



## **Metropolitan Government of Nashville and Davidson County - Finance Dept. Policy: Direct Subsidy Bonds**

**Effective Date:** December 2017  
**Revision Date:** September 16, 2025  
**Policy Number:** 3.13  
**Sponsor:** Office of the Treasurer

### **Purpose**

In order to qualify to receive direct subsidy payments from the U.S. Treasury with respect to direct subsidy bonds issued pursuant to Section 54AA of the Internal Revenue Code of 1986, as amended (the "Code"), The Metropolitan Government of Nashville and Davidson County (Metro) must comply with federal tax rules regarding expenditure of direct subsidy bond proceeds, use of direct subsidy-financed property, investment of direct subsidy bond proceeds in compliance with arbitrage rules, retention of records and filings with the Internal Revenue Service. This Tax Compliance Policy sets forth Metro's policies for compliance with such rules.

### **General Policies**

#### **Establishment of Issue Price**

In order to ensure that no maturity of any direct subsidy bonds is issued with more than a de minimis amount of premium, as required by Section 54AA(d)(2)(C) of the Code, the Metropolitan Treasurer with the assistance of the Financial Advisor and/or Bond Counsel shall follow the following procedures:

In a competitively sold direct subsidy bonds issuance, review the notice of sale and other offering documents to determine that the winning bidder will be required to deliver written certifications regarding the making of a bona fide public offering of all of the direct subsidy bonds and that the issue price of each maturity does not include more than a de minimis amount of premium as required by Section 54AA (d) (2) (C) of the Code.

Prior to pricing negotiated direct subsidy bonds, arrange for a meeting or conference call with Metro's financial advisor and bond counsel and representatives of the underwriter(s) to ensure that the underwriter understands the requirements of Section 54AA(d)(2)(C) of the Code, the certifications that will be requested of the underwriter with respect to those requirements and the information and explanations that Metro and its bond counsel and financial advisor will seek from the underwriter with respect to those requirements.

At the pricing of a negotiated issue, determine, with the assistance of Metro's financial advisor, that the proposed purchase price for the direct subsidy bonds and the issue prices for each maturity of the bonds proposed by the underwriter represent market prices.

After pricing and before closing, direct Metro's financial advisor to monitor the trading prices of each maturity of the bonds on EMMA and determine whether, based on such trading prices, the underwriter made a bona fide public offering of each maturity of the bonds at the stated issue prices, and inquire of the underwriter whether any direct subsidy bonds were purchased in the initial offering by affiliates or affiliated accounts of the underwriter.

At the closing of the direct subsidy bonds, obtain a certification from the underwriter, in form acceptable to Metro's bond counsel, establishing that the requirements of Section 54AA (d) (2) (C) were met.

#### **Expenditure of Proceeds**

Expenditure of bond proceeds as set forth below will be reviewed and managed by Metro's Chief Accountant as needed to ensure compliance with the requirements with tax certificate executed in connection with the direct subsidy bonds. In connection with such review and management, the Chief Accountant will undertake the following:



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Establish form and procedure for documenting expenditures of direct subsidy bond proceeds, including a description of the property financed with each expenditure.

Only permit bond proceeds to be expended for capital expenditures or costs of issuance of the direct subsidy bonds.

Not permit more than 2% of proceeds to be applied to payment of costs of issuance of direct subsidy bonds.

Not permit amounts to be expended to pay capitalized interest on direct subsidy bond, except during the construction period of property financed through direct subsidy bonds.

Ensure that expenditure reimbursed by bond proceeds are expended no more than 60 days prior to the date the declaration of intent to reimburse is adopted by Metro.

Prepare a final allocation of proceeds to uses, no later than 18 months after the placed-in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the direct subsidy bonds).

Monitor the expenditure of proceeds against the tax certificate expectation to (i) spend or commit 5% of net sale proceeds within 6 months, (ii) spend 85% of net sale proceeds within 3 years, and (iii) proceed with due diligence to complete the project and fully spend the net sale proceeds.

Monitor the expenditure of proceeds against the schedule for the arbitrage rebate exception or exceptions identified in the tax certificate.

Determine the amount of "available project proceeds" under Section 54(e) (4) of the Code.

### **Use of Direct Subsidy Financed Property**

Use of direct subsidy financed property, when completed and placed in service, will be reviewed by the Chief Accountant on at least an annual basis.

Metro will not do any of the following with respect to the direct subsidy financed property without prior discussion with bond counsel regarding potential effect of such action on the ability of Metro to be eligible for direct payments:

- Enter into a management, service or incentive payment contract with any Non-Governmental person or entity (including the federal government) (a "Non-Governmental Person").
- Enter into a lease with any Non-Governmental Person.
- Sell or otherwise transfer such property to any Non-Governmental Person.
- Grant special legal entitlements with respect to such property to any Non-Governmental Person.

### **Investment of Proceeds**

Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the Metropolitan Treasurer.

All proceeds of direct subsidy bonds will be deposited and maintained in a separate account or accounts. The investment of bond proceeds shall comply with the following:

- Investments will be purchased only in market transactions at fair market value.
- Calculations of rebate liability as to direct subsidy bonds will be performed periodically as set forth in the tax certificate by outside consultants unless Metro is eligible for an exception to rebate liability with respect to direct subsidy bonds.
- Rebate payments, if required, will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate



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- requirements will be reported to the bond trustee and the issuer.
- Metro will identify the date for first rebate payment at time of issuance if rebate payments are expected.

### **Form 8038-CP Filings**

Periodic Filing of Form 8038-CP will be supervised by the Metropolitan Treasurer. Such Supervisory responsibilities will include:

- File a Form 8038-CP at least 45 days prior to each interest payment date on the direct subsidy bonds, requesting the direct payment for such interest payment date.
- Ensure a proper determination of the amount of interest payable on each interest payment date and the proper amount of the refundable credit.

### **Records**

Management and retention of records related to direct subsidy bond will be supervised by the Metropolitan Treasurer and the Chief Accountant.

Records will be retained for the life of the direct subsidy bonds plus any refunding bonds plus three years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.

Retainable records pertaining to bond issuance include transcript of documents executed in connection with the issuance of the bonds and any amendments, and copies of rebate calculations and records of payments including Form 8038-T.

Retainable records pertaining to expenditures of bond proceeds include requisitions, trustee statements (if any) and final allocation of proceeds.

Retainable records pertaining to use of property include all agreements reviewed for nonexempt use and any reviewed documents relating to unrelated business activity.

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.

### **Identification of Violations**

Based on the foregoing procedures, the Metropolitan Treasurer will monitor whether any violations of applicable federal tax requirements have occurred and, upon determination that any such violations may have occurred, promptly consult with appropriate counsel.

### **Overall Responsibility**

Overall administration and coordination of this policy is the responsibility of the Finance Director. Such person shall be responsible for identifying any violations of federal tax requirements relating to direct subsidy bonds and shall consult with bond counsel as to best method for the timely correction of any identified violations either through available remedial actions or through the IRS's Voluntary Closing Agreement Program.

## **Applicable Local, State or Federal Regulations**

Metro Charter Article 8, Section 8.103 The director of finance shall be responsible to the mayor for the financial affairs of the metropolitan government.

Metro Charter Article 8, Section 8.104 The budget officer, with the advice and assistance of the chief accountant, shall write, revise and maintain a proper standard procedure instruction manual to be followed by all officers, departments, boards and other agencies of the government to ensure uniform accounting and budgetary



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procedures.

Metro Charter Article 8, Section 8.105 The chief accountant shall maintain a general accounting system and such cost accounting records as shall be required by the director of finance.

### **Associated Policies**

None.

### **Effective Date**

This Policy Statement shall become effective upon issuance and shall be applied to all Metro departments and agencies.

### **Approvals**

#### **Approval of the Director of Finance**

I hereby approve this Policy Statement of the Department of Finance and as such agree with and authorize the actions necessary to implement its requirements.

Jenneen Reed

Director of Finance

**Date:** September 16, 2025