

MAX BAUCUS, MONTANA, CHAIRMAN

JOHN D. ROCKEFELLER IV, WEST VIRGINIA  
KENT CONRAD, NORTH DAKOTA  
JEFF BINGAMAN, NEW MEXICO  
JOHN F. KERRY, MASSACHUSETTS  
BLANCHE L. LINCOLN, ARKANSAS  
RON WYDEN, OREGON  
CHARLES E. SCHUMER, NEW YORK  
DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
BILL NELSON, FLORIDA  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE

CHUCK GRASSLEY, IOWA  
ORRIN G. HATCH, UTAH  
OLYMPIA J. SNOWE, MAINE  
JON KYL, ARIZONA  
JIM BUNNING, KENTUCKY  
MIKE CRAPO, IDAHO  
PAT ROBERTS, KANSAS  
JOHN ENSIGN, NEVADA  
MICHAEL B. ENZI, WYOMING  
JOHN CORRYN, TEXAS

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

November 16, 2010

RUSSELL SULLIVAN, STAFF DIRECTOR  
KOLAN DAVIS, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL

Gene Dodaro  
Acting Comptroller General  
Government Accountability Office  
441 G Street, NW,  
Washington, DC 20548

Dear Acting Comptroller General Dodaro:

I am writing you to request that the Government Accountability Office (GAO) provide a report to Congress concerning the Build America Bonds (BABs) program established by the American Recovery and Reinvestment Act (ARRA), more commonly known as the stimulus bill.

As I am sure you are aware, the stimulus bill established BABs as a temporary program that would expire on December 31, 2010. Proponents stated that this temporary BABs program was needed as a means to provide help to state and local governments who may be experiencing difficulty raising funds to finance infrastructure projects due to tight credit markets. BABs, unlike traditional municipal bonds that are tax exempt, provide a much richer subsidy (at a much higher cost to American taxpayers) for state and local governments in the form of a direct federal payment to the issuer of the bond on 35 percent of the interest they pay to the holder of the bond. Critics of BABs have stated that this is another federal bailout for states that overspent their budgets, as was the Federal Medical Assistance Percentage (FMAP) provision in the stimulus bill. As the Ranking Member of the tax-writing Senate Finance Committee, I have a duty to eliminate fraud, waste, and abuse in the BABs program.

With federal tax dollars being handed out with the issuance of these bonds, I have concerns that there is less of an incentive for the issuers of the bonds to seek the best interest rate possible on the bonds and an incentive for bond underwriters, which are Wall Street investment banks, to set higher interest rates and fees. Moreover, state and local entities may be more willing to fund dubious projects so that they can receive checks from the federal government as a result of issuing Build America Bonds. Another concern is that the BABs program may provide a perverse incentive by providing a better deal to states and local governments that have been less fiscally responsible and therefore have a poorer credit rating. This is because entities with a poorer credit rating get a larger federal check than states and local governments that have been more fiscally responsible and therefore have a better credit rating.

My concerns about the BABs program were heightened by a February 2010 report (GAO-10-349) released by your office that looked at several tax provisions in the stimulus bill, which found "that IRS's reporting requirements for BABs are minimal in contrast to requirements for Recovery Act infrastructure and other direct spending projects, even though such projects may be similar." The lack of reporting requirements is very disconcerting given the large volume of

BABs that have been issued. With federal taxpayer dollars on the line, full scale accountability is needed to ensure these tax dollars are being used wisely and in accordance with the law.

Since the release of GAO's February report, several news articles have highlighted the potential abuses of BABs. A May 18, 2010, a Bloomberg Businessweek article reported that the Securities and Exchange Commission (SEC) is examining a \$600 million issuance of Build America Bonds sold by a Chicago agency. Additionally, a June 7, 2010, Wall Street Journal article cites the IRS as expressing concerns that BABs may be being priced incorrectly, increasing the cost of subsidies from American taxpayers.

I request that you conduct a review of the BABs program to shed much needed sunlight on this program. Your review should include, but not be limited to, the following:

- Provide a comprehensive list of all projects that have been funded with BABs, including, but not limited to, the issuer of the bond, the purpose of the bond, the amount issued, the interest rate on the bond, the underwriter(s) of the bond, and the fees paid to the underwriter(s);
- An analysis of the underwriting fees for BABs compared to their alternative, which is municipal bonds, and how the BABs program has impacted the volume of municipal bonds that have been issued;
- An analysis of who primarily benefits from the BABs program, including, but not limited to, what states are the primary beneficiaries and what investment banks have received the largest fees;
- whether some states and/or local governments are using proceeds from the bonds to reduce or close their current budget deficits;
- An update, if available, regarding any SEC investigations concerning BABs;
- A review of actions the IRS has taken or is planning to take in response to its concerns about BABs, including, but not limited to, the examination of direct-pay bond issuers by the IRS' Tax Exempt Bond (TEB) function as announced on October 25, 2010<sup>1</sup>;
- An analysis of any instances of fraud, waste, or abuse that have been observed or any concerns that may exist in the way the law is currently written that unnecessarily leaves the door open for potential fraud, waste, or abuse;
- Lastly, the GAO report (GAO-10-349), referenced above, made several suggestions on actions the IRS could take with respect to BABs to increase transparency and reduce fraud. Has the IRS adopted the GAO recommendations? If not, has any reason been provided by the IRS regarding why the GAO recommendations were not adopted? Are

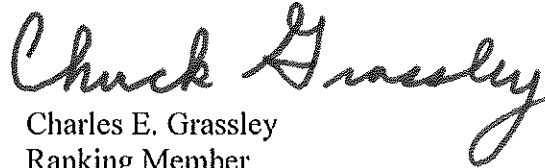
---

<sup>1</sup> See *IRS Promotes Compliance by Direct Pay Bond Issuers*, <http://www.irs.gov/taxexemptbond/article/0,,id=229609,00.html>

there additional measures that the IRS could take, including improvements that could be made in the examination of direct-pay bond issuers by IRS' TEB function.

Thank you in advance for your assistance. If you have any questions regarding this request, please contact Jim Lyons of my staff at (202) 224-4515.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Grassley". The signature is written in black ink and is positioned to the right of the typed name.

Charles E. Grassley  
Ranking Member