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**Welcome  
Energy Services Coalition's Educational Webinar  
Build America Bonds**

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Tony Phillips at **601-602-4604****

If you have any questions or need additional information about today's webinar, please email Rhonda Courtney at [rc@energyservicescoalition.org](mailto:rc@energyservicescoalition.org)

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# Build America Bonds BAB's

Using BAB's to fund ESPC Projects

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The Energy Services Coalition presents a national education forum through the use of webinars to enhance the learning and awareness of performance contracting.

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- **Optimizing Economic Stimulus Dollars through Energy Savings Performance Contracting**
- **Biggest Bang for the Buck - Leveraging Funds**
- **LEED Green PC**

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# Build America Bonds

## **Lona J. Valentine, Esq.**

- Practices tax and financial analysis, including guidance on: arbitrage rebate, federal tax law research in the tax-exempt bond and charitable organization areas
- Worked on a wide variety of municipal financing transactions.
- Served as a panelist for a tax due diligence and documentation at the annual National Association of Bond Lawyers' Bond Attorneys Workshop.
- Speaks at various seminars on IRS arbitrage rebate compliance.
- Author of "Restructuring of Advance Refunding Escrows: An Opportunity for Savings" (2004).
- Certified Internal Auditor for a large publicly traded corporation.



# Build America Bonds

## **Karen Keeler**

- ESC Board member representing financing companies
- Focused on the financing of energy performance contracting (EPC) transactions.
- Financial industry for over 15 years
- Originated of over \$1 billion in lease and bond financings supporting energy efficiency EPC projects.
- Involved in the development of EPC legislation in several states
- Active member of NAESCO and the Energy Services Coalition.



# Build America Bonds

**Friday, December 4, 2009**

**Presented by Lona J. Valentine, Esq.**



# Outline

1. Recovery Act Overview
2. Taxable Governmental Bonds
  - Build America Bonds (Tax Credit)
  - Build America Bonds (Direct Payment)
  - Recovery Zone Economic Development Bonds



# Overview: The Recovery Act

- Signed into law on February 17, 2009
- Allocates resources to provide for, among other things, tax relief, education and training, state and local fiscal relief, infrastructure development, protecting the vulnerable, health care, energy
- Tax relief provisions establish and expand upon numerous public financing programs available to state and local governments throughout the country
- New financing possibilities supplement traditional tax-exempt financing opportunities



# Build America Bonds (BABs)

- New type of taxable governmental bond (Section 54AA, I.R.C.)
  - Tax Credit BAB (credit available to any taxpayer)
  - Direct Pay BAB (credit available to the issuer)
- No national dollar allocation limitation
- Purpose: any legal governmental purpose for which tax-exempt bonds may be issued



# Build America Bonds (BABs)

- Only applies to state and local governments (i.e. public improvements)
- Must be issued in 2009 and/or 2010
- Governmental issuer must irrevocably elect to have BAB provisions apply



# Build America Bonds (BABs)

- Tax credit is provided to a bondholder (i.e. Tax Credit BAB) unless government elects to receive a "refundable credit" in lieu of bondholder tax credit (i.e. Direct Pay BAB), in either case for the life of the bonds
- Tax credit (rate) = 35% of interest payable



# Build America Bonds (BABs)

- Generally, federal tax provisions affecting tax-exempt bonds will apply
- State law debt limitations will apply
- De minimis limitation with respect to premium for purposes of issue price
- 2% cost of issuance limitation with respect to Direct Pay BABs



# Build America Bonds (BABs)

## Refundings

### Tax Credit BABs

- Able to currently refund
- Able to have one advance refunding

### Direct Pay BABs

- Cannot refund prior issues



# Build America Bonds (BABs)

- Reimbursement
  - Tax Credit BABs
    - Normal reimbursement rules apply
  - Direct Pay BABs
    - Normal reimbursement rules apply
    - Eligible capital expenditures paid for with the proceeds of short term obligations issued after February 17, 2009 may be treated as reimbursement BABs



# Build America Bonds (BABs)

- Direct Pay BABs
  - Direct Payments
    - May be made in advance or as reimbursement
    - IRS Form 8038-CP ("Return for Credit Payments to Issuers of Qualified Bonds")
      - Form by which Direct Pay Tax Credits are made to an Issuer
      - Submit to IRS at least 45 days, but not more than 90 days, prior relevant interest payment date
      - For variable rate issues, quarterly interest payments are aggregated and an issuer must file for reimbursement no later than 45 days after the quarterly interest accrual date



# Build America Bonds (BABs)

- Bond Yield
  - For Tax Credit BABs, yield is determined without regard to the tax credit
  - For Direct Pay BABs, yield is reduced by the amount of the direct pay credit
- Prevailing Wage
  - Davis-Bacon Act of 1931 is not applicable to Tax Credit or Direct Pay BABs (but will be applicable to Recovery Zone Economic Development Bonds, a form of a BAB, to be discussed next)



# Recovery Zone Bonds

- **Recovery Zone Economic Development Bonds**
  - Third type of Build America Bond
  - Does not provide tax credits, but provides a 45% subsidy payment to the Issuer
  - Must be state or local government bond (not a private activity bond)
  - Subject to volume cap limitations. National: \$10 billion.



# Recovery Zone Bonds

- **Recovery Zone Economic Development Bonds**
  - 100% of proceeds must be used for “qualified economic development purposes” within designated “recovery zones” (costs of issuance up to 2% of proceeds, certain reserve funds, reimbursements, working capital can be eligible for funding from these bond proceeds)



# Recovery Zone Bonds

- **Recovery Zone Economic Development Bonds**
  - Qualified economic development purpose means:  
Any expenditures for purposes of promoting development or other economic activity in a recovery zone including (1) capital expenditures paid or incurred with respect to property located in the recovery zone, (2) expenditures for public infrastructure and construction of public facilities, (3) expenditures for job training and education programs



# Recovery Zone Bonds

- **Recovery Zone Economic Development Bonds**
  - Recovery zone means: Any area (1) designated as having significant poverty, unemployment, rate of home foreclosures or general distress; (2) designated by the issuer as economically distressed by reason of closure or realignment of military installations; (3) for which a designation as an empowerment zone or renewal community is in effect
  - Prevailing wage requirements of the Davis-Bacon Act apply



# Recovery Zone Bonds

- **Recovery Zone Facility Bonds**
  - These are different from Recovery Zone Economic Development Bonds
  - NOT a type of Build America Bond – RZFBs are tax-exempt bonds that do NOT provide tax credits or subsidies
  - Considered “exempt facility bonds” that are qualified private activity bonds



# Conclusion

Questions can be entered in the chat area of your web control box or submitted to [info@energyservicescoalition.org](mailto:info@energyservicescoalition.org)



**PECK SHAFFER**

**LONA J. VALENTINE**  
PARTNER

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The image shows a business card for Peck Shaffer. On the left side, there is a logo consisting of a green square partially overlapping a circular graphic made of many thin, overlapping lines. To the right of the logo, the company name 'PECK SHAFFER' is printed in a bold, dark blue font. Below the company name, the name 'LONA J. VALENTINE' and her title 'PARTNER' are listed in a bold, dark green font. At the bottom, her phone number '(513) 639-9238' and email address 'lvalentine@peckshaffer.com' are provided in the same dark green font.



# Build America Bonds

**Friday December 4, 2009**

**Presented by: Karen Keeler**



# Build America Bonds

State and local governments can issue Build America Bonds as taxable bonds that and the bonds can be used to finance any capital expenditures for which otherwise could be issued as tax-exempt governmental bonds.

These bonds must be issued before January 1, 2011

## Two Primary Types

Direct Payment Option (greater financial benefit to issuer) Issuer receives payment equal to 35% of the interest payable to the holder

Tax Credit Option Bondholder receives taxable interest payments  
Bondholder receives a tax credit in an amount equal to 35% of the interest payable net of the tax credit (this represents about 25% of total return to investor)



## **The EPC Process and Build America Bonds**

- What types of EPC projects would benefit from using a BAB structure?
- Is there a dollar size of a project or a finance term limitation when considering BAB's?
- How do you qualify a project for financing using BAB's?
- Can you refinance existing EPC project phases and roll them into a new BAB?



## The EPC Process and Build America Bonds

- When is the time to prequalify whether a deal would be a good opportunity to use a BAB structure?
- When you put together a BAB, what interest rate should be used for the cash flow?
- What is the typical timeline for issuing a BAB?
- What additional costs are there associated with BAB's?



## **The EPC Process and Build America Bonds**

- Success Stories for EPC Projects
- California Housing Authority – Revenue Bond
- Tennessee School District – G.O. Bond
- Colorado Water District – Revenue Bond
- Nevada City – Lease Purchase



Thanks for your participation!

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