000	3.106.000
Ross County, OH		4.934.000	7.401.000
Sandusky County, OH		1.202.000	1.803.000
Scioto County, OH		1.413.000	2.120.000
Seneca County, OH		2.824.000	4.236.000
Shelby County, OH		2.542.000	3.813.000
Stark County, OH		11.050.000	16.575.000
Summit County, OH	Residual	13.084.000	19.625.000
Trumbull County, OH		6.330.000	9.495.000
Tuscarawas County, OH		2.736.000	4.104.000
Union County, OH		996.000	1.494.000
Van Wert County, OH		1.157.000	1.735.000
Vinton County, OH		1.010.000	1.515.000
Warren County, OH		6.071.000	9.106.000
Washington County, OH		604.000	906.000
Wayne County, OH		3.639.000	5.459.000
Williams County, OH		1.374.000	2.061.000
Wood County, OH		8.835.000	13.253.000
Wyandot County, OH		31.000	47.000