

## Part III - Administrative, Procedural, and Miscellaneous

### Qualified Forestry Conservation Bonds

Notice 2008–70

#### **SECTION 1. PURPOSE**

This Notice solicits applications for authority to issue qualified forestry conservation bonds (QFCBs) under section 54B(c) of the Internal Revenue Code (the “Code”). There is a national limitation of \$500,000,000 on the volume of QFCBs that may be authorized (the “QFCB National Limitation”). Applications must be submitted in accordance with this Notice.

#### **SECTION 2. INTRODUCTION**

Section 15316 of the Food, Conservation, and Energy Act of 2008, Public L. No. 110-246, 122 Stat. 1651 (2008) (the “Act”), added sections 54A and 54B to the Code. Section 54A sets forth general provisions applicable to qualified tax credit bonds and provides that the term “qualified tax credit bond” means a QFCB that is part of an issue that meets the requirements in section 54A(d)(2), (3), (4), (5), and (6). Section 54B(a) defines a QFCB and authorizes the issuance of QFCBs for one or more qualified forestry conservation purposes. No more than \$500,000,000 of QFCBs may be issued. Under section 54B(d), the Secretary of the Treasury (or his or her delegate) must make allocations of the QFCB National Limitation among qualified forestry conservation purposes in the manner that the Secretary determines is appropriate to ensure that all of

the QFCB National Limitation is allocated before the date that is 24 months after the date of enactment of the Act. The Internal Revenue Service (IRS) has responsibility for making these allocations in coordination with the United States Forest Service (USFS) and relevant State authorities.

### **SECTION 3. BACKGROUND AND GENERAL REQUIREMENTS**

#### **(1) Qualified Tax Credit Bonds**

Section 54A(a) provides that a taxpayer that holds a qualified tax credit bond on one or more credit allowance dates of the bond during the taxable year shall be allowed a credit against the taxpayer's income tax for the taxable year equal to the sum of the credits determined under section 54A(b).

The credit amount for any credit allowance date is 25 percent of the annual credit determined with respect to the bond. The annual credit is determined by multiplying the applicable credit rate by the outstanding face amount of the bond. The applicable credit rate for the bond is the rate that the Secretary estimates will permit the issuance of the qualified tax credit bond with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

Section 54A(d) provides that a qualified tax credit bond means a QFCB that is part of an issue that meets the requirements of paragraphs (2) through (6) of section 54A(d). Paragraphs (2), (3), (4), (5), and (6) set forth requirements related to expenditures, reporting, arbitrage, maturity, and conflicts of interest, respectively.

Other definitions are set forth in section 54A(e). For example, the term "credit allowance date" means March 15, June 15, September 15, and December 15 of each

year, as well as the last day on which the bond is outstanding. The term “available project proceeds” means the excess of the proceeds from the sale of the issue over the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds) plus the investment return from any investment of the excess.

Section 54A(f) provides that the credit amount determined in section 54A(a) is treated as interest that is includable in gross income.

Under section 54A(g), if an S corporation or a partnership allocates to its shareholders or partners (as the case may be) a credit allowed by section 54A, then the allocation is treated as a distribution.

Section 54A(i) permits, under regulations to be issued by the Secretary, the separation of the ownership of a qualified tax credit bond and the entitlement of the credit with respect to that bond. In the case of any such separation, the credit is allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond, and the rules of section 1286 apply to the qualified tax credit bond as if it were a stripped bond and to the credit under section 54A as if it were a stripped coupon.

## **(2) Qualified Forestry Conservation Bonds**

Section 54B(a) defines a QFCB as any bond issued as part of an issue if—

(a) The bond is issued by a qualified issuer;

(b) The issuer designates the bond for purposes of section 54B (under section 54B(b), the maximum amount of QFCBs that may be designated by any issuer shall not exceed the limitation amount allocated to that issuer by the Secretary); and

(c) 100 percent of the available project proceeds of the issue are to be used for one or more qualified forestry conservation purposes.

*Qualified issuer.* Under section 54B(f), a State or any political subdivision or instrumentality thereof, or a 501(c)(3) organization (as defined in section 150(a)(4)), may be a qualified issuer of a QFCB.

*Limitation on the amount of QFCBs designated.* Section 54B(c) sets forth the QFCB National Limitation for the aggregate amount of bonds that may be designated under section 54B(a). No more than \$500,000,000 of QFCBs may be designated under section 54B(a). Under section 54B(d), the Secretary shall make allocations of the QFCB National Limitation among qualified forestry conservation purposes in such manner as the Secretary determines appropriate so as to ensure that all of the QFCB National Limitation is allocated before the date that is 24 months after the date of the enactment of the Act. The Secretary shall solicit applications for allocations of the National Limitation not later than 90 days after the date of enactment of the Act.

*Qualified forestry conservation purpose.* Under section 54B(e) the term “qualified forestry conservation purpose” means the acquisition by a State or any political subdivision or instrumentality thereof, or by a 501(c)(3) organization (as defined in section 150(a)(4)), from an unrelated person of forest and forest land meeting all the following qualifications:

- Some portion of the land acquired must be adjacent to USFS Land. For purposes of this qualification, a parcel of land is adjacent to USFS Land if it—
  - Touches any unit of the National Forest System as defined in 16 U.S.C. 1609(a);

- Shares a common boundary with any unit of the National Forest System, or
- Is located within the boundaries of a unit of the National Forest System.

If at least one portion of the land acquired is adjacent to USFS Land, it is irrelevant that other non-contiguous acquired parcels are not adjacent to it.

- The amount of acreage acquired must be at least 40,000 acres.
- All of the land must be subject to a native fish habitat conservation plan approved by the United States Fish and Wildlife Service (USFWS).
- The person acquiring the land must satisfy the disposition requirement in section 54B(e)(2).

*Disposition requirement.* The Code establishes a two-part requirement regarding the disposition of the acquired land. Section 54B(e)(2) provides, “At least half of the land acquired must be transferred to the United States Forest Service at no net cost to the United States, and not more than half of the land acquired may either remain with, or be conveyed to, a State.” The first part of this requirement means that the qualified issuer that acquired the land must transfer to the USFS at least half of the land acquired. The second part means that all of the acquired land that is not transferred to the USFS (land that necessarily is no more than half of the land acquired) either (a) if the qualifying issuer is not a State, must be transferred to one or more States, or (b) if the qualifying issuer is a State, must be retained by that State or conveyed to one or more other States. (For purposes of this requirement, “the land acquired” or “the acquired land” means land that the qualified issuer acquired using proceeds derived from issuance of the bonds or from receipt of the refund of the deemed payment, as described below.)

If the qualified issuer is not a State, the USFS and any State(s) involved may consult with each other as to the identification of land that the qualified issuer proposes to transfer to each of them. If the USFS and the State(s), however, do not agree, requests for allocation that correspond to the preferences of the USFS are expected to be favored. The transfers to the USFS and, if applicable, to one or more States must occur not longer after the qualified issuer acquires the land than is prescribed by the deadlines in Section 6(3)(e)(iii) of this Notice.

The requirement that the transfer to the USFS be made “at no net cost to the United States” means that the transferor must cover all costs directly incident to the transfer of the land to the USFS (for example, any survey costs, title insurance, transfer taxes, recordation fees, etc.), but not indirect costs to the Department of Agriculture such as USFS salary and overhead and expenses for travel, legal review, and clearance.

*Election to receive cash instead of using the allocation to designate QFCBs.* Under section 54B(h)(1), if a qualified issuer receives an allocation of the QFCB National Limitation, then, without regard to whether the issuer is subject to tax under Chapter 1 of the Code, the issuer may elect to be treated as having made a payment (the “deemed payment”) against that tax, for the taxable year preceding the taxable year in which the allocation is received, in an amount equal to 50 percent of the amount of the allocation. Under section 54B(h)(2)(A), the Secretary shall not use the deemed payment of tax as an offset or credit against any tax liability of the issuer but shall refund the deemed payment to the issuer. Under section 54B(h)(2)(B), except as provided in section 54B(h)(3), the

deemed payment shall not be taken into account in determining any amount of interest under the Code.

Section 54B(h)(3) provides that an election to be treated as making a deemed payment shall not take effect unless the qualified issuer certifies to the Secretary that any payment of the tax refunded to the issuer will be used exclusively for one or more qualified forestry conservation purposes.

*Failure to use all of the refund or all of available project proceeds for a qualified forestry conservation purpose.* If the qualified issuer fails to use any portion of the refund for a qualified forestry conservation purpose (either because the issuer fails to purchase land described in section 54B(e) or because the issuer fails to dispose of the acquired land in a manner that satisfies section 54B(e)(2)), then the issuer shall be liable to the United States in an amount equal to that portion, plus interest at the overpayment rate under section 6621, for the period from the date the portion was refunded to the date the amount is paid to the United States. Any such amount shall be assessed and collected in the same manner as tax imposed by Chapter 1, except that subchapter B of Chapter 63 (relating to deficiency procedures) shall not apply in respect of such assessment or collection.

If a qualified issuer issues QFCBs and, within the expenditure period defined by section 54A(d)(2)(B)(ii) and (iii), fails to use 100 percent of the available project proceeds to acquire land described in section 54B(e), some of the bonds must be redeemed within 90 days after the end of the expenditure period. The bonds to be redeemed are nonqualifying bonds determined in the same manner as under section 142. See

section 54A(d)(2)(B)(i). If a qualified issuer issues QFCBs and uses some or all of the available project proceeds to acquire land described in section 54B(e) but some portion of the land so acquired is not disposed of in a manner that satisfies section 54B(e)(2), then, in the same manner as under section 142, a portion of the QFCBs is treated as nonqualifying, and the issuer is treated as if the tax credits allowed under section 54A with respect to the non-qualifying portion of the QFCBs are a refund of the deemed payment under section 54B(h) that was not used for a qualified forestry conservation purpose. The treatment of such a refund is set forth in section 54B(h)(3)(A) (last two sentences). This treatment also applies to all tax credits allowed with respect to nonqualifying QFCBs. For this purpose, each credit allowance date is treated as the beginning of a period for which overpayment interest is to be assessed.

Just as the amount of available project proceeds includes investment return from investment of the net proceeds from the sale of an issue, in the case of a qualified issuer that has made the election under section 54B(h), the amount that must be used for qualified forestry conservation purposes includes any investment return from investment of the money received as a refund. The requirements, however, that all available project proceeds (including any investment return), or the entire refund (including any investment return), must be used for qualified forestry conservation purposes is not violated by use of some or all of the investment return to pay for one or more surety bonds required by Section 6(3)(e)(vi) of this Notice.

Between the time a qualified issuer receives either proceeds from the sale of QFCBs or a refund of a deemed payment under section 54B(h) and the time the land



described in section 54B(e) is acquired, the qualified issuer must give a surety bond that complies with 31 USC 9304–9308. The bond must cover the full amount of the proceeds (or the refund) that was received by that qualified issuer and all investment return on those funds. Alternatively, as is provided by 31 CFR Part 225, the qualified issuer may pledge Government obligations (securities whose principal and interest are unconditionally guaranteed by the United States Government) in lieu of a surety bond. If that is done, it is permissible for the qualified issuer to use the proceeds (or the refund) to acquire the Government obligations. No other alternative will be acceptable.

#### **SECTION 4. APPLICATION PROCESS AND DEADLINES**

Because each applicant for an allocation of the QFCB National Limitation must address various requirements administered by the IRS, by the USFS, and potentially by one or more States, the process described below is designed to support applicants in efficiently completing their applications. Except to the extent waived by the applicant, all information that the applicant provides in the course of the application process to the IRS, to the USFS, or to any State is confidential tax return information within the meaning of section 6103. If some of the land acquired will be transferred to one or more States (and thus application information will have to be given to that State or those States), the applicant should notify the IRS immediately. Although the process contains deadlines for some of its stages, applicants that have completed one stage before the deadline are encouraged immediately to embark on the next. Nothing in this process prevents some applicants from submitting their Final Applications even before the due date for other applicants' Expressions of Interest. If all Final Applications are submitted substantially

before the deadline below, the IRS and the USFS intend that allocations will be made substantially before the statutory deadline in section 54B(d)(1).

The application process consists of the following five stages:

- *Preliminary Consultation.* Both the USFS and States have specific requirements that must be satisfied in order for land to be transferred to them. In particular, at a minimum, land to be transferred to the USFS must be by general warranty deed or the functional equivalent under applicable State law, with title otherwise acceptable to the Department of Agriculture, Office of the General Counsel, and in conformity with the title standards of the U.S. Attorney General. All lands conveyed to the USFS must be managed pursuant to the laws and regulations governing the National Forest System. Applicants should immediately begin consultations with the USFS and with any relevant States regarding the applicable requirements, including requirements regarding the condition of the land at the time of transfer in light of timber harvesting or other land management activities occurring prior to transfer. (For purposes of this Notice, the term “applicant” includes potential applicants.) These consultations should also address how the qualified forestry conservation projects to be included in an application can be structured in ways that maximally advance the statutory purposes of section 54B.
- *Expression of Interest.* To enable the IRS, the USFS, and any affected State to determine the resources that must be dedicated to the allocation process, all persons who may apply for an allocation to issue QFCBs must file an Expression of Interest no later than October 21, 2008. The signed original of the Expression of

Interest and a copy must be filed with the IRS, and two additional copies must be sent to the USFS, as well as to each relevant State, if any of the property will be conveyed to a State or States. See Section 17, below, for instructions on where to file. Section 5 of this Notice describes the requirements for the Expression of Interest.

- *Pro Forma application.* The various government agencies need sufficient time to determine whether the proposed land acquisitions and dispositions satisfy all applicable requirements. Although prior informal consultation generally will enable applicants to anticipate most of the requirements that they must meet, materials reflecting a complete application are needed for government officials to perform a thorough evaluation. The due date for the *Pro Forma* application is designed to provide applicants with ample opportunity to revise and refine their applications to address any additional concerns raised and suggestions presented. The complete *Pro Forma* application must be filed with the IRS, the USFS, and any affected State not later than February 18, 2009. Section 7 of this Notice describes the requirements for the *Pro Forma* application.
- *Draft of Final Application.* Once all issues have been resolved, a complete draft of the Final Application must be provided to the USFS and to all States involved, for them to provide the required certifications. At this stage of the process, there should have been sufficient consultation and exchange of information so that the USFS and the States have the limited task of confirming that the materials submitted for certification conform in all respects to pre-existing understandings with

the applicants. After that confirmation, the USFS and the States will provide to the applicants the certifications that must be incorporated into the applicant's Final Application. The draft of the Final Application must be filed with the USFS and any affected State not later than March 1, 2010, and a copy must simultaneously be filed with the IRS. Section 8 of this Notice describes the requirements for the draft of the Final Application.

- *Final Application.* The filing of the Final Application is an applicant's last step in establishing its eligibility for an allocation of the QFCB National Limitation. If the applicant chooses to make the election under section 54B(h), that election is made as part of the Final Application. The original of the Final Application must be filed with the IRS not later than April 1, 2010, and copies must simultaneously be filed with the USFS and all affected States. Section 6 of this Notice describes the requirements for the Final Application. The allocations of the QFCB National Limitation will be made not later than the earlier of—
  - ▣ 24 months after the date of enactment of the Act; or
  - ▣ 60 days after the date on which all applicants have filed their Final Applications.

## **SECTION 5. EXPRESSION OF INTEREST**

Each Expression of Interest in applying for an allocation of some or all of the QFCB National Limitation must comply with this Section 5.

(1) *Identification of the applicant.* The Expression of Interest must identify the applicant by name, address, and taxpayer identification number. There must be sufficient

information to establish that the applicant is a qualified issuer within the meaning of section 54B(f).

(2) *Contact person.* The Expression of Interest must designate one or more persons with knowledge regarding the contemplated application (including the proposed acquisition and transfer of land) whom the applicant authorizes to discuss these matters with the IRS, the USFS, and any relevant State authorities. This designation must include the designee's name, title, telephone number, fax number, and mailing address. If a designee is not an official or officer of the applicant, the Expression of Interest must include an executed Form 2848 (*Power of Attorney and Declaration of Representative*) that authorizes the IRS, the USFS, and all affected States to discuss with the designee any taxpayer information specifically relating to the potential application, acquisition, and transfer.

(3) *General description of the contemplated qualified forest conservation purpose.* The Expression of Interest must include a general description of the land proposed to be acquired, the portions of the land that are being considered for transfer to the USFS, and the portions that are being considered for retention by the applicant, if the applicant is a State, or for transfer to one or more States. The Expression of Interest must also identify the specific habitat conservation plan approved by the USFWS that applies to the land proposed to be acquired. (The plan must be in effect by the time the Expression of Interest is filed.)

(4) *Declaration and signature.* The declaration described in Section 16 of this Notice must be included in the Expression of Interest, and an authorized official or officer of the potential applicant must sign the document.

## **SECTION 6. FINAL APPLICATION**

Each Final Application for an allocation of the QFCB National Limitation must comply with this Section 6.

(1) Applicant(s). An application may be filed either by a single applicant or by more than one applicant. (For additional requirements governing applications jointly filed by multiple applicants, see Section 6(4) of this Notice.) Each applicant for an allocation of the QFCB National Limitation must be—

(a) A State or any political subdivision or instrumentality thereof; or

(b) A 501(c)(3) organization (as defined in section 150(a)(4)).

The application must demonstrate clearly that each applicant meets this requirement. For this purpose, standards under section 103 of the Code determine whether an entity is a political subdivision or instrumentality. The applicant must have timely filed the Expression of Interest described in Sections 4 and 5 of this Notice.

(2) Dedication of bond proceeds, or of refund of deemed payment, to qualified forestry conservation purposes. The applicant must certify that, for each issue of its bonds that may be designated pursuant to an allocation of any portion of the QFCB National Limitation and for any amount of the allocation for which an election under section 54B(h) is being made, 100 percent of the available project proceeds of the issue (including any investment return), or 100 percent of the refund of the deemed payment (including any

investment return), will be used for one or more qualified forestry conservation purposes. (The expenditure requirement in the preceding sentence is not violated by use of some or all of the investment return to pay for one or more surety bonds required by Section 6(3)(e)(vi) of this Notice.)

(3) Certifications and additional information. Each application must contain the information and certifications by the applicant required by this subsection (3).

(a) Requirements governing the land to be acquired. With respect to the land to be acquired with the available project proceeds of each issue (or, if applicable, with the refund of the deemed payment), each application must contain a certification by the applicant that includes the following statements and information:

(i) The land is forest and forest land that the applicant has established is suitable for conveyance to the USFS or the State.

(ii) Some portion of the land to be acquired is adjacent to USFS land (within the meaning set forth under “Qualified forestry conservation purpose” in Section 3(2)(c) of this Notice).

(iii) All of the land is subject to a native fish habitat conservation plan approved by the USFWS. The conservation plan approved by the USFWS must accompany the application.

(iv) The amount of acreage to be acquired is at least 40,000 acres.

(v) The application must set forth a specific date, no later than three years after issuance of the bonds or, if applicable, after receipt of the refund of the deemed payment,

on or before which the applicant expects to acquire the land. See Section 13(1) of this Notice regarding the procedure for requesting an extension of this three-year deadline.

(b) Land description and location. The application must specifically describe the land to be acquired, with an emphasis on characteristics that qualify the land as forest or forest land. The description must include the location of the land to be acquired and demonstrate that the land is adjacent to USFS land (within the meaning set forth under “Qualified forestry conservation purpose” in Section 3(2)(c) of this Notice). United States Geological Survey maps for all quadrants containing any of the land must be included with the application, and the land must be clearly and precisely identified on the map or maps. Legal descriptions must be depicted on a map or plat of a scale of 1:24,000 or larger unless otherwise allowed by the USFS.

(c) Current owner (or owners) of the land. The application must state from whom the land is to be acquired and must certify that no such current owner is related, directly or indirectly, to the applicant that will purchase the land.

(d) Acquisition cost and other financial arrangements. The application must disclose the acquisition cost of the land to be acquired with the QFCB proceeds (or, if applicable, the refund of the deemed payment).

(e) Land transfer. The application must contain a commitment by the applicant that at least one-half of the land to be acquired will be transferred to the USFS by general warranty deed, or the functional equivalent under applicable State law, at no net cost to the United States, and that the entire remainder either will be conveyed to one or more States or, if the applicant is a State, will remain with the applicant.



(i) The application must certify the applicant's intent to transfer the land to the USFS and, if applicable, to the affected State or States.

(ii) With respect to each transferee, the application must contain—

- A legal description of the land to be transferred in at least the level of detail set forth in Section 6(3)(b) of this Notice;
- Copies of any land surveys;
- A description of the state of the title of the land to be transferred;
- A statement whether any of the land to be transferred is, or after transfer will be, subject to liens, easements, or other encumbrances and, if so, both a detailed description (including thorough documentation) of all such burdens and a disclosure whether any of those burdens is expected to remain after the land is transferred (in particular, the application must disclose any rights or reservations, including without limitation any contractual rights to be retained on the land by the applicant or any third party);
- A statement whether any of the land contains toxic, hazardous, or other noxious materials that have the potential to impair enjoyment of the land to be transferred or to subject the transferee to liability; and
- Any other information or documentation requested by that transferee.

(iii) The application must describe in detail the applicant's commitment to satisfying the Disposition Requirement, described above in Section 3(2), and to meeting the deadlines in this Section 6(3)(e)(iii), including the following: With respect to each portion of the land acquired (except for portions that are going to be retained by the applicant if the

applicant is a State), either paragraph (A) or paragraph (B) of this Section 6(3)(e)(iii) must be satisfied not later than six months after the completion of the acquisition of the land.

- (A) That portion of the acquired land has been transferred to the ultimate recipient of that portion (the USFS or a State);<sup>1</sup> or
- (B) The following two events have occurred—
  - The applicant and the ultimate recipient of that portion of the land (the USFS or a State) have entered into a contract that satisfies Section 6(3)(e)(iv) and is effective under State or Federal law immediately to vest in the ultimate recipient equitable title to that portion of the land; and
  - That contract has been appropriately recorded or referenced in all land records for that portion of the land.

See Section 13(2) of this Notice regarding the procedure for requesting an extension of this six-month deadline.

- (iv) At a minimum, the contract described in Section 6(3)(e)(iii)(B) must —
  - Specify the date by which the portion of the acquired land to which the contract refers will be completely transferred to the ultimate recipient;

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<sup>1</sup> As is stated elsewhere in this Notice, transfers to the USFS must be by a general warranty deed, or the functional equivalent under applicable State law, with title otherwise acceptable to the Department of Agriculture, Office of the General Counsel, and in conformity with the title standards of the U.S. Attorney General. Any transfer to a State must meet the analogous requirements under State law.

- Prescribe the title requirements of the land to be transferred, including requirements for abstracts of title or title reports by a title insurance company;
- Describe requirements for the condition of the land at the time of that transfer to the ultimate recipient including any environmental documentation that the USFS may require pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.) or that a transferee State may require pursuant to its requirements for land to be transferred to it;
- Prescribe standards for land management by the applicant between the time it transfers equitable title to the ultimate recipient and the time it completely transfers the land to the ultimate recipient; and
- Contain such other terms and conditions as the USFS or State, as appropriate, may require.

(v) Each of the following constitutes a failure to use the corresponding amount of available project proceeds (or the corresponding amount of the refund of the deemed payment) for a qualifying forestry conservation purpose within the meaning of section 54B(e). As such, each produces the consequences, as appropriate, that are described in section 54A(d)(2)(B) of the Code, section 54B(h)(3)(A) of the Code, and Section 3(2) of this Notice.

- (A) Failure to satisfy Section 6(3)(e)(iii)(A) or (B) before the expiration of the six-month deadline (taking any extensions into account); or

(B) Failure of a qualified issuer to consummate timely all land transfers that were promised in one or more contracts that were intended to satisfy Section 6(3) and Section 6(3)(e)(iv) of this Notice. (Whether a transfer is timely is determined taking into account any extensions obtained pursuant to Section 13(3) of this Notice.)

- Failure timely to transfer land to the USFS or to a State is not excused on the grounds that the intended recipient refuses to accept the proposed transfer because, in the intended recipient's sole discretion, the proposed transfer for any reason does not satisfy the criteria that apply to the intended recipient at the time of the proposed transfer for accepting a transfer of land.
- See Section 13(3) of this Notice for a procedure to request an extension of time for consummating a transfer that was promised in a contract that was intended to satisfy Section 6(3)(e)(iii)(B) and Section 6(3)(e)(iv) of this Notice.
- See Section 14 of this Notice for a procedure for transferring Replacement Land to the USFS or to a State in partial satisfaction of the requirement in section 54B(e)(2).

(vi) If any of the land covered by a contract described in Section 6(3)(e)(B) of this Notice is scheduled to be transferred to the USFS (or, if applicable, to a State), more than three years after the execution of the contract, then the qualified issuer must obtain a surety bond acceptable to the Treasury Department to cover satisfaction of any possible

liability from a failure by that qualified issuer to transfer the promised land. (The qualified issuer may also satisfy this bonding requirement by providing a bond that is secured with Government obligations. See 31 CFR Part 225.) The amount of the qualified issuer's bond must be at least five percent of the portion of the available bond proceeds (or, if applicable, of the refund of the deemed overpayment) that is allocable to the qualified issuer's acquisition of the land the transfer of which under the contract is scheduled for more than three years after the execution of the contract. The amount of bond may be reduced from time to time as the qualified issuer's conveyances of land to the USFS (or a State) reduce the portion of the available bond proceeds (or, if applicable, of the refund of the deemed overpayment) that is allocable to the qualified issuer's acquisition of the land the transfer of which under the contract has not yet occurred.

Alternatively, the qualified issuer may reduce or eliminate the amount of this required surety bond if the qualified issuer posts sufficient appropriate land as collateral by deed of trust or by conveyance in escrow in favor of the United States. The USFS must determine, taking into account all of the land's attributes, that the land proposed to be used as collateral will provide effective protection for the interests of the United States. If the IRS and the USFS approve the use of that land as collateral for this purpose, the amount of the required bond shall be reduced by one half of the estimate of value by the USFS for the land that is proposed to be used as collateral. (Thus, if the value of the land used as collateral is at least twice the amount of the required bond, the need for a surety bond is eliminated.) The USFS need not conduct a formal appraisal of any property for any determination under this provision. The collateral may be partially released from time

to time as conveyances of land to the USFS (or a State) reduce the amount of the surety bond required.

(f) Certification by the United States Forest Service. The application must be accompanied by a signed statement from the USFS—

(i) Certifying that the land to be acquired satisfies the requirements in Section 6(3)(a)(i) through (iv) of this Notice;

(ii) Confirming that the USFS is willing to accept the land proposed for transfer in the application; and

(iii) Containing any other comments the USFS has with respect to the information provided by the applicant.

USFS confirmation of a willingness to accept the offered land does not waive any requirement for conveyance of acceptable title or remediation of hazardous substances, or any other requirement of federal land acquisition.

(g) Certification of Affected State or States. With respect to any State to which a portion of the acquired property is to be transferred, a statement signed by an authorized State official confirming that the State is willing to accept the land described in the application proposed to be transferred to the State must accompany the application. Any such confirmation by a State of its willingness to accept the offered land does not waive any requirement for conveyance of acceptable title or remediation of hazardous substances, or any other requirement of land acquisition under the law or policies of the State.

(4) Applications filed jointly by more than one applicant. If an application is filed jointly by more than one applicant—

- Each applicant must satisfy the requirements set forth in Section 6(1) of this Notice;
- Each applicant must make the certification described in Section 6(2) of this Notice;
- Each such proposed use of bond proceeds, or of the refund of the deemed payment, separately must satisfy the criteria to be a qualified forestry conservation purpose;
- The various qualified forestry conservation purposes for which the application requests allocations must be consistent and complementary with each other; and
- The aggregate allocations that the application requests for all joint applicants must be no more than the QFCB National Limitation.

(5) Election under section 54B(h). Any election under section 54B(h) must be included with the Final Application. See Section 11 of this Notice.

(6) Declaration and signatures. The declaration described in Section 16 of this Notice must be included in the Final Application, and an authorized official or officer of each applicant must sign the application.

## **SECTION 7. PRO FORMA APPLICATION**

A *Pro Forma* application is similar to a Final Application with the following differences:

- In lieu of making all of the required certifications, the applicant may describe the certifications that the applicant in good faith expects to make as part of the Final Application but that the applicant cannot yet make. If the applicant does not yet have sufficient information to make a certification, the applicant must describe the additional information it needs and how it intends to obtain that information.
- If the applicant does not have sufficient information satisfactorily to complete the items described in Section 6(3)(a) through (e) of this Notice, the applicant must provide the required information that is in its possession and must describe both whatever additional information is required by section 54B, by this Notice, by the USFS, or by any affected State and how the applicant intends to obtain that information.
- The certifications required by Section 6(3)(f) and Section 6(3)(g) are not required.
- An executed election under section 54B(h) need not be included, but the applicant must state whether it intends to make the election.

## **SECTION 8. DRAFT OF FINAL APPLICATION**

A draft of the Final Application is similar to a Final Application with the following difference:

- The certifications required by Section 6(3)(f) and Section 6(3)(g) are not required.



**SECTION 9. COORDINATION WITH FEDERAL AND STATE AGENCIES**

(1) The IRS may consult with the USFS, the USFWS, and any State containing any of the land to be acquired.

(2) If the IRS receives applications for aggregate allocations that are in excess of the QFCB National Limitation or competing applications not all of which can be fulfilled (for example, because they relate in whole or in part to the same land), allocations will be made in a manner consistent with the recommendations of the USFS.

**SECTION 10. CONSENT TO DISCLOSURE AND TO USE OF INFORMATION**

(1) In order to provide the public with information on how the IRS has allocated the QFCB National Limitation, to disclose the resulting benefits to the USFS and to one or more States, and to facilitate oversight of the QFCB program, the IRS intends to publish the results of the allocation process. The published information will identify the specific allocations awarded and the successful applicants' uses of the resulting funds.

Section 6103 requires consent for the IRS to disclose the return information with respect to an applicant to which an allocation has been awarded. Therefore, the IRS requests that each applicant submit with its application a separate document, in the form set forth in Appendix A, consenting to the public disclosure by the IRS of the name of the applicant, the amount of the allocation, and certain other information, including a description (including the location) of the land to be acquired with the proceeds of QFCBs (or, if applicable, the refund of the deemed payment) and the disposition of the land so acquired. An authorized official of the applicant must sign the consent. An applicant is not required to provide this consent in order to receive an allocation. The IRS will not publish

any return information with respect to applications that are not awarded an allocation of the QFCB National Limitation.

(2) In order for the USFS or the State to which land is transferred under section 54B to manage the land, the applicant must consent for the USFS or State, as applicable, to retain and make use of the information described in Appendix B that the applicant provided about the land either during the application process or in connection with the transfer of land or negotiating the contract to transfer land. The applicant is required to provide this consent, in the form set forth in Appendix B, in order to receive an allocation.

#### **SECTION 11. ELECTION TO TREAT HALF OF THE ALLOCATION AS PAYMENT OF TAX**

In lieu of issuing bonds pursuant to an allocation of some of the QFCB National Limitation, an applicant may elect to treat 50 percent of any such allocation to it as a deemed payment of a tax, which the IRS must then refund to the applicant.

See section 54B(h). Any such election must be included with the Final Application but must be set forth in a document separate from the application. The election document must contain also—

- A certification by the electing applicant that, within three years of the receipt of the refund, the applicant will use the deemed payment, exclusively for the qualified forestry conservation purpose described in the application; and
- A certification by the electing applicant that between the time the applicant receives the refund and the time it acquires the land, it will comply with the last paragraph of Section 3 of this Notice.

In describing the amounts to be used for qualifying forestry conservation purposes, the application must be consistent with whether the requested allocation will be used to issue bonds or to qualify for a refund of a deemed payment. Whether an applicant makes the election will affect the amount of funds available for the purchase of land described in section 54B(e). Because the minimum amount of land to be transferred to USFS is “one half of the land acquired,” making the election will affect the amount of that minimum transfer but will not affect its fractional relation to the amount of land acquired.

## **SECTION 12. ISSUANCE OF THE QFCBS**

If an applicant has not made the election described in Section 11 of this Notice and receives an allocation of the QFCB National Limitation, the applicant must issue the bonds within one year of the allocation, unless an extension of time has been granted under Section 13(1) of this Notice.

## **SECTION 13. EXTENSIONS OF TIME**

(1) *Time to issue QFCBs.* Pursuant to a written request (not a request for a letter ruling), upon a showing of good cause, the IRS may provide a reasonable extension of the one-year period within which bonds must be issued. Any request for an extension must be sent to the address set forth in Section 17(1)(A) of this Notice.

(2) *Time to acquire and transfer land.* Pursuant to a written request (not a request for a letter ruling), following issuance of the bonds (or if applicable, receipt of the refund of the deemed payment), upon a showing of good cause, the IRS may provide a reasonable extension of the three-year period described in Section 6(3)(a)(v) or the six-month period

described in Section 6(3)(e)(iii). The original of any request for an extension must be sent to the address set forth in Section 17(1)(A) of this Notice, and copies must also be sent to the USFS and to any State to which any of the land to be acquired is planned to be transferred.

(3) *Extension of time to transfer land under a contract intended to satisfy Section 6(3)(e)(iii)(B) and Section 6(3)(e)(iv) of this Notice.* If a qualified issuer and the USFS (or a State, as applicable) agree to modify a contract that was intended to satisfy Section 6(3)(e)(iii)(B) and Section 6(3)(e)(iv) of this Notice and if the agreed-to modification would create no more than a reasonable delay in the time when land governed by the contract must be transferred to the USFS (or to the State), then, pursuant to a written request (not a request for a letter ruling), and upon a showing of good cause, the IRS may agree to an extension of the deadlines contained in the contract. The original of any request for such an extension must be sent to the address set forth in Section 17(1)(A) of this Notice, and copies must also be sent to the other party to the contract (to which any of the land required to be transferred).

#### **SECTION 14. TRANSFER OF REPLACEMENT LAND IN PARTIAL SATISFACTION OF SECTION 54B(e)(2) AND THE REQUIREMENTS OF THIS NOTICE**

(1) *Transfer of Replacement Land treated as transfer of Unacceptable Land for purposes of satisfying the Disposition Requirement.* If land that is required to be transferred to the USFS (or, if applicable, to a State) is not so transferred because it is Unacceptable Land (within the meaning of Section 14(2)(a) of this Notice) and if the qualified issuer instead transfers to the USFS or the State land that is Replacement Land

with respect to the Unacceptable Land (within the meaning of Section 14(2)(b) of this Notice), then the transfer of the Replacement Land is treated like a transfer of the Unacceptable Land for purposes of satisfying the requirements of section 54B(e)(2) and this Notice.

(2) *Definitions.*

(a) *Unacceptable Land.* The term “Unacceptable Land” means land that is required to be transferred to the USFS or to a State under the requirements of section 54B and this Notice but that the intended recipient will not accept because of—

- Defects in title—
  - ▣ Of which the qualified issuer was unaware at the time it acquired the land; or
  - ▣ Of which the qualified issuer was aware at the time it acquired the land, which it reasonably believed that it could remedy, but which were not remedied by the qualified issuer’s reasonable efforts; or
- Conditions that—
  - ▣ Existed at the time the qualified issuer acquired the land but of which the qualified issuer was then unaware; or
  - ▣ Did not exist at the time the qualified issuer acquired the land and were not subsequently caused by the qualified issuer or by any person that was related to, or acting on behalf of, the qualified issuer.  
  
(If an unrelated person engages in activities on the land with the permission of the qualified issuer—regardless whether the qualified

issuer is legally required to allow some form of those activities—that person is treated for this purpose as acting on behalf of the qualified issuer.)

(b) *Replacement Land.* With respect to particular Unacceptable Land, the term “Replacement Land” means land such that—

- If the qualified issuer had acquired the Replacement Land instead of acquiring the Unacceptable Land, the acquisition would have satisfied the requirements of section 54B(e) (other than section 54B(e)(2));
- The total acreage of the land is no less than the total acreage of the Unacceptable Land;
- The intended recipient of the Unacceptable Land explicitly determines that the land is no less desirable than the Unacceptable Land would have been if the cause for its unacceptability did not exist; and
- The intended recipient specifically consents to accept the land in lieu of the Unacceptable Land.

(3) *Application procedure.* If a qualified issuer and the USFS (or a State, as applicable) agree to treat certain land as Replacement Land with respect to certain Unacceptable Land, then, pursuant to a written request (not a request for a letter ruling), and upon a showing of good cause, the IRS may agree to treat the land as Replacement Land. The original of any request for this treatment must be sent to the address set forth in Section 17(1)(A) of this Notice, and copies must also be sent to the other party to the contract (to which any of the land is required to be transferred). The request must include

complete documentation establishing that both the alleged Unacceptable Land and the requested Replacement Land meet the requirements of this Section 14.

## **SECTION 15. CERTIFICATIONS OF ACQUISITION AND TRANSFER OF LAND**

Each of the following certifications must be submitted to the IRS at the address set forth in Section 17(1)(B) of this Notice:

(1) Not later than one month after the expiration (taking into account any extensions) of the three-year period described in Section 6(3)(a)(v), the applicant must certify that it has acquired the land described in the application. The certification must describe in detail how the proceeds from the sale of the QFCBs (or the refund of the deemed payment) were used during that period, between their receipt by the applicant and the applicant's acquisition of the land described in the application, must account for the entire compound investment return on those funds, and must demonstrate that, during that period, the interests of the United States were protected in a manner consistent with the last paragraph of Section 3 of this Notice.

(2) If the IRS grants one or more extensions of the six-month period described in Section 6(3)(e)(iii) of this Notice, then, not later than one month after receiving each extension, the applicant must provide to the USFS and to any affected State a copy of the extension document (including any attachments).

(3) Not later than one month after the expiration of each six-month deadline in Section 6(3)(e)(iii) (taking into account any extensions), the applicant must certify that it has complied with Section 6(3)(e)(iii) of this Notice and must provide detailed information and documents sufficient to demonstrate that compliance. If the applicant is complying

with Section 6(3)(e)(iii)(B) (that is, by contracting to transfer the land in the future), the documents provided must include a copy of the contract or contracts and evidence that the contract has been appropriately recorded or referenced in all relevant land records. The certification must highlight compliance with the requirements designed to ensure satisfaction of any obligation that may arise under section 54B(h)(3)(A) of the Code and Section 3(2) of this Notice.

(4) If the applicant has executed a contract that was intended to satisfy Section 6(3)(e)(iii)(B) and Section 6(3)(e)(iv) of this Notice, then, not later than one month after the expiration of the deadline for the transfer of each portion of land as provided in the contract (taking extensions under Section 13(3) of this Notice into account), the applicant must certify that the property to which that deadline applies has been properly transferred; and, in the case of the last such deadline, the filing must include a certification that at least one-half of all the land acquired has been conveyed to the USFS at no net cost to the United States and that the remainder of the land acquired has been retained by the applicant if the applicant is a State or has been transferred to one or more States, if the applicant is not a State. All such certifications must contain detailed information and documents sufficient to demonstrate that compliance. The last such filing must contain a certification by the USFS that the applicant has fulfilled its contractual obligations and has conveyed at least one half of the land acquired to the USFS at no cost to the United States. The IRS may request the USFS to provide it corroboration of any certification of an applicant made pursuant to this section.



**SECTION 16. REQUIRED DECLARATIONS**

Except for the consents described in Section 10 of this Notice, each application, certification, report, or other document submitted under this Notice must include the following declaration signed by an authorized official or officer who has personal knowledge of the relevant facts and circumstances: “Under penalties of perjury, I declare that I have examined this document (including any attachments) and, to the best of my knowledge and belief, the document (including any attachments) contains all of the relevant facts, and such facts are true, correct, and complete.”

**SECTION 17. ADDRESSES**(1) Internal Revenue Service.

## (A) Application materials and requests for extensions—

Internal Revenue Service  
 Attention CC: FI&P: Branch 5  
 1111 Constitution Avenue, NW, Room 4017  
 Washington, D.C. 20224

Alternatively, these materials and requests may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to:

Courier's Desk  
 Internal Revenue Service  
 1111 Constitution Avenue, NW  
 Washington, DC, attention CC:FI&P:5

## (B) Certifications required by Section 15 must be submitted to:

Internal Revenue Service  
 Attention: SE:T:G:TEB  
 1111 Constitution Avenue, NW, PE –5S1  
 Washington, D.C. 20224

(2) United States Forest Service. Applications and materials to be filed with the USFS must be either submitted by postal service or hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to:

United States Forest Service  
Attention: Director of Lands  
1400 Independence Avenue, SW  
Mailstop:1124  
Washington, D.C. 20250

Alternatively applications and materials may be sent by express mail to:

United States Forest Service  
Attention: Director of Lands  
201 14th Street, SW  
Washington, DC 20024

## **SECTION 18. INFORMATION REPORTING**

An applicant that receives an allocation of the QFCB National Limitation must file Form 8038, *Information Return for Tax-exempt Private Activity Bond Issues*, in accordance with the instructions for that form and this Notice. A copy of the completed and signed Form 8038 must simultaneously be sent to the IRS and USFS at the addresses listed in section 17(1) and (2) of this Notice, respectively. An applicant that used the allocation to issue QFCBs must complete Part II by checking the box on Line 11q (Other), writing in “Qualified Forestry Conservation Bonds,” and entering the amount of the bonds in the Issue Price column. An applicant that elects the application of section 54B(h) (and thus receives a refund of a deemed payment in lieu of issuing QFCBs) must file the Form 8038 not later than the date that it would have been required to file the form if it had issued QFCBs on the date that it receives the refund. That applicant must complete Part II of the

Form 8038 by checking the box on Line 11q (Other), writing in “Refund Under Section 54B(h),” and entering the amount of the refund in the Issue Price column.

#### **SECTION 19. DRAFTING INFORMATION**

The principal author of this Notice is Timothy L. Jones of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Department of the Treasury participated in its development. For further information regarding this Notice, please contact Mr. Jones at (202) 622-3980 (not a toll free number).

**APPENDIX A**  
**CONSENT TO PUBLIC DISCLOSURE OF CERTAIN QUALIFIED FORESTRY CONSERVATION BOND APPLICATION INFORMATION**

In the event that the Application of [*Insert name of applicant here*:] (the "Applicant") for an allocation of the QFCB National Limitation to issue QFCBs under section 54B of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant hereby consents to the disclosure by the Internal Revenue Service through publication of a Notice in the Internal Revenue Bulletin or a press release or press conference of the name of applicant, the amount of the allocation, and a description (including the location) of the property to be acquired with the proceeds of the QFCBs (or if applicable, the refund of the deemed payment).

This authorization shall become effective upon the execution thereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to public disclosure on behalf of the taxpayer named below.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name of Applicant-Taxpayer: \_\_\_\_\_  
Taxpayer Identification Number of the Applicant: \_\_\_\_\_  
Applicant's Address: \_\_\_\_\_

Note: Treasury Regulation § 301.6103(c)-1 requires that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

**APPENDIX B**  
**CONSENT TO DISCLOSURE OF CERTAIN QUALIFIED FORESTRY**  
**CONSERVATION BOND APPLICATION INFORMATION AND RELATED**  
**DOCUMENTS**

In the event that the Application of [*Insert name of applicant here*: ] (the "Applicant") for an allocation of the QFCB National Limitation to issue QFCBs under section 54B of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant hereby consents as follows: At all times after the transfer of title to any land acquired with the proceeds of QFCBs (or the refund of any deemed payment) to the United States Forest Service (USFS) or to [*insert name of any State to which any part of the acquired land may be transferred*], the officers and employees of the USFS or [*insert the name of any State to which any part of the acquired land may be transferred*] may use (and if they so desire, disclose) information from any or all of the following documents related to such transferred land: title reports; title abstracts; surveys; maps; leases and other uses of the land; water rights, habitat conservation plans and related implementation documents; environmental documents; resource inventories; management plans; documents related to the condition of the land; documentation of hazardous contamination, remediation, and clearances; and documents developed in connection with the transfer of the land to the United States Forest Service or [*insert name of any State to which any part of the acquired land may be transferred*].

The undersigned understands that the information described in this consent may be published, broadcast, discussed, or otherwise disseminated in the public record.

This authorization shall become effective upon the execution thereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to public disclosure on behalf of the taxpayer named below.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name of Applicant-Taxpayer: \_\_\_\_\_  
Taxpayer Identification Number of the Applicant: \_\_\_\_\_  
Applicant's Address: \_\_\_\_\_

Note: Treasury Regulation § 301.6103(c)-1 requires that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.