



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.2.3

JANUARY 7, 2020

EFFECTIVE DATE

(01-07-2020)

PURPOSE

- (1) This transmits revised IRM 7.2.3, TE/GE Closing Agreements, Tax Exempt Bonds Voluntary Closing Agreement Program.

MATERIAL CHANGES

- (1) Updated references to specific Letters used in VCAP cases.
- (2) Removed items in Exhibit 7.2.3-1 list of submission requirements related to post-issuance compliance procedures.
- (3) Changed all references from Indian Tribal Governments/Tax Exempt Bonds (ITG/TEB) to Tax Exempt Bonds (TEB).
- (4) Changed all references from Technical Program Manager to TEB Program Manager.
- (5) Updated IRM 7.2.3.3.1, Case Establishment and Assignment to indicate there is one Technical group (TEB Technical) after the 2019 reorganization.
- (6) Updated procedures for the Closing Agreement process for the Tax Exempt Bonds Voluntary Closing Agreement Program to reflect changes due to the 2019 reorganization of the Tax Exempt and Government Entities Division.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 7.2.3 dated December 27, 2018.

AUDIENCE

Tax Exempt and Government Entities

Christie J. Jacobs
Director, Indian Tribal Governments/Tax Exempt Bonds
Government Entities and Shared Services
Tax Exempt and Government Entities

7.2.3

Tax Exempt Bonds Voluntary Closing Agreement Program

Table of Contents

7.2.3.1 Program Scope and Objectives

7.2.3.1.1 Background

7.2.3.1.2 Terms

7.2.3.1.3 TEB VCAP Objectives

7.2.3.1.4 TEB VCAP Scope

7.2.3.1.5 Effect of TEB VCAP Closing Agreement

7.2.3.1.6 Audit of TEB VCAP Cases

7.2.3.1.7 Special Procedures for Anonymous Requests

7.2.3.2 TEB VCAP Request Submission

7.2.3.2.1 Information Required in Submission Request

7.2.3.2.2 Receipt and Perfection of Submission Request

7.2.3.3 TEB VCAP Case Processing Procedures

7.2.3.3.1 Case Establishment and Assignment

7.2.3.3.2 Case Development (Specialist)

7.2.3.3.2.1 Resolution Amount

7.2.3.3.2.2 Computation of Amounts

7.2.3.3.2.3 Approval of the Proposed Resolution

7.2.3.3.3 Case Resolution

7.2.3.3.4 Specialist: Closing Agreement Finalization and Execution

7.2.3.3.5 Case Closing

7.2.3.3.6 Unresolved Cases

7.2.3.4 TEB VCAP Resolution Standards

7.2.3.4.1 Objectives and Scope

7.2.3.4.2 Implementation of Standards

7.2.3.4.3 Identified Violations – Tax-Exempt Bonds

7.2.3.4.4 Identified Violations – Certain Direct Pay Bonds

Exhibits

7.2.3-1 Statement Under Penalties of Perjury Required Information

7.2.3-2 Examples of Allocating Total Nonqualified Bond Amount to Bond Maturities

Tax Exempt Bonds Voluntary Closing Agreement Program 7.2.3

page 1

7.2.3.1 (01-07-2020) Program Scope and Objectives

- (1) **Purpose:** This IRM discusses the closing agreement process issuers of tax-advantaged bonds use to resolve compliance issues brought into the voluntary closing agreement program (VCAP). It contains VCAP procedures for:
 - Tax-exempt bonds
 - Tax credit bonds
 - Direct pay bonds
- (2) **Policy Owner:** Tax Exempt Bonds
- (3) **Program Owner:** Tax Exempt Bonds (TEB)
- (4) **Authority:** The IRS may enter into and approve a written closing agreement with any person for his/her liability (or the person or estate for whom he acts) or any internal revenue tax for any taxable period (IRC 7121 and the corresponding Regulations). This authority includes conclusively resolving any specific matters jeopardizing the tax-advantaged status of bonds with the issuer of the bonds even though the issuer may not have tax liability for the bonds.
 - a. Notice 2008-31 provides information about VCAP including procedural requirements.
 - b. The Commissioner of Internal Revenue delegates to the Director, Government Entities (Director) and the Program Manager, Tax Exempt Bonds (TEB Program Manager) the authority to enter into and approve written closing agreements in cases under their jurisdiction. (Delegation Order Number 8-3 (formerly Delegation Order 97) in IRM 1.2, Servicewide Policies and Authorities.)
 - c. These bonds are referred to as **tax-advantaged** because the issuers of the bonds directly or indirectly receive tax benefits associated with the status of their bonds.

7.2.3.1.1 (12-27-2018) Background

- (1) The Secretary is authorized to enter into a written agreement with any person relating to that person's (or of the person or estate for whom he acts) liability in respect of any internal revenue tax for any taxable period (IRC 7121). A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if the taxpayer shows good and sufficient reasons for desiring a closing agreement and the Commissioner determines that the United States won't sustain disadvantage through consummation of such an agreement (Regulation section 301.7121-1(a)).
- (2) Through VCAP, issuers of tax-advantaged bonds can voluntarily approach the office of Tax Exempt Bonds (TEB) to resolve violations of the Internal Revenue Code (IRC) and applicable Income Tax Regulations (the "Regulations") through closing agreements with the IRS.
- (3) TEB Technical oversees and works cases in VCAP.

7.2.3.1.2
(12-27-2018)

Terms

(1) The following references defined below apply throughout this IRM 7.2.3:

Term	Definition
Tax-exempt bonds	State or local bonds issued under IRC 103 and the interest on which isn't included in the holder's gross income.
Tax credit bonds	<p>Bonds for which the holder receives a credit against taxes instead of tax-exempt interest, such as:</p> <ul style="list-style-type: none">• Qualified tax credit bonds issued per IRC sections 54, 54A (and either IRC 54B, 54C, 54D, 54E, or IRC 54F), 1397E and 1400N(l).• Build America bonds issued per IRC 54AA for which holders of such bonds are allowed credits against taxes with respect to a portion of the interest on those bonds.• Any other bonds for which the holder receives a credit against taxes.

Term	Definition
Direct pay bonds	<p>Bonds for which the issuer receives a refundable credit for some or all the interest it pays on the bonds instead of the holder receiving a tax credit or tax-exempt interest, including:</p> <ul style="list-style-type: none"> • Specified tax credit bonds issued per IRC 54A (and either IRC 54C, 54D, 54E or 54F) and IRC 6431(f) in effect before the enactment of Public Law 115-97 (the amendment to strike IRC section 6431 set forth in section 13404 of Public Law 115-97, commonly known as the Tax Cuts and Jobs Act (the "TCJA"), does not apply to bonds issued prior to January 1, 2018). • Build America bonds issued per IRC 54AA(g)(2). • Recovery zone economic development bonds issued per IRC 1400U-2. • Any other bonds for which the issuer receives a refundable credit for some or all the interest it pays on the bonds instead of the holder receiving a tax credit or tax-exempt interest. <p>Note: All references to "IRC 6431" herein are references to IRC 6431 in effect before the enactment of the TCJA.</p>
Committee	The TEB Closing Agreement Committee, as described in IRM 4.81.6.4 (3)

7.2.3.1.3
(09-29-2016)

(1) VCAP's primary objectives are to:

TEB VCAP Objectives

- Encourage issuers to exercise due diligence in complying with federal tax requirements for tax-advantaged bonds.
 - Ensure others that use tax-advantaged bonds' proceeds exercise due diligence in complying with the federal tax requirements.
 - Encourage issuers to voluntarily bring forward discovered violations to the IRS.
 - Provide a way to correct these violations as quickly as possible.
 - Eliminate the subsidy for nonqualified bonds as quickly as possible.
- (2) Issuers can expect to settle a VCAP on terms that are no less favorable than those imposed had the IRS discovered the violation during an exam.
- (3) VCAP reflects TEB's continuing policy of resolving violations of federal tax law that applies to tax-advantaged bonds at the transaction level instead of the bondholder level.

7.2.3.1.4

(01-07-2020)

TEB VCAP Scope

- (1) VCAP requests are accepted when the IRS has a reasonable basis to believe there has been a federal tax law violation. VCAP is available only if the issuer works with TEB Technical in good faith to resolve the matter with due diligence throughout the process.
- (2) VCAP is appropriate when there's an advantage to having the violation permanently and conclusively resolved and:
- a. It's in the best interests of the United States to enter into the agreement.
 - b. The U.S. won't sustain a disadvantage through consummation of such an agreement.
- (3) VCAP generally may be used for violations applicable to tax-advantaged bonds under the IRC or applicable Regulations.
- (4) Absent extraordinary circumstances or specific IRS instructions to the contrary, VCAP is unavailable if the issuer can resolve the violation by taking actions authorized under the IRC, or other remedial action provisions or bond closing agreement programs under the IRC, the Regulations or other published guidance, or by filing of a corrected return, when permitted. Examples include:
- a. An issuer may take remedial actions impacting tax-exempt bonds under 26 CFR 1.141-12, 1.142-2, 1.144-2, 1.145-2, and 1.147-2.
 - b. An issuer may correct its failure to expend 100 percent of available project proceeds of qualified tax-credit bonds for qualified purposes under IRC 54A(d)(2)(C) by the close of an expenditure period by redeeming all of the nonqualified bonds, generally within 90 days after the end of such period.
 - c. An issuer may take remedial actions under 26 CFR 1.1397E-1(h)(8) for violations impacting qualified zone academy bonds issued under IRC 1397E.
 - d. An issuer may take remedial actions impacting certain tax-advantaged bonds under Rev. Proc. 2018-26.
 - e. Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, line 21 allows issuers of direct pay bonds to adjust by a net increase or net decrease previous credit payments to correct prior clerical or computational errors. This line of the form isn't intended to and doesn't remediate violations of the IRC or Regulations applicable to direct pay bonds.

- (5) VCAP is also available to issuers to resolve errors made on Form 8328 that can't be corrected under Rev. Proc. 2005-30, 2005-1 C.B. 1148.
- (6) VCAP is not available:
 - a. To resolve matters of law on future events or actions that may impact the tax-advantaged status of bonds. Issuers seeking guidance on the tax implications of future events or actions may request a private letter ruling in appropriate circumstances.
 - b. If the bond issue is under audit. A bond issue is generally treated as under audit on the date we mail a letter opening the audit.
 - c. When the tax-advantaged status of the tax-advantaged bonds is an issue in any court proceeding or is being considered by the IRS Independent Office of Appeals.
 - d. If TEB Technical determines that the violation was due to willful neglect.
 - e. If the transaction giving rise to the violation occurred, but the issuer has not filed a Form 8038 series information return for the bond issue for which VCAP is sought.
- (7) VCAP closing agreements generally don't address any potential IRC 6700 promoter penalty liabilities.

7.2.3.1.5
(09-29-2016)
**Effect of TEB VCAP
Closing Agreement**

- (1) Closing agreements, including VCAPs, are final and conclusive. TEB can't reopen the closing agreements as to the matters agreed upon or modified. We may not annul, modify, set aside or disregard the closing agreement (or any legal action in accordance with it) in any suit, action or proceeding unless there is a showing of fraud, malfeasance or misrepresentation of material fact. (See IRC 7121 and corresponding Regulations).

7.2.3.1.6
(12-27-2018)
**Audit of TEB VCAP
Cases**

- (1) A bond issue isn't audited while under review in VCAP (except as directed in this IRM or under extraordinary circumstances). Generally, the date a bond issue is "under review" in VCAP is the date TEB Technical receives a complete VCAP request.

Note: An anonymous VCAP request is not a complete VCAP request because the submission doesn't disclose the names of the issuer or the bond issue with other required information. Therefore, the bond issue is not "under review" on the date TEB Technical received the anonymous request.

- (2) Bond issues previously reviewed in VCAP may be selected for audit.
- (3) A VCAP closing resolution of any specific violation is final and conclusive and we may not reconsider the specific violation under audit except in the limited circumstances in IRC 7121.
- (4) During an exam, TEB may review and test source documents to confirm the accuracy of facts submitted in the VCAP request and relating to the closing agreement.

7.2.3.1.7
(01-07-2020)
**Special Procedures for
Anonymous Requests**

- (1) This IRM describes resolution standards for various violations that inform issuers on how TEB is likely to resolve a particular violation under the VCAP.

- (2) When these resolution standards don't provide guidance for a particular violation, the issuer may anonymously request information on that violation's likely resolution method. The anonymous request option is intended to help an issuer:
 - a. Evaluate appropriate resolution methods for novel or unique violations
 - b. When there's uncertainty as to how to appropriately resolve the violation.
- (3) The anonymous request option is not intended to encourage issuers to delay submitting a fully disclosed VCAP request for relatively simple or straightforward violations with reasonably clear and appropriate resolution methods. When deciding to respond, TEB Technical considers whether the anonymous submission request represents the issuer's less than good faith effort to resolve the violation as expeditiously as possible.
- (4) An anonymous request can only relate to a general matter, question or factual scenario. TEB Technical gives a general written response and doesn't discuss the matter further other than to clarify any vague or ambiguous language in its written response. TEB Technical may decline to respond to any anonymous request that is based upon a detailed factual scenario or when it's in the best interest of sound tax administration.
- (5) Because an anonymous request doesn't identify an associated bond issue, submitting an anonymous request doesn't prevent IRS from opening an examination on any bond issue. As described in IRM 7.2.3.1.4(6), when IRS opens an examination on a bond issue, the issue is no longer eligible for VCAP.
- (6) TEB's response to an anonymous request is intended only to describe a general resolution framework based on its described facts; it doesn't represent TEB's resolution offer. Moreover, if a VCAP's request submitted facts per this IRM reveal more serious or additional violations in addition to those described in the anonymous request, TEB's response to the anonymous request is given no weight in arriving at the final VCAP resolution.
- (7) Tax Law Specialist (Specialist): When an anonymous request is assigned to you:
 - a. Prepare a briefing memo including background, description, analysis, and a recommendation. The recommendation generally includes a proposed draft response letter (for example, Letter 5562), which indicates either: i) a proposed resolution of the described violation (a "Resolution Recommendation") or ii) an explanation that the request doesn't fit within the VCAP scope of IRM 7.2.3.1.4 or the limitations in IRM 7.2.3.1.5(3) or (4) (a "Non-eligible Recommendation").
 - b. Prepare the draft response letter.
 - c. Attach the briefing memo and the draft response letter to the VCAP approval document (the "Closing Agreement Approval Document") after informally discussing with your group manager, the Committee (including obtaining input from Committee members on the draft response letter), and the representative submitting the request.
 - d. Secure e-mail the Closing Agreement Approval Document to your group manager for review and concurrence.
 - e. After receiving the TEB Program Manager's final concurrence via the signed Closing Agreement Approval Document, prepare the final response letter and secure e-mail it to your manager to submit to the TEB Technical Program Manager for signature.

- f. After receiving the TEB Program Manager's signed response letter, mail the letter to the representative submitting the request.
- (8) Group manager: When you receive the Closing Agreement Approval Document from the specialist:
 - a. Review and provide feedback/concurrence to the Specialist.
 - b. For Resolution Recommendations, secure mail the Closing Agreement Approval Document to the Committee.
 - c. For Non-Eligible Recommendations, secure mail the Closing Agreement Approval Document to the TEB Program Manager for electronic signature.
- (9) Committee: When you receive the Closing Agreement Approval Document from the group manager:
 - a. Review the briefing memo and the draft response letter (for example, Letter 5562).
 - b. Consider whether the general resolution framework described is consistent with other TEB closing agreement resolution terms and if not, whether there is a valid business reason for the difference, such as another closing agreement is the result of an exam.
 - c. Recommend any changes to the draft response letter by noting them and any other comments on the Closing Agreement Approval Document.
 - d. Digitally sign the Closing Agreement Approval Document and secure mail it to the group manager.
- (10) Group manager: When you receive the Committee-signed Closing Agreement Approval Document, either:
 - a. Return the Closing Agreement Approval Document to the specialist for additional development.
 - b. Secure e-mail the Closing Agreement Approval Document to the TEB Program Manager for electronic signature.
- (11) TEB Program Manager: When you receive the Closing Agreement Approval Document:
 - a. Offer comments to the Committee (if a Resolution Recommendation) and group manager, if any, on the proposed response letter (for example, Letter 5562).
 - b. If approving, electronically sign the Closing Agreement Approval Document and response letter and securely e-mail each to the group manager and Specialist.
 - c. If not approving, return the Closing Agreement Approval Document to the group manager, who notifies the Specialist the case needs further development.
- (12) Specialist: When you receive the signed response letter (for example, Letter 5562) from the TEB Program Manager, mail the letter to the representative submitting the request and close the RCCMS case file using the closing code 107.

7.2.3.2
(09-29-2016)

**TEB VCAP Request
Submission**

- (1) This section describes the required VCAP submission request and case assignment procedures.

7.2.3.2.1
(09-29-2016)

**Information Required in
Submission Request**

- (1) Completed Form 14429, Tax Exempt Bonds Voluntary Closing Agreement Program Request.

Until Form 14429 (March 2013) is updated, the issuer should make these changes:

- a. Question 6 (Note) should state: "With respect to a violation that affects multiple issuers or issues of bonds, such as a composite issue, absent extraordinary circumstances, each issuer of an affected issue must join in the request and provide the information required in lines 1-6 in an attached schedule. If an issuer is requesting that extraordinary circumstances apply, the issuer may submit an explanation for this request and forgo supplying information about the other issuers and affected issues unless and until the IRS determines that this information is necessary."
- b. Disregard question 45. The IRS will consider the Form 14429 (March 2013) complete without this question being answered.
- c. Disregard questions 49-51. The IRS will consider Form 14429 (March 2013) complete without these questions being answered.

Note: Unless specifically stated otherwise, TEB Technical considers the VCAP submission incomplete unless all information and items are included. TEB Technical declines the request and closes the case without further resolution unless they timely receive all required information.

- (2) Statement under penalties of perjury with all required information listed in Exhibit 7.2.3-1 containing the following declaration, signed by an individual with personal knowledge of, or responsibility over, the information in the submission and authorized by the issuer:

Note: "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents and statements, and to the best of my knowledge and belief, the submission contains all the relevant facts relating to the request, and such facts are true, correct, and complete."

- (3) Copy of the Form 8038 series information return filed with the IRS. If the violation relates to IRC 148 requirements, also include a copy of any Forms 8038-T and Forms 8038-R related to the bond issue and submitted to the IRS. If the issuance is a direct pay bond, include a copy of all Forms 8038-CP filed for the bond issue.
- (4) Executed Form 2848, Power of Attorney and Declaration of Representative, if applicable, declaring a representative authorized to represent the issuer before the IRS with respect to the bond issue. The request may also include an executed Form 8821, Tax Information Authorization, authorizing the IRS to communicate with a third party (for example, conduit borrower, trustee) with respect to the bond issue.

- (5) A draft closing agreement based on the VCAP Model Agreement, completed as appropriate:
 - a. See *TEB VCAP Model Closing Agreements*.
 - b. The issuer must follow the VCAP Model Agreement when completing the submitted draft closing agreement. If the issuer believes a deviation is necessary, they should notate the proposed change on their submitted draft closing agreement and the reason the deviation is necessary.
 - c. If the VCAP request is for a violation for which the IRS has provided a specialized closing agreement template (not a VCAP Model Agreement) in an Announcement or other form of guidance describing a particular type of violation (a "Specialty Template Agreement"), the issuer should follow the announcement/other guidance instructions in its proposed agreement.
- (6) VCAP resolves violations of the IRC or applicable Regulations based upon the issuer's representations of facts submitted under penalties of perjury. Subject to its discretion to require additional information in appropriate circumstances, TEB Technical generally relies on those representations of facts as true and accurate and won't review books or records to confirm or verify the facts. TEB Technical may rely on representations of facts submitted by a party other than the issuer (for example, conduit borrower, trustee) under penalties of perjury and, with that reliance, require that the issuer certify under penalties of perjury that to the best of the issuer's knowledge such facts are true and accurate. See IRM 7.2.3.1.5 for when a closing agreement won't be final.

Note: The requirements under subsection 7.2.3.2.1 do not apply to anonymous requests.

7.2.3.2.2 (12-27-2018) **Receipt and Perfection of Submission Request**

- (1) The procedures in this subsection apply to the Intake Coordinator. The TE/GE Compliance Planning and Classification, Planning and Monitoring function assigns a Closing Group to oversee VCAP Case Intake. That group's manager assigns a Case Intake Coordinator ("Intake Coordinator").
- (2) The Intake Coordinator monitors the e-mail inbox and mail stop for TEB VCAP requests received. Issuers e-mail VCAP requests to TEBVCAP@irs.gov or mail them to the address below or another address posted at www.irs.gov/tax-exempt-bonds with directions that it supersedes this address:

Internal Revenue Service
Attention: FAST M/S 114
1973 Rulon White Blvd
Ogden, UT 84201-0252
Attention: TEB VCAP
- (3) For each VCAP request, the Intake Coordinator must:
 - a. Verify the issuer submitted an executed Form 14429, the required penalties of perjury statement per IRM 7.2.3.2.1 (2) and a copy of the signed Form 8038 series information return for the bonds. Neither Form 14429 nor Form 8038 is required for an anonymous request.
 - b. Research the bond issue's audit history and if currently under audit, notify your group manager and send a copy of the submission to the

exam group's manager, return the request to the issuer informing the issuer that VCAP is unavailable, don't establish on RCCMS, and take no further action.

Note: This step doesn't apply to anonymous requests.

- c. If the submission doesn't contain the signed Form 14429, the required penalties of perjury statement, or a copy of the signed Form 8038 series information return for the bonds, within five business days of identifying the missing information, request issuer to send the missing or incomplete information:

1. Inform the issuer and the authorized representative (per Form 2848), in writing, using Letter 5685 that we've received the request but need more information before we can assign it.
2. Identify the missing information.
3. Request that they send the missing items by the response date that is 21 business days after the date of the letter.
4. Allow 21 business days for a response to your request for additional information.
5. Get your manager's approval for any extensions (not granted except for extraordinary circumstances).
6. Return the VCAP submission to the issuer using Letter 5566 if the issuer doesn't send the information. Don't establish on RCCMS and take no further action.

- d. If the submission contains the Form 14429, the required penalties of perjury statement, and a copy of the signed Form 8038 series information return for the bonds, either as originally submitted or after supplementation after contact, then establish and process the case for assignment per IRM 7.2.3.3.1.

Note: Processing a case for assignment or assigning the case to a specialist doesn't waive the IRS' right to close the case for failing to include all of the required information and items in IRM 7.2.3.2.1.

Note: For anonymous requests, the Intake Coordinator establishes the case on RCCMS using the process in IRM 7.2.3.2.2 (1) and IRM 7.2.3.2.2 (2) above but establishes using the case name "Anonymous – [representative's last name]." List the tax period based on the submission date and use a generic report number. List the appropriate project code for the type of bond, if you can determine it from the submitted material.

7.2.3.3
(09-29-2016)

TEB VCAP Case Processing Procedures

- (1) This section describes the case processing procedures for TEB VCAP cases.

7.2.3.3.1
(01-07-2020)

Case Establishment and Assignment

- (1) Intake Coordinator:
 - a. Establish a compliance activity in the Reporting Compliance Case Management System ("RCCMS") for the VCAP case. Establish each Form 8038 series information return for the submission request as a separate compliance activity. Establish in status 8.

Note: It may take up to 20 business days to establish a case.

- b. Assign the compliance activity to TEB Technical requesting status 10.

- (2) Group manager: When you receive the case from the Intake Coordinator, generally assign it to a Specialist who can begin the case as soon as possible but no later than 15 business days.

7.2.3.3.2
(01-07-2020)
**Case Development
(Specialist)**

- (1) The procedures in this section apply to the Specialist. When you receive a VCAP assignment:
 - a. Within five business days, give the issuer or authorized representative your contact information and submit Form 2848 or Form 8821 to the Centralized Authorization File. Follow the guidance in IRM 4.81.5.5.2.1 and IRM 4.5.2.2.3. Follow up by sending Letter 5585. Notate your actions in the case chronology record.
 - b. When you first charge time to the case, update the status to 12 in RCCMS.
 - c. Review the request to verify that it has all the required completed information per IRM 7.2.3.2.1.
 - d. Determine if you need any additional information or authorizations. Remember to secure Forms 2848 and 8821, if applicable. If a borrower is involved, consider if it needs to provide Form 8821, as well. If you need additional information/authorizations, request the information/executed forms from the issuer/representative. The issuer/representative must submit any additional information in written statements under penalties of perjury per IRM 7.2.3.2.1(2).
 - e. Request the issuer submit the additional information or executed forms within 21 business days, using Letter 5685. You may, with your group manager's approval, allow one 21-day extension. The TEB Program Manager must approve any additional extensions. Document the extension with a specific date in Letter 686(DO) sent to the issuer. Copy any representative with Letter 937.
 - f. If the issuer doesn't timely provide the information, follow the procedures in IRM 7.2.3.3.6 to determine whether to close the case due to the failure to provide the required information.
 - g. When processing the case, call the issuer or authorized representative with regular status updates as often as appropriate and at least monthly. Notate any granted extensions, all contacts, updates and reminders on the case chronology record.
 - h. When you receive all required information, analyze it, determine the recommended case resolution, and resolve the case.
- (2) In most voluntary closing agreement cases, you:
 - a. Negotiate the terms of the closing agreement. Use the issuer drafted agreement per IRM 7.2.3.2.1 for suggested terms.
 - b. Draft the agreement to be executed. In some cases, you/your group manager may ask the Committee to help draft closing agreements.
- (3) The issuer must:
 - Meet the specific time frames in IRM 7.2.3.3.2(2) to submit additional information.
 - Resolve the VCAP in good faith and with due diligence.

- (4) If you determine that an issuer or authorized representative hasn't met the required deadlines or isn't proceeding toward case resolution in good faith and with due diligence, discuss with your manager whether it's appropriate to issue a final demand letter:
 - a. Upon your group manager's and the TEB Program Manager's concurrence, draft a final demand letter notifying the issuer that we'll close the case without resolution 14 days from the date of the letter unless specific actions are taken.
 - b. Use Letter 5734 and explain the specific actions required and the reasons for the letter.
 - c. E-mail the final demand letter to the TEB Program Manager for electronic signature.
 - d. Upon receipt of the signed letter, mail it to the issuer and authorized representative.
 - e. Include a copy of the signed letter in the RCCMS case file.
 - f. If you don't receive a timely response, close the case per IRM 7.2.3.3.6.
 - (5) If at any time during the case process, you recommend (and both your manager and the TEB Program Manager agree) that, due to unusual circumstances outside of TEB's control, the case resolution will require significant additional time without substantial progress toward resolution:
 - a. Note your recommendation (and your group manager/TEB Program Manager's concurrence) and the expected date of next action on the case chronology record.
 - b. Update the status to 38 on RCCMS.
- Example:** The TEB Program Manager determines that extraordinary circumstances exist and grants the issuer significant additional time to submit supplemental information.
- (6) If 100% of the bonds consisting of the VCAP issue have been redeemed, retired or canceled, notify your manager to discuss the appropriate case resolution.
 - (7) When you're determining the appropriate resolution:
 - a. Apply the standard resolution terms of IRM 7.2.3.4 unless you have compelling reasons to deviate from those terms.
 - b. You may increase the resolution amount based on factors such as time delay between the date of the violation and the submission.
 - c. When no standard resolution term applies, defer to the standard resolution terms for guidance.
 - d. If the issuer received correspondence in response to an anonymous request, consider it in light of the facts in the complete submission.
 - (8) Except in unusual circumstances, such as impermissible arbitrage profit exceeding taxpayer exposure, the resolution amount should not exceed 100% of taxpayer exposure on all the outstanding bonds.

7.2.3.3.2.1 (12-27-2018) Resolution Amount

- (1) Generally, a VCAP resolution amount is based on the greater of either (i) \$2,500 or (ii) taxpayer exposure or the credit maintenance amount, as computed in IRM 7.2.3.3.2.2. However, as appropriate, you can also base closing agreement resolution amounts on the greater of \$2,500 or:

- The present value of an alternative minimum tax adjustment
- IRC 150(b) adjustments
- IRC 168(g) adjustments
- Any excessive arbitrage profit, as described in IRM 4.81.6.5.3.8.

Note: The resolution amount may be higher than the otherwise applicable standards described above.

- (2) For direct pay bonds, an issuer and TEB may agree to modify the amount of future allowable credit payments the issuer may claim by excluding a portion of interest payments on those bonds from the calculations of the credits, as appropriate under the facts and circumstances.
- (3) In certain cases, the closing agreement resolution amount is based on a specified amount. Generally, a specified amount is only appropriate when described in a closing agreement program in published guidance (including Notices and Announcements).

7.2.3.3.2.2 (01-07-2020) Computation of Amounts

- (1) Compute the taxpayer exposure or credit maintenance amount for a VCAP following the steps in IRM 4.81.6.5.3.1 or IRM 4.81.6.5.3.2, as applicable, except for these changes:
- Base the taxpayer exposure or credit maintenance amount used for a resolution on the Total Nonqualified Bonds, determined per IRM 7.2.3.3.2.2 (2).
 - The compliance failure is considered to have been identified by TEB on the date the IRS initially receives a disclosed VCAP request, regardless of whether all items required for case assignment have been included (see IRM 7.2.3.2.2).
 - The taxpayer exposure or credit maintenance amount computation shouldn't exceed the taxpayer exposure or credit maintenance amount on 100% of the bonds in the issue determined under IRM 4.81.6.4.3.1 or IRM 4.81.6.4.3.2, as applicable.
- (2) When determining a resolution amount based on the Total Nonqualified Bonds in the issue, calculate taxpayer exposure or credit maintenance amount as follows:

1. Determine the amount of the Total Nonqualified Bonds. This is the amount that would be nonqualified bonds on the date of the violation under remedial action provisions that apply to the type of violation (for example, Regulations 1.141-12(j) for private activity violations) or, if no remedial action provision, an appropriate amount of the bonds based upon the violation.

Note: If nonqualified bonds are due to refunding of a prior issue with a compliance failure, the Total Nonqualified Bonds amount for the refunding issue is an amount of refunding bonds equal to the amount of refunded bonds that were Total Nonqualified Bonds for the refunded issue on the date of the violation.

2. Determine the allocation of the Total Nonqualified Bonds, if applicable. The Total Nonqualified Bonds are allocated to:
 - Maturities of bonds still outstanding **on the date TEB identified the violation** (this is the “Outstanding Bond Amount”).
 - Maturities that would be outstanding on that date but for the early redemption of bonds before maturity for the purpose of removing nonqualified bonds from the market after the issuer or party responsible for compliance discovered the compliance failure (this is the “Redeemed Bond Amount”). The redeemed bonds must be bonds in the issue that properly would be nonqualified bonds on the date of the violation under remedial action provisions applicable to the type of violation (for example, Regulations 1.141-12(j) for private activity violations) or, in the absence of an applicable remedial action provision, an appropriate amount of the bonds based upon the violation, and must not have been paid with proceeds of tax-advantaged bonds.

Note: You may accept the issuer’s representation, under penalties of perjury, that the purpose of an early redemption was to remove nonqualified bonds from the market after the discovery of the compliance failure.

 - Prorate the allocation in the first two bullets. TEB considers alternative allocations on a case-by-case basis. Alternative allocations may not result in the bonds allocated to the Total Nonqualified Bonds having an original weighted average maturity that is shorter than the original weighted average maturity of all the bonds in the Outstanding Bond Amount and the Redeemed Bond Amount
 - If the sum of (A) the Outstanding Bond Amount plus (B) the Redeemed Bond Amount is less than the Total Nonqualified Bonds amount, allocate the excess of the Total Nonqualified Bonds to bonds in the issue that matured before the date TEB identified the violation in reverse order of maturity starting with the most recent.
 - Use the interest on the Total Nonqualified Bonds, as allocated to the maturities of bonds in the issue in the manner above to compute the taxpayer exposure or credit maintenance amount for both past and future years.

Note: If any of the Total Nonqualified Bonds were originally sold at a discount or premium of 5% or more, the amount of interest on those bonds to be used is the amount accruing at the yield on those bonds instead of the interest actually paid.
3. Calculate taxpayer exposure and credit maintenance amount for each year during the period covered under the agreement (see IRM 4.81.6.5.3.1) or the credit adjustment period (see IRM 4.81.6.5.3.2), as applicable. Use the steps in IRM 4.81.6.5.3.1(2) or IRM 4.81.6.5.3.2(4), as applicable, applied to the Total Nonqualified Bonds identified in step b.

Example: See the examples of application of the above steps to a tax- exempt bond issue in Exhibit 7.2.3-2.
4. Confirm that the resolution amount based on non-qualified bonds does not exceed the taxpayer exposure or credit maintenance amount on 100% of the bonds in the issue determined under IRM 4.81.6.5.3.1 or IRM 4.81.6.5.3.2, as applicable.
5. Compute the alternative minimum tax adjustment using the general method in IRM 4.81.6.5.3.4.
6. Compute the IRC 150(b) interest deduction adjustment using the general method in IRM 4.81.6.5.3.5.
7. Compute the IRC 168(g) depreciation deduction adjustment using the general methodology found in IRM 4.81.6.5.3.6.

7.2.3.3.2.3
(12-27-2018)

(1) Get review and approval of the proposed VCAP case resolution as follows:

Approval of the Proposed Resolution

If the violation is...	And the proposed closing agreement...	Then...	Need Committee's review?
Described in IRM 7.2.3.4	Doesn't substantively differ from the TEB VCAP Model Agreement language	<ul style="list-style-type: none"> • Prepare a briefing memo following the applicable resolution standard. • Attach the memo and the proposed closing agreement to the Closing Agreement Approval Document. • Forward to your manager for concurrence and submission to the TEB Program Manager for signature. 	No (but your group manager or the TEB Program may request Committee review)
Covered in a Specialty Agreement Template in an announcement or other form of guidance	Complies with the guidance (including required Specialty Template Agreement language)	Submit the agreement and the Closing Agreement Approval Document to your group manager for approval and submission to the TEB Program Manager for signature.	No (but your group manager or the TEB Program Manager may request Committee review)

If the violation is...	And the proposed closing agreement...	Then...	Need Committee's review?
<ul style="list-style-type: none"> • Not covered by a Specialty Template Agreement • Not described in IRM 7.2.3.4 • Covered by a Specialty Template, Agreement, but the closing agreement provides for changes from the agreement template or terms of the guidance • Is described in IRM 7.2.3.4, but the closing agreement has proposed language that substantively differs from the TEB VCAP Model Agreement language 		<ol style="list-style-type: none"> 1. Prepare a briefing memo discussing key facts, applicable law, issuer's proposed settlement offer, the changes made from the Template or Model Agreement (if applicable), the reason for those changes, and your recommended case resolution. 2. Send the Closing Agreement Approval Document to your group manager for review and concurrence. 3. If in agreement, your group manager may forward to the TEB Program Manager for discussion, review and feedback. If the TEB Program Manager provides feedback, address the questions raised. 4. When your group manager concurs, and you addressed any TEB Program Manager feedback, your group manager sends (or asks you to send), the Closing Agreement Approval Form to the Committee for review and comments. 5. Review, consider and discuss with your group manager, as appropriate, any comments or recommendations made by the Committee. <p>Note: It is appropriate to discuss proposed terms of resolution with the issuer during case development. During any discussions, emphasize that the agreement and terms, including the resolution amount, are still subject to the review and approval process and may change as a result of that review.</p>	Yes

7.2.3.3.3
(12-27-2018)

Case Resolution

- (1) In negotiating the terms of a closing agreement, the specialist, group manager and the Committee ensure the terms:
 - a. Are fair and equitable.
 - b. Promote voluntary compliance and encourage due diligence in complying with all applicable federal tax laws.
 - c. Recognize the difference between the IRS enforcement and voluntary compliance programs.
- (2) If the proposed resolution of the case requires Committee review per IRM 7.2.3.3.2.3, the group manager or Specialist forwards the Closing Agreement Approval Document with the attached documents to the Committee. The group manager and the TEB Program Manager may request Committee review for closing agreements not required to be reviewed per IRM 7.2.3.3.2.3.
- (3) The Committee:
 - a. Reviews the proposed resolution terms to determine whether the resolution terms are generally consistent with other TEB closing agreement resolution terms. If not, the Committee evaluates the facts and circumstances of the case and determines whether there's a valid reason for the difference (for example, a significant difference in the facts or an agreement submitted under VCAP rather than an agreement from an examination case.)
 - b. If the closing agreement language has been substantively modified from the standard language, assesses whether the closing agreement is enforceable.
 - c. Makes any relevant comments or recommendations to the resolution terms and closing agreement terms.
 - d. Signs and returns the Closing Agreement Approval Document with attached documents to the group manager.
 - e. May seek advice from the Chief Counsel ad hoc members, such as when a proposed closing agreement contains nonstandard terms.
 - f. Informs the group manager if, after consulting with the Chief Counsel ad hoc members, the Committee determines needed changes to make the agreement enforceable.
 - g. If concluding that the proposed resolution isn't consistent with other TEB closing agreements, inserts the reasons in the Closing Agreement Approval Document.
- (4) The Specialist and/or group manager:
 - a. Reviews and considers any comments and/or recommendations from the Committee.
 - b. Discusses with the TEB Program Manager the Committee recommendations that the Specialist and group manager propose not to adopt.
 - c. Forwards the Closing Agreement Approval Document to the TEB Program Manager for final review and approval indicating whether the issuer/authorized representative has agreed to the recommended closing agreement and resolution terms.
- (5) The TEB Program Manager:
 - a. Reviews the Closing Agreement Approval Documents.
 - b. Discusses any concerns with the Committee.

- c. If in agreement, notes approval by signing the Closing Agreement Approval Document and returns the approved document to the group manager, with a copy to members of the Committee.
 - d. If not in agreement, discusses concerns with the Committee and group manager and returns the case for further development.
- (6) The Specialist, after receiving the necessary reviews and approvals, follows the closing agreement finalization and execution procedures in IRM 7.2.3.3.4.

7.2.3.3.4
(12-27-2018)

**Specialist: Closing
Agreement Finalization
and Execution**

- (1) Specialist: confirm that you've received the applicable reviews and approvals per IRM 7.2.3.3.2.3 and IRM 7.2.3.3.3.
- (2) If the agreement is a Specialty Template Agreement executed by the issuer and other parties (if applicable), and complies with the applicable guidance (including the required Specialty Template Agreement language):
 - a. Verify payment receipt and secure e-mail the issuer-executed agreement and Letter 5567 to your manager for review and the TEB Program Manager's signature.
 - b. Mail a copy of the executed agreement and Letter 5567 to the issuer.
 - c. Sign transmittal Letter 937 and/or Letter 5735 in your name, and mail to the authorized representative(s) and other parties to the agreement with copies of the agreement (if applicable).
- (3) If the agreement is not a Specialty Template Agreement or doesn't comply with the applicable guidance (including the required Specialty Template Agreement language in the guidance for the Specialty Template Agreement):
 - a. Send a draft of the proposed closing agreement to the issuer or authorized representative to obtain the issuer or representative's input on the draft.
 - b. Make sure the issuer understands the terms are presented only for negotiation and are not binding on the IRS.
 - c. If issuer disagrees with any revisions made to the closing agreement in the review process or proposes other changes, discuss any proposed modifications to the draft closing agreement with your manager. If the changes are substantive, submit to the Committee for review.
 - d. Once the closing agreement is finalized and approved, send it out for signature:

- Print the final closing agreement in format appropriate for signing.
- Send the agreement to the issuer with transmittal Letter 5565. If a borrower or other party is also to execute the agreement, send an additional copy to the issuer for each additional signature party.
- Update Letter 5565 to direct the signed agreement(s) be returned to the Specialist. Sign Letter 5565 and Letter 937 for any authorized representatives in your own name.
- Call the authorized representative to inform him or her that you sent the agreement, obtain an estimated agreement return date and document the case file.
- Remind the issuer or authorized representative that before TEB executes the closing agreement, the issuer must:
 1. Submit the closing agreement payment (if any).
 2. Return the executed copies of the agreement to the Specialist's address in the final closing agreement letter.
 3. Include a copy of the confirmation of the Electronic Federal Tax Payment System (**EFTPS**) deposit (if any) with the executed agreements.

Note: Any payments made by or on behalf of the issuer must use the issuer's EIN unless otherwise specified in the closing agreement.

 4. Complete actions specified in the agreement, if any, such as filing an amended information return, redeeming bonds, or establishing an irrevocable defeasance escrow.
- Follow up within two business days if the estimated receipt date for the issuer-executed agreement is not met.

- (4) The issuer and Specialist may call the EFTPS Financial Institution Helpline at 1-800-605-9876 (Monday – Friday, 8:00 a.m. – 8:00 p.m., Eastern Time).
- (5) When you receive the closing agreement signed by the issuer (and other parties, if applicable):
 - a. Monitor and confirm receipt of the closing agreement payment (if any) by e-mailing the Field Agent Support Team (FAST) at tege.fast@irs.gov, including a copy of the Taxpayer Information Worksheet for the EFTPS deposit and requesting confirmation. Include "VCAP" and the Report Number from Part I of the Form 8038 series information return in your e-mail.
 - b. Put evidence of receipt of payment in the RCCMS case file.
 - c. Verify the EIN and electronic funds transfer information match the agreement.
 - d. Include electronic copy of the signed Form 3870, Request for Adjustment, in the RCCMS file. In the Reason for Adjustment section of Form 3870, include all identifying information from the second paragraph of the Taxpayer Information Worksheet for Electronic Federal Tax Payment System Deposit found in the closing agreement. Also, include the report number of the Form 8038 and a statement that the adjustment is due to a VCAP resolution payment.

- A taxpayer signature is not required for the Form 3870 for VCAP.
- The Specialist signs Form 3870 as preparer and securely e-mails a copy of the signed, completed form to the group manager.
- The group manager, after review, digitally signs the Form 3870 and returns it to the Specialist.

- e. Verify the agreement has not been altered from what the Committee approved (or what management approve if Committee approval is not required), check for required signatures for agreements other than pre-executed agreements, including signature on the Consent to Disclose Tax Information.
- f. Prepare closing transmittal Letters 5567, 5735 and 937, as applicable, for sending the executed closing agreement to the issuer and authorized representative(s) and Borrower, as applicable. Letter 5567 is signed by the TEB Program Manager; the Specialist signs the other letters.
- g. Secure e-mail the closing agreement and issuer's closing transmittal letter (Letter 5567) to your manager for review. Include in your e-mail confirmation that:

- The agreement is not modified from the form of agreement on the final signed Closing Agreement Approval Form.
- The TIN and EFT Amount on the Payment Confirmation matches the agreement.
- You've included a copy of Payment Confirmation in the RCCMS case file.

- (6) Group manager: After you review, secure e-mail the execution copy of the agreement and Letter 5567 to TEB Program Manager for execution.
- (7) TEB Program Manager: After signing the agreement and transmittal letter electronically, secure e-mail the signed document back to the Specialist.

7.2.3.3.5 (12-27-2018) Case Closing

- (1) Specialist: Generally, within 10 business days of i) execution of the closing agreement, or ii) execution of the closing letter, if the case is closed without a closing agreement, close the case:
 1. Send the transmittal and case closing letter (Letter 5567) and signed closing agreement to the issuer, as applicable, authorized representative and Borrower (if any) under the appropriate transmittal letters.
 2. Include in the RCCMS case file, copies of the final transmittal and case closing letter, all other transmittal letters, and the signed closing agreement.
 3. Notify the issuer if issuing an approved response letter closing the case without a closing agreement, and send the appropriate closing letter (for example, Letter 5562, Letter 5564, Letter 5566, or Letter 6065) signed by the TEB Program Manager.
 4. Complete the RCCMS case file.
 5. Transfer the case to your group manager (or delegate) within RCCMS.
- (2) If a closing agreement resolves a violation related to bonds for which the issuer irrevocably elected to receive direct payments equal to all or a portion of

the interest on the bonds, secure e-mail a final copy of the executed closing agreement to the Direct Pay Bonds Coordinator in TEB, who oversees needed updates of electronic data.

- (3) Group manager: After reviewing the case file to confirm it's complete, request case closure in RCCMS using codes 400-20011-7204 and update the case to status 51.

7.2.3.3.6 (12-27-2018) Unresolved Cases

- (1) In certain situations, the Specialist may close a VCAP case without a final resolution.

Example: An issuer may: i) withdraw the request, ii) disagree with TEB Technical in a reasonable time after we offer a closing agreement, iii) not timely submit information requested after IRS sends a final demand letter per IRM 7.2.3.3.2, or iv) fail to negotiate in good faith.

- a. If you recommend closing the case as unresolved, discuss with your group manager, consider an audit referral. Document your consideration of an audit referral, and if applicable follow TE/GE referral procedures.
 - b. If your group manager agrees with you, prepare the appropriate closing letter (for example, Letter 5566 or Letter 6065); a briefing memo explaining the reasons for closing the case; and your determination of whether to make an audit referral, and forward to your group manager.
- (2) Group manager:
 - a. Send the closing letter to the TEB Program Manager for review and concurrence. If the TEB Program Manager concurs, they electronically sign the closing letter and return it to you.
 - b. If the TEB Program Manager approves, forward the signed closing letter to notify the Specialist to close the case per case closing procedures in IRM 7.2.3.3.5.
 - c. If the TEB Program Manager doesn't approve, notify the Specialist that the case needs further development.

7.2.3.4 (12-27-2018) TEB VCAP Resolution Standards

- (1) The IRS requested comments on VCAP operation, including suggestions for standardized closing agreement terms and amounts for particular violations (Notice 2008-31).
 - a. On June 11, 2008, the Advisory Committee on Tax Exempt and Government Entities (ACT) issued a report titled *The Streamlined Closing Agreement For Tax-Exempt Bonds: A Cure For Common Violations* recommending the IRS create programs to allow streamlined treatment of certain tax law violations.
 - b. On June 9, 2010, ACT issued a report titled *Tax Exempt Bonds: Improvements to the Voluntary Closing Agreement Program for Tax-Exempt, Tax Credit, and Direct Pay Bonds* offering additional recommendations.
 - c. On June 7, 2018, ACT issued a report titled *Recommendations to Encourage Self-Compliance by Issuers of Tax-Advantaged Obligations*, recommending additional revisions to VCAP. TEB has reviewed these reports and has implemented resolution standards.

- (2) This section lists VCAP resolution standards for specific violations. TEB anticipates continuing to expand the list of resolution standards for specified violations.
- (3) Resolve the violation through the VCAP general procedures on appropriate terms under the facts and circumstances if either the:
 - Violation isn't described in this section.
 - Issuer requests TEB Technical to consider unusual factors to arrive at a different resolution.

7.2.3.4.1
(12-27-2018)
Objectives and Scope

- (1) VCAP resolution standards' primary compliance objective is to promote due diligence on issuers and other parties to the tax-advantaged bond transaction in resolving violations.
- (2) The IRS encourages due diligence by offering:
 - Certainty to issuers and other parties about how a particular violation is resolved.
 - Financial incentives for early discovery of the violation.
- (3) The main VCAP resolution standards' administrative objective is to streamline the closing agreement process for specific violations. This results in more efficient processing of cases.
- (4) The resolution standards under this section aren't available when:
 - a. The VCAP request covers multiple violations, even if all the violations are described in this paragraph.
 - b. The VCAP agreement doesn't meet the conditions of IRM 7.2.3.1.4.
 - c. The VCAP's specific violation isn't a violation specifically described in this section.
 - d. The issuer submits a VCAP request after the latest date specified for resolution under the applicable resolution standard.
 - e. TEB Technical determines the issuer is not acting in good faith or proceeding with due diligence towards the resolution of the request.
 - f. The issuer doesn't timely respond to TEB Technical's requests for additional information or to TEB Technical's closing agreement proposals.

Note: In situations in (4) a, c, or d, handle requests under VCAP general procedures.

7.2.3.4.2
(12-27-2018)
Implementation of Standards

- (1) IRM sections IRM 7.2.3.4.3 and IRM 7.2.3.4.4 contain specific compliance failures and the way to determine a resolution amount or a Base Amount for those failures.
- (2) When a Base Amount is specified in IRM 7.2.3.4.3 or IRM 7.2.3.4.4, the resolution amount to be paid in a closing agreement resolving the described compliance failure is the greater of either (i) \$2,500 or (ii) 100% of the Base Amount when the issuer submits the VCAP request within six months of the date of the deliberate action giving rise to the compliance failure. When the issuer submits the request more than six months but within one year of the date of the deliberate action giving rise to the compliance failure, substitute 110% of the Base Amount for 100% to calculate the closing agreement payment.

- (3) Generally, the resolutions standards apply to VCAP requests received within one year of the date of the deliberate action giving rise to the VCAP request. If an issuer's doesn't submit within one year of the compliance failure or by the latest date otherwise specified for the applicable resolution standard, they may still resolve the violation through the VCAP general procedures on those terms as are determined appropriate under the facts and circumstances.

Example: An issuer that submits a request more than one year from the date of a deliberate action resulting in excessive nonqualified use is generally required to pay a closing agreement payment greater than 110% of taxpayer exposure on the Total Nonqualified Bonds.

- (4) Generally, the resolution standards described in IRM 7.2.3.4.3 apply only to violations that relate to tax-exempt bonds. However, an issuer of tax credit bonds or direct pay bonds may propose to use these standards in a TEB VCAP request if the resolution is in the best interest of the United States in light of the benefit conferred upon the issuer or bondholders from the related transaction. Process these requests under general VCAP procedures. IRM 7.2.3.4.4 contains specific resolution standards for tax credit and direct pay bonds.
- (5) IRM 4.81.6.5.3 contains direction on calculating taxpayer exposure, credit maintenance amount, alternative minimum tax adjustment, and other bases for resolution amounts. As stated in IRM 7.2.3.3.2 the taxpayer exposure or credit maintenance amount upon which the resolution amount paid in a VCAP closing agreement is based will not be greater than 100% of taxpayer exposure or credit maintenance amount on the issue as computed in IRM 4.81.6.5.
- (6) If the issuer notes that certain facts and circumstances for the identified violation warrant special consideration, the issuer should propose a modification to the proposed closing agreement terms. Process these requests under general VCAP procedures.
- (7) Generally, funds used to pay the resolution amount or to redeem, defease, retire, cancel, fund a defeasance escrow for, or otherwise remediate violations for bonds must not be proceeds of tax-advantaged bonds.
- (8) When a resolution standard requires redemption of bonds, the issuer must redeem and retire and cancel the bonds that are subject to redemption before the date IRS executes the closing agreement. For bonds that can't be redeemed or cancelled before the execution date, the issuer must establish and fund an irrevocable defeasance escrow to defease the callable bonds to their first call date and issue an irrevocable notice of redemption for that date. The issuer must complete these actions before the date the IRS executes the closing agreement.

7.2.3.4.3
(12-27-2018)
**Identified Violations –
Tax-Exempt Bonds**

- (1) **Excessive Nonqualified Use.** Certain use of proceeds requirements are imposed upon governmental bonds and various qualified private activity bonds under IRC sections 141(b), 142(a), 143(b)(1), 144(a)(12)(B), 144(b)(2), 144(c)(1), 145(a)(2), 147(g), 1394(a), 1400L(d), 1400N(a)(2), and 7871(c)(3)(B). These provisions limit to certain defined percentages of proceeds that may be allocated to nonqualified purposes.

- a. *Covered violation.* When an issuer takes a deliberate action that results in the amount of proceeds allocated to nonqualified purposes exceeding the defined percentage limitations.
 - b. *Base Amount.* The taxpayer exposure on the Total Nonqualified Bonds computed per IRM 7.2.3.3.2.2(2), with the period for computing taxpayer exposure beginning on the date of the deliberate action and ending on the date the Total Nonqualified Bonds are redeemed and retired or cancelled.
 - c. *Additional requirements.* The issuer must redeem and retire and cancel the Total Nonqualified Bonds.
- (2) **Ownership of Qualified 501(c)(3) Bond-Financed Property.** All property provided by the net proceeds of a qualified 501(c)(3) issue must be owned by a 501(c)(3) organization or a governmental unit (IRC 145(a)(1)).
 - a. *Covered violation.* When property provided with the net proceeds of a qualified 501(c)(3) issue is owned by a person other than a 501(c)(3) organization or a governmental unit.
 - b. *Base Amount.* The taxpayer exposure on the Total Nonqualified Bonds computed per IRM 7.2.3.3.2.2(2), with the period for computing taxpayer exposure beginning on the date of the deliberate action and ending on the date the Total Nonqualified Bonds are redeemed and retired or cancelled.
 - c. *Additional resolution standards.* The issuer must redeem and retire and cancel the Total Nonqualified Bonds.
- (3) **Failure to Provide Notice of Defeasance.** An issuer remediating nonqualified bonds by establishing an irrevocable defeasance escrow must notify IRS in writing within 90 days of the date they establish the defeasance escrow (26 CFR 1.141-12(d)(4) and 26 CFR 1.150-5(a)(1)).
 - a. *Covered violation.* When an issuer doesn't successfully remediate nonqualified bonds because it inadvertently doesn't notify the IRS timely in writing that it established a defeasance escrow to remediate nonqualified bonds as required under 26 CFR 1.141-12(d).
 - b. *Resolution amount.* When the issuer submits a VCAP request within six calendar months of the end of the required period to provide timely notice that it established a defeasance escrow, the issuer may resolve the failure under a closing agreement by paying \$2500. When the issuer submits the request more than six calendar months but within one year of the end of the required period to provide timely notice, the resolution amount is double that amount.
- (4) **Failure to Call Defeased Bonds Within 10.5 Years of Issuance.** An issuer may only remediate nonqualified bonds (issued after May 16, 1997) by establishing an irrevocable defeasance escrow if the period between the issue date of the bonds and the first call date of the bonds is 10.5 years or less (26 CFR 1.141-12(d)(5)).
 - a. *Covered violation.* When the issuer fails to successfully remediate nonqualified bonds by timely establishing an irrevocable defeasance escrow because all or a portion of the defeased nonqualified bonds are not callable within 10.5 years of the issue date.
 - b. *Base Amount.* The taxpayer exposure on the bonds for only non-qualified bonds that are not callable within 10.5 years of issuance, with the period for computing taxpayer exposure beginning on the later of the date 10.5

- years after the issue date or the date of the deliberate action and ending on the date the bonds will be redeemed under the defeasance escrow.
- c. *Additional requirements.* The issuer must establish an irrevocable defeasance escrow for all nonqualified bonds, under the rules for creating a defeasance escrow under 26 CFR 1.141-12(d), other than 26 CFR 1.141-12(d)(5).
- (5) **Alternative Minimum Tax Adjustment.** The interest on certain qualified private activity bonds is treated as an item of tax preference for the alternative minimum tax. IRC 57(a)(5)(C)(ii) provides an exception to this rule for qualified 501(c)(3) bonds (IRC 57(a)(5)).
- a. *Covered violation.* When a change in the use of the proceeds of a bond issue not subject to the alternative minimum tax ("non-AMT bonds") occurs resulting in the bonds being re-characterized as subject to the alternative minimum tax ("AMT bonds"). A violation is covered only when the proceeds of the bonds were first expended for a purpose that at the time of the expenditure would not make the bonds subject to the alternative minimum tax.
- b. *Base Amount.* The Base Amount for this violation is the alternative minimum tax adjustment on the bonds (see IRM 4.81.6.5.3.4) beginning on the date of the deliberate action and ending on the date the bonds are no longer outstanding.
- (6) **Capital Expenditure Limitation Failure.** Qualified small issue bonds must have an aggregate face amount of not more than \$1,000,000, unless an issuer makes an election under IRC 144(a)(4)(A) for the \$10,000,000 limitation to apply instead of the \$1,000,000 limitation (IRC 144(a)(1)). Under IRC 144(a)(4), in determining whether an issue meets or exceeds the \$10,000,000 limitation, the issuer must include the sum of:
- The aggregate amount of certain outstanding qualified small issue bonds described in IRC 144(a)(2).
 - The aggregate amount of capital expenditures described in IRC 144(a)(4)(A)(ii) with respect to facilities described in IRC 144(a)(4)(B) (as modified by IRC 144(a)(4)(G), when applicable).

- a. *Covered violation.* When the sum of the face amount of the bonds, other outstanding bonds required to be taken into account and capital expenditures to be taken into account for purposes of IRC 144(a)(4) exceeds \$10,000,000 (as modified by IRC 144(a)(4)(G), when applicable).
 - b. *Base Amount.* The Base Amount for this violation is the taxpayer exposure on the Total Nonqualified Bonds, with the period for determining taxpayer exposure beginning on the date the violation occurs and ending on the date the Total Nonqualified Bonds are redeemed and retired or cancelled.
 - c. For this purpose, the Total Nonqualified Bonds are bonds of the issue having a principal amount equal to the amount by which the applicable limitation is exceeded and for which the average maturity of the bonds remaining after these bonds are redeemed will not be greater than the average maturity of the bond issue before these bonds are redeemed.
 - d. *Additional requirements.* The issuer must redeem and retire or cancel the Total Nonqualified Bonds.
- (7) ***Maturity Exceeding 120% of Economic Life.*** The average maturity of certain qualified private activity bonds may not exceed 120% of the average reasonably expected economic life of the facilities being financed with the net proceeds of the issue (IRC 147(b)).
- a. *Covered violation.* When the net proceeds the issuer allocates to property are from bonds that have an average maturity greater than 120% of the average reasonably expected economic life of that property.
 - b. *Resolution standards.* When the issuer submits the VCAP request within six calendar months of the violation date giving rise to the request, the issuer may resolve the violation by redeeming or defeasing to an early redemption date an amount of the bonds sufficient to reduce the weighted average maturity of the issue to 120% of the economic life of the financed property and paying the IRS a resolution amount of \$2,500.
- Note:** When an issuer submits the request more than six calendar months but within one year of the date of the violation giving rise to the VCAP request, the issuer must redeem or defease an amount of the bonds sufficient to reduce the weighted average maturity of the issue to 110% of the economic life of the financed property and pay \$2,500.
- (8) ***Impermissible Advance Refunding.*** IRC 149(d) generally prohibits the advance refunding of any other bond. IRC 149(d), as in effect before January 1, 2018, generally prohibited the advance refunding of:
- 1. Any qualified private activity bond issue other than a qualified 501(c)(3) bond issue, or
 - 2. Any governmental bond issue or qualified 501(c)(3) bond issue that has already been advance refunded.

Note: IRC 149(d) notes that a bond is treated as issued to advance refund another bond if issued more than 90 days before the redemption of the refunded bond. A current refunding issue is defined as a refunding issue that is issued not more than 90 days before the final payment of principal and interest on

the prior refunded issue. An advance refunding issue is a refunding issue which is not a current refunding issue (26 CFR 1.150-1(d)(3)).

- a. *Covered violation.* When the issuer uses proceeds of a refunding issue intended to be a current refunding issue to pay the principal or interest on a prior issue more than 90 days from the issue date of the refunding issue and, if the refunding issue is issued before January 1, 2018, the prior issue isn't permitted to be advance refunded under IRC 149(d) as in effect prior to January 1, 2018.
 - b. *Base Amount.* The taxpayer exposure on the refunding bonds, with the period for computing the taxpayer exposure beginning on the issue date of the refunding bonds and ending on the date 90 days before the final redemption of the prior refunded issue.
 - c. *Additional resolution standards.* The issuer must represent that the refunded bonds were callable within 90 days of the issue date of the refunding issue, and the refunding was intended to result in redemption of the refunded bonds within 90 days of issuance of the refunding bonds, but an error resulted in the actual redemption of the refunded bonds occurring later than intended.
- (9) ***Failure to Timely Reinvest Proceeds into SLGS.*** An issue is treated as consisting of arbitrage bonds if any portion of the proceeds is intentionally used directly or indirectly to acquire higher yielding investments (IRC 148(a)). Under IRC 148(b)(1), a higher yielding investment is any investment property which produces a yield over the term of the issue which is materially higher than the yield on the issue. For this purpose, see definitions of materially higher yield in 26 CFR 1.148-2(d).

Example: Investments held in a refunding escrow are treated as higher yielding investments when the yield on those investments over the life of the escrow produces a yield which is more than 1/1000 of 1% higher than the yield on the bond issue.

- a. *Covered violation.* When a party to the escrow agreement violates the escrow agreement by not timely reinvesting proceeds of a refunding issue, upon the maturity of investments (for example, failure to reinvest proceeds of a matured guaranteed investment contract in 0% U.S. Treasury Securities – State and Local Government Series (SLGS) in an efficient escrow).
- b. *Resolution standards.* When the issuer submits the VCAP request within 60 days of the next required computation date after the date of the reinvestment failure, the issuer may resolve the violation by ensuring that the IRS receives payment of an amount equal to the sum of the following:

1. An amount which, if treated as a payment for the investments held in the escrow, would reduce the yield on the escrow to the bond yield; plus
2. An amount equaling interest accrued at the underpayment rate under IRC 6621 on the payment described above, computed for the period beginning on the date the payment would have been due if treated as a yield reduction payment and ending on the date the payment is actually paid to the IRS. For this purpose, proceeds the trustee holds because it failed to reinvest as required may, absent an alternative investment, be treated as if such had been invested in, and received interest payments from, SLGS bearing the maximum available interest rate on the date of the investment failure for a SLGS investment with a maturity on the scheduled maturity date under the escrow agreement for the 0% SLGS that failed to be acquired, or such earlier date as 0% SLGS were actually purchased with the proceeds subject to the investment failure. The maximum available SLGS interest rate for any day of investment and applicable maturity are to be determined from the SLGS Daily Rate Table available on the Treasury Direct website at <https://www.slgs.gov/GA-SL/SLGS/selectSLGSDate.htm>.

Note: When the issuer submits the request within the six calendar months after the next required computation date following the date of the reinvestment failure, substitute 110% of the amount in step 1 above.

- (10) ***Failure to Satisfy TEFRA Public Approval Requirement in Connection with Status of Applicable Elected Representative.*** Certain private activity bonds are not qualified bonds unless the issuer of the bonds has satisfied the public approval requirement (TEFRA Approval) of IRC 147(f)(2).
- a. ***Covered violation.*** A violation is covered by this paragraph when an issuer of private activity bonds for which TEFRA Approval is required issues the bonds without obtaining approval from an applicable elected representative as defined in IRC 147(f)(2)(E)(i)(II).
 - b. ***Resolution standards.*** When the issuer submits the TEB VCAP request within six calendar months of the date of issuance, the issuer may resolve the violation by paying an amount equal to the greater of (i) \$2,500 or (ii) 5% of taxpayer exposure, with the period for computing taxpayer exposure beginning on the issue date of the bonds and ending on the date of the closing agreement. The issuer will represent in the closing agreement that:

1. It made a good faith effort to obtain a TEFRA Approval before the bond issuance.
 2. It reasonably relied on an approval from an individual that it mistakenly thought met the requirements of an “applicable elected representative” under IRC 147(f)(2)(E)(i)(II).
 3. Its records relating to the bonds (including any records relating to the issuer’s good faith effort to obtain TEFRA Approval) don’t indicate substantial public opposition to the bonds.
 4. The issuer has taken actions that would constitute TEFRA Approval for the bonds if taken prior to issuance of the bonds. When the issuer submits the request more than six calendar months but within one year of the date of issue, substitute 5.5% for 5% when determining the resolution amount.
- (11) ***Extinguishment/Merger.*** Notice 2008-41, as modified by Notice 2008-88, and Notice 2010-7 provided certain temporary rules that allowed issuers to purchase and hold their own tax-exempt bonds for temporary holding periods (“extinguished bonds”) without causing those bonds to be treated as retired under IRC 103 and 141-150. Those temporary rules expired on December 31, 2010.
- a. *Covered violation.* When the holder of an obligation that is extinguished for purposes of IRC sections 103 and 141-150 excludes from gross income the interest income paid on such obligation.
 - b. *Resolution standards.* The issuer may treat the extinguished bonds as outstanding even though the issuer holds the bonds during the period. (the “extinguished period”) that:
 1. Begins on the later of January 1, 2011, or the date the issuer purchases its own bonds.
 2. Ends on the earlier of the date 180 days after the execution of the closing agreement or such earlier date requested by the issuer. To receive this treatment, the issuer must:
 1. Adopt a resolution that it intends to resell or currently refund the extinguished bonds as tax-exempt bonds within specified timeframes.
 2. Represent in writing that the extinguished bonds are legal, valid and binding obligations under state law and that there are no other matters relating to the tax-exempt status of the bonds under IRC sections 103 and 141 through 150.
 3. Pay an amount equal to the greater of (i) \$2,500 or (ii) the par value of the extinguished bonds multiplied by 0.029% for each month during the extinguished period.
- (12) ***Failure to Satisfy Information Reporting Requirements After Remedial Action.*** An issuer taking a remedial action under 26 CFR 1.141-12 must comply with the information reporting requirements of IRC 149(e) and 26 CFR 1.149(e)(1) if as a consequence of the remedial action, bonds are required to be treated as reissued as described in 26 CFR 1.141-12(g).

- a. *Covered violation.* When the issuer fails to successfully remediate non-qualified bonds because it doesn't timely file with the IRS a completed information reporting form prescribed for such purpose.
- b. *Resolution standards.* When the issuer submits the VCAP request within six calendar months after the deadline for filing the appropriate information reporting form with the IRS, the issuer may correct the failure by paying \$2,500. The issuer is required to file the completed information reporting form before the IRS executes the closing agreement. When the issuer submits the request more than six calendar months but within one year after the deadline for filing the information return, the resolution payment is double the \$2,500 amount.

7.2.3.4.4
(12-27-2018)

**Identified Violations –
Certain Direct Pay
Bonds**

- (1) Generally, the resolution standards only apply to violations that relate to the direct pay bonds, described in this section.
- (2) ***Excessive Nonqualified Use; expenditure period failure.*** Build America bonds under IRC 54AA or recovery zone economic development bonds under IRC 1400U-2 are taxable state and local government bonds that can't be private activity bonds under IRC 141 (IRC 54AA(d)). Under IRC 54AA(g)(2), 1400U-2, and 54A(d), as applicable, proceeds of build America bonds, recovery zone economic development bonds and qualified tax credit bonds are subject to certain use of proceeds requirements and limitations.
 - a. *Covered violation.* When the issuer takes a deliberate action that causes its build America bonds, recovery zone economic development bonds or qualified tax credit bonds to be used in a way that doesn't comply with the applicable requirements or limitations under IRC 54AA, IRC 1400U-2, and IRC 54A(d), as applicable.
 - b. *Base Amount.* The credit maintenance amount calculated for the Total Nonqualified Bonds. For this purpose, the credit adjustment period used to calculate the credit maintenance amount begins on the date of the violation and ends on the date the nonqualified bonds are redeemed and retired or cancelled, but may be shortened when the issuer and TEB Technical agree to modify the debt service schedule to treat the nonqualified bonds as no longer outstanding for purposes of requesting IRC 6431 credits (See IRM 4.81.6.5.3.2).
 - c. *Additional Resolution standards.* The issuer must identify the nonqualified bonds in a manner consistent with Regulations section 1.141-12(j). The issuer must identify the amount of disposition proceeds, if any, resulting from the compliance failure. Any disposition proceeds not applied to the redemption of bonds or the payment of the resolution amount under the agreement must be used for a qualifying use of proceeds of the bonds (without considering time limits imposed for use of those proceeds). For submissions more than six months but not more than one year after the deliberate action resulting in the compliance failure, any closing agreement permitting the shortening of the credit adjustment period through a prospective modification of the debt service schedule for purposes of calculating IRC 6431 credits require such modification to be structured such that the issuer is prevented from requesting refundable credits with respect to an amount of bonds equal to 110% of the non-qualified bonds.
- (3) ***De Minimis Premium Violation.*** The issue price of build America bonds and recovery zone economic development bonds for which the issuer receives direct payments, per IRC 6431, equal to a portion of the interest on those

bonds must be not greater than the principal amount of each bond plus a *de minimis* amount of premium over the stated principal amount of each bond IRC 54AA(d)(2)(C). Notice 2010-35 imposes a rule similar to the rule in IRC 54AA(d)(2)(C) against issuance of specified tax credit bonds under IRC 6431(f)(3) with more than a *de minimis* amount of premium.

- a. *Covered violation.* A violation is covered by this paragraph on the issue date when any maturity of bonds for which the issuer receives direct payments, pursuant to IRC 6431 is issued at a price in excess of the permissible price.
 - b. *Resolution standards.* When the issuer submits the VCAP request with respect to one or more fixed rate direct pay build America bonds, recovery zone economic development bonds, or specified tax credit bonds described in IRC 6431(f)(3), the issuer may resolve the violation under the following closing agreement terms. For purposes of the closing agreement, the stated interest rate for each maturity originally issued at a price in excess of the permissible price will be adjusted to an interest rate that corresponds to the yield of the maturity assuming that the maturity was sold at the maximum permissible price (the **Adjusted Interest Rate**). The issuer will pay an amount equal to the greater of (i) \$2,500 or (ii) 120% of the credit maintenance amount on the bond maturity, computed by assuming that the bond maturity accrued or will accrue interest (taking into account scheduled sinking fund payments but without regard to any optional call) at an interest rate equal to the difference between the original interest rate on the bond maturity and the Adjusted Interest Rate. For this purpose, the credit adjustment period used to calculate the credit maintenance amount will begin on the issue date but may be shortened when the issuer and TEB agree to modify the debt service schedule for purposes of requesting IRC 6431 credits (See IRM 4.81.6). Any closing agreement permitting the shortening of the credit adjustment period through a prospective modification of the debt service schedule may provide an Adjusted Interest Rate for each maturity that will be used for purposes of calculating IRC 6431 credits thereafter.
- (4) **Extinguishment/Merger.** A debt instrument generally is treated as retired or extinguished when an issuer acquires its own debt because a merger of the interests of the issuer and the holder occurs. When direct pay bonds are acquired by the issuer of the bonds (for purposes of this section, the “Initial Acquisition”), such bonds become extinguished for federal tax purposes and the issuer is not entitled to refundable credit payments equal to a portion of the interest on the extinguished bonds from and after the date of the Initial Acquisition.
- a. *Covered violation.* When an issuer claims a refundable credit with respect to interest on extinguished bonds that accrued or that will accrue from and after the date of the Initial Acquisition. An issuer may later sell those bonds to the public (a **Subsequent Sale**), in which case the bonds may be treated as reissued. The deliberate action causing this compliance failure occurs on the date the issuer engages in the transaction that extinguishes the bonds.
 - b. *Base Amount.* The credit maintenance amount on the portion of the bonds acquired by the issuer through the Initial Acquisition (taking into account scheduled sinking fund payments on a pro rata basis, if any). For this purpose, the credit adjustment period used to calculate the credit

maintenance amount begins on the date of the Initial Acquisition and ends on the first interest payment date on the bonds scheduled after the date of the closing agreement. If the Initial Acquisition occurred during the primary offering of the direct pay bonds, the Base Amount also includes an amount equal to any profits realized by the issuer or any related party to the issuer from the Subsequent Sale.

- c. *Additional resolution standards.* In the request, the issuer must represent that at all times from their original issue date the bonds acquired by the issuer through the Initial Acquisition:

1. Are outstanding for purposes of state law and constitute legal, valid and binding obligations of the issuer under applicable state law.
2. Assuming that the bonds are treated as remaining outstanding for purposes of IRC 103, 141-150, or IRC 54A and either 54C, 54D, 54E, or 54F (as applicable), qualify as "obligations" of the issuer under IRC 103 or 54A, as applicable.

The issuer may make these representations itself or the issuer may satisfy the requirement for these representations through submission of an unqualified opinion of a nationally recognized public finance attorney or law firm that addresses these representations.

Note: The closing agreement will provide that:

- 1) The Initial Acquisition won't have resulted in an extinguishment of the bonds before the closing agreement's effective date for federal tax purposes (except for direct payments under IRC 6431 as otherwise provided by the closing agreement terms).
- 2) The IRS will treat the bonds as having not been extinguished as a result of the Initial Acquisition or reissued as a result of the Subsequent Sale.

Tax Exempt Bonds Voluntary Closing Agreement Program 7.2.3

page 33

Exhibit 7.2.3-1 (12-27-2018)

Statement Under Penalties of Perjury Required Information

a	Bond issuer's information	
	1	Name
	2	EIN
	3	Street address, city, state, and zip code
	4	Name, title, and telephone number of an official of the issuer we may contact for additional information.
	<p>Note: For a violation that affects multiple issuers or issues of bonds, (i.e., a composite issue, absent extraordinary circumstances) each issuer of an affected issue must join the request and provide the information required by the VCAP request.</p>	
b	Bond issue information	
	1	Name and issue date of the bond issue
	2	Issue price
	3	A full debt service schedule for the issue showing principal maturities and interest rates (for variable rate issues, describe how the rate is set and the interest payments to the date of the request)
	4	CUSIP number(s), if any
c	Violation description for VCAP resolution, including a:	
	1	Clear statement of the specific federal tax requirement that provides a basis for finding a violation
	2	Description of the identified violation(s) and the relevant facts and circumstances pertaining to the identified violation and its occurrence
	3	Statement as to when and how the facts surrounding the identified violation were discovered.
	4	<p>If an issuer requests consideration of the lack of clarity about a legal answer as a factor in determining an appropriate resolution, the issuer must also include the following information to support its request:</p> <ul style="list-style-type: none"> • <ul style="list-style-type: none"> • Applicable law for which the issuer believes there is uncertainty • Established law supporting a determination that there is a credible basis for finding that a violation occurred • The legal questions, and how they apply to the facts of the submission
d	Proposed resolution terms for violation. Describe, with respect to any proposed payment of a closing agreement amount, the:	

Exhibit 7.2.3-1 (Cont. 1) (12-27-2018)**Statement Under Penalties of Perjury Required Information**

	1	Method in IRM 4.81.6 used to compute the amount or a description of an alternative method used (describe why the alternative method is appropriate under the facts and circumstances).
	2	Source of funds the issuer will use to pay the closing agreement amount. If redemption, defeasance, tender, or purchase of any amount of the bonds comprising the bond issue is proposed, the source of funds for this purpose and the maturities of the bonds subject to this action.
e	Issuer representations	
	1	That the VCAP request is permitted under IRM 7.2.3.
	2	Whether it knew or reasonably expected on the issue date that the violation might occur.
	3	Whether the bonds are under review in any court (other than a federal court), administrative agency, commission, or other proceeding (identify the proceeding).
	4	Date(s) of the violation, the date and circumstances surrounding the discovery of the violation, and the date and nature of any actions taken in response to the discovery of violation (for example, redemption, defeasance).
f	Whether or not the issuer submitted any previous or contemporaneous VCAP requests (including anonymous requests) for:	
	1	This bond issue.
	2	A violation of the same type for another bond issue submitted in the past five years. Include: the name(s) of the bond issue(s), brief summaries of the violation(s) identified, the letter received as a result of the request, and resolution(s) of all previous requests.
	3	If applicable: <ul style="list-style-type: none"> • an explanation of why the issuer is requesting a VCAP for the same type of violation • a description of actions, if any, taken to prevent the violation from occurring again.
g	Whether or not the issuer requested a private letter ruling for the bonds for this VCAP's violation. If so, briefly summarize the matters addressed in that private letter ruling request.	
h	Whether or not the issuer has publicly disclosed the VCAP's potential violation (in other words, did issuer disclose via the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (EMMA) or to any state or local taxing jurisdiction that grants tax-advantaged treatment to the issuer's bonds). If so, how was the disclosure made.	
i	If requesting that the IRS consider that another party caused the violation in determining the appropriate resolution: provide information on the other person(s) acts or omissions that gave rise to the violation and describe the circumstances surrounding the violation (including identifying the person(s) whose acts or omissions caused the violation).	
j	Any other relevant information for the VCAP request and resolution.	

Tax Exempt Bonds Voluntary Closing Agreement Program 7.2.3

page 35

Exhibit 7.2.3-2 (12-27-2018)

Examples of Allocating Total Nonqualified Bond Amount to Bond Maturities

Original Bond Issue

Issue Date	Principal Maturities	Coupon	Semiannual Interest	Annual Interest ³	Principal Outstanding
01/01/13					
07/01/13			22,162.50	22,162.50	1,000,000
01/01/14			22,162.50		
07/01/14			22,162.50	44,325.00	1,000,000
01/01/15	120,000	4.00%	22,162.50		
07/01/15			19,762.50	41,925.00	880,000
10/01/15 ¹					
01/01/16	130,000	4.25%	19,762.50		
07/01/16			17,000.00	36,762.50	750,000
01/01/17	150,000	4.25%	17,000.00		
07/01/17			13,812.50	30,812.50	600,000
10/01/17 ²					
01/01/18	170,000	4.50%	13,812.50		
07/01/18			9,987.50	23,800.00	430,000
01/01/19	180,000	4.50%	9,987.50		
07/01/19			5,937.50	15,925.00	250,000
01/01/20	250,000	4.75%	5,937.50	5,937.50	0
Totals	1,000,000		221,650.00	221,650.00	

Footnotes:

¹ Violation Date

² Submission Date

³¹ Interest paid January 1 (accrued during prior calendar year) and July 1 is included in the annual interest each year.

Scenario #1:

Violation Date: 10/01/2015

Submission Date: 10/01/2017

Total Nonqualified Bonds: \$225,000

Exhibit 7.2.3-2 (Cont. 1) (12-27-2018)**Examples of Allocating Total Nonqualified Bond Amount to Bond Maturities**

Date	Nonqualified Principal	Coupon	Semiannual Interest	Nonqualified Semiannual Interest	Nonqualified Annual Interest ⁵
01/01/13	Issue Date				
07/01/13			5,179.69	0.00	0.00
01/01/14			5,179.69	0.00	
07/01/14			5,179.69	0.00	0.00
01/01/15			5,179.69	0.00	
07/01/15			5,179.69	0.00	0.00
10/01/15	Violation Date				
01/01/16			5,179.69	2,589.84 ⁴	
07/01/16			5,179.69	5,179.69	7,769.53 ⁶
01/01/17			5,179.69	5,179.69	
07/01/17			5,179.69	5,179.69	10,359.38
10/01/17	Submission				
01/01/18	63,750 ¹	4.50%	5,179.69	5,179.69	
07/01/18			3,745.31	3,745.31	8,925.00
01/01/19	67,500 ²	4.50%	3,745.31	3,745.31	
07/01/19			2,226.56	2,226.56	5,971.88
01/01/20	93,750 ³	4.75%	2,226.56	2,226.56	2,226.56
Totals	225,000		63,740.63	35,252.34	35,252.34

Footnotes:

¹ \$63,750 = 170,000 * (225,000 / 600,000)² \$67,500 = 180,000 * (225,000 / 600,000)³ \$93,750 = 250,000 * (225,000 / 600,000)⁴ Interest from October 1, 2015 Violation Date, paid January 1, 2016.⁵ Interest paid January 1 (accrued during prior calendar year) and July 1 is included in the annual interest each year.⁶ Interest from October 1, 2015, paid January 1, 2016 and July 1, 2016.

Tax Year	Due Date	Total Interest	Relevant Tax %*	Taxpayer Exposure
2016	4/15/17	7,769.53	29.00%	2,253.16

Tax Exempt Bonds Voluntary Closing Agreement Program 7.2.3

page 37

Exhibit 7.2.3-2 (Cont. 2) (12-27-2018)

Examples of Allocating Total Nonqualified Bond Amount to Bond Maturities

2017	4/15/18	10,359.38	29.00%	3,004.22
2018	4/15/19	8,925.00	27.80%	2,481.15
2019	4/15/20	5,971.88	27.80%	1,660.18
2020	4/15/21	<u>2,226.56</u>	27.80%	<u>618.98</u>
Totals		35,252.34		10,017.70
* Assumes no change in the IRC 3406(a)(1) backup withholding rate or the IRC 1411(a)(1) net investment income tax rate after July 1, 2018.				

Scenario #2:

Violation Date: 10/01/2015

Submission Date: 10/01/2017

Total Nonqualified Bonds: \$650,000

Date	Nonqualified Principal	Coupon	Semiannual Interest	Nonqualified Semiannual Interest	Nonqualified Annual Interest ²
01/01/13	Issue Date				
07/01/13			14,875.00	0.00	0.00
01/01/14			14,875.00	0.00	
07/01/14			14,875.00	0.00	0.00
01/01/15			14,875.00	0.00	
07/01/15			14,875.00	0.00	0.00
10/01/15	Violation Date				
01/01/16			14,875.00	7,437.50 ¹	
07/01/16			14,875.00	14,875.00	22,312.50 ³
01/01/17	50,000	4.25%	14,875.00	14,875.00	
07/01/17			13,812.50	13,812.50	28,687.50
10/01/17	Submission				
01/01/18	170,000	4.50%	13,812.50	13,812.50	
07/01/18			9,987.50	9,987.50	23,800.00
01/01/19	180,000	4.50%	9,987.50	9,987.50	

Exhibit 7.2.3-2 (Cont. 3) (12-27-2018)**Examples of Allocating Total Nonqualified Bond Amount to Bond Maturities**

Date	Nonqualified Principal	Coupon	Semiannual Interest	Nonqualified Semiannual Interest	Nonqualified Annual Interest ²
07/01/19			5,937.50	5,937.50	15,925.00
01/01/20	<u>250,000</u>	4.75%	<u>5,937.50</u>	<u>5,937.50</u>	<u>5,937.50</u>
Totals	650,000		178,475.00	96,662.50	96,662.50

Footnotes:

¹ Interest from October 1, 2015 Violation Date, paid January 1, 2016.

² Interest paid January 1 (accrued during prior calendar year) and July 1 is included in the annual interest each year.

³ Interest from October 1, 2015, paid January 1, 2016 and July 1, 2016.

Tax Year	Due Date	Total Interest	Relevant Tax %*	Taxpayer Exposure
2016	4/15/17	22,312.50	29.00%	6,470.63
2017	4/15/18	28,687.50	29.00%	8,319.38
2018	4/15/19	23,800.00	27.80%	6,616.40
2019	4/15/20	15,925.00	27.80%	4,427.15
2020	4/15/21	<u>5,937.50</u>	27.80%	<u>1,650.63</u>
Totals		96,662.50		27,484.18

* Assumes no change in the IRC 3406(a)(1) backup withholding rate or the IRC 1411(a)(1) net investment income tax rate after July 1, 2018.