7.2.3 Tax Exempt Bonds Voluntary Closing Agreement Program

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7.2.3.1 (11-01-2008)

In General

1. This section sets forth procedures for the voluntary closing agreement program for tax-exempt bonds and tax credit bonds known as TEB VCAP. Through TEB VCAP, issuers of tax-exempt bonds and tax credit bonds can voluntarily resolve violations of the Internal Revenue Code (the "Code") on behalf of their bondholders through closing agreements with the Service.

2. The Tax Exempt Bonds Compliance & Program Management ("CPM") function is responsible for the administration and oversight of TEB VCAP as part of its voluntary compliance initiatives. The TEB VCAP Inventory Coordinator will review the operations of the program and report to the Manager, Compliance & Program Management.

3. Notice 2008-31 provides general guidance on the scope of authority and procedural requirements applicable to TEB VCAP.

7.2.3.1.1 (11-01-2008)

Objectives

1. The primary objective of TEB VCAP is to encourage issuers and other parties to the tax-exempt bond or tax credit bond transaction to exercise due diligence in complying with the Code and applicable Income Tax Regulations (the "Regulations") and to provide a vehicle to correct violations of the Code and applicable Regulations as expeditiously as possible.

2. TEB VCAP reflects the continuing policy of TEB to attempt to resolve all violations of federal tax law applicable to tax-exempt bonds and tax credit bonds at the transaction level instead of the bondholder level.

7.2.3.1.2 (11-01-2008)

Scope

1. Gross income does not include interest on any state or local bond that meets the requirements of section 103 and related provisions of the Code. Violations of section 103 or related provisions of the Code may be resolved under TEB VCAP with certain exceptions.

2. A credit against tax is provided to a holder of a qualified tax credit bond issued under section 54, 1397E or 1400N that meets the requirements of those sections and related provisions of the Code. Violations of section 54, 1397E or 1400N or related provisions of the Code may be resolved under TEB VCAP with certain exceptions.

3. TEB VCAP is generally not available if, absent extraordinary circumstances, the violation can be remediated under existing remedial action provisions or tax-exempt bond closing agreement programs contained in regulations or other published guidance.

   An issuer may remediate violations impacting tax-exempt bonds under sections 1.141-12; 1.142-2; 1.144-2; 1.145-2, and 1.147-2 of the Regulations.

   An issuer may remediate violations impacting tax credit bonds under section 1.1397E-1T(h)(7) of the Regulations.
An issuer may resolve certain violations resulting from a change in the use of tax-exempt bond proceeds or tax-exempt bond-financed property through the execution of a closing agreement under the program described in Rev. Proc. 97-15, 1997-1 C.B. 635.

4. TEB VCAP is not available if the bond issue is under examination. A bond issue is generally treated as under examination on the date a letter opening an examination on the bond issue is sent.

5. TEB VCAP is not available if the tax-exempt status of the tax-exempt bonds or qualified status of the tax credit bonds is at issue in any court proceeding or is being considered by the IRS Office of Appeals.

6. TEB VCAP is not available if TEB determines that the violation was due to willful neglect.

7.2.3.1.3 (11-01-2008)
Effect of TEB VCAP Closing Agreement

1. Closing agreements, including closing agreements executed under TEB VCAP, are final and conclusive and may not, in the absence of fraud, malfeasance, or misrepresentation of material fact, be reopened as to matters agreed upon or be modified by an officer, employee or agent of the United States.

2. Any violation resolved pursuant to a closing agreement under TEB VCAP will not be reopened by the Service in any future examination of the tax-exempt bond issue or tax credit bond issue unless so permitted under section 7121 of the Code.

7.2.3.1.4 (11-01-2008)
Audit Selection of VCAP Cases

1. Absent extraordinary circumstances, a bond issue will not be classified and selected for examination while it is under review in TEB VCAP.

2. Any bond issue previously reviewed in TEB VCAP will be subject to general or project classification and may be selected for examination. However, the resolution of any specific violation through a closing agreement under TEB VCAP will be final and conclusive and may not be reconsidered under examination unless so permitted under section 7121 of the Code.

7.2.3.1.5 (11-01-2008)
Special Procedures for Anonymous Requests

1. A TEB VCAP request may be submitted to inquire as to the appropriate resolution terms for an identified violation on an anonymous basis. The anonymous request option is intended to assist issuers in evaluating complex or unique violations as part of their post-issuance compliance due diligence. It is not intended to encourage issuers to delay the submission of a fully disclosed TEB VCAP request relating to relatively simple or straightforward violations. As such, when evaluating an anonymous request concerning a straightforward violation, CPM will consider whether the submission of the anonymous request represents a less than good faith effort on the part of the issuer to resolve the identified violation as expeditiously as possible.

2. An anonymous request may be made on behalf of one issuer or a group of similarly situated issuers. However, the execution of a closing agreement must be between the Service and a disclosed issuer, and all terms of a closing agreement must be consistent with section 7121 of the Code.

3. Until the name of the issuer and the bond issue are disclosed to the Service, a request for a closing agreement under TEB VCAP will not prevent the Service from beginning an examination of the bond issue. An issue relating to an anonymous request which has been opened for examination prior to identification to CPM will no longer be eligible for TEB VCAP.

7.2.3.1.6 (11-01-2008)
Information Required in Submission Request

1. The following information and items are required to be included in a TEB VCAP submission request. The failure to include any of these items will result in CPM declining to consider the request.

2. An issuer or its authorized representative requesting a closing agreement under TEB VCAP must submit a statement(s) under penalty of perjury including the following information:

   A. Information identifying the governmental issuer of the bond issue including: (1) the name; (2)
employer identification number; (3) street address, city, state, and zip code; and (4) name, title, and telephone number of an official of the issuer who may be contacted for additional information.

B. Information identifying the bond issue including: (1) the name of the bond issue; (2) issue price; (3) final maturity date; (4) CUSIP number; and (5) type of Form 8038 series information return filed with respect to the issuance of the bonds.

C. Information identifying the violation including: (1) a clear statement of the specific federal tax requirement which is the subject of the violation; (2) a description of the violation, including its nature, when it occurred, and the facts and circumstances surrounding it; and (3) a statement as to when and how the violation was discovered.

D. Description of the proposed settlement terms for resolving the identified violation. If the proposal includes the payment of a closing agreement amount, include a description of the computation methodology determining the amount and a statement that such payment will not be made with proceeds of bonds described under IRC section 103. If the proposal includes the redemption, defeasance, or tender of any amount of the bonds comprising the bond issue, include a statement of the source of funds to be used to effectuate such action.

E. Statements of good faith including: (1) a statement that the bond issue is not under examination, the subject in any court proceeding, or under consideration by the IRS Office of Appeals; (2) a statement that, on the issue date, the issuer reasonably expected to comply with section 103 and all related provisions of the Code; (3) a description of the policies or procedures which have been or will be implemented to prevent this type of violation from recurring with this or any other bond issues; and (4) a statement that the request for a closing agreement was promptly undertaken upon the discovery of the violation.

3. The statement(s) described in paragraph (2) above must be submitted under the following declaration, signed by the party making the submission: "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."

4. The request must include a copy of the Form 8038 series information return filed in connection with the issuance of the bond issue.

5. The request may include an executed Form 2848, Power of Attorney and Declaration of Representative, declaring a representative authorized to represent the issuer before the Service with respect to the bond issue.

7.2.3.1.7 (11-01-2008)
Receipt and Perfection of Submission Request

1. Submission requests under TEB VCAP are typically emailed to TEBVCAP@irs.gov and/or may be mailed to:

   Internal Revenue Service
   Attn: TEB VCAP
   1122 Town & Country Commons
   St. Louis, MO 63017

2. Upon receipt of a TEB VCAP submission request, the TEB VCAP Inventory Coordinator will review the submission request to verify that all of the required information described in section 7.2.3.1.6 is complete.

3. If the submission request is complete, the Coordinator will process the case for assignment in accordance with section 7.2.3.2.

4. If the submission request is not complete, the Coordinator will provide the issuer with written notification that the request has been received, but that certain missing information is required before the request can be processed for assignment. The Coordinator will also contact the authorized representative (if any) by telephone to request the missing information. If the Coordinator is unable to obtain the missing information after reasonable attempts, the submission request will be closed without resolution.

7.2.3.2 (09-01-2008)
TEB VCAP Case Processing Procedures
1. This section sets forth the case processing procedures for TEB VCAP cases.

7.2.3.2.1  (11-01-2008)
Case Establishment and Assignment

1. Upon determining that the submission request is complete, the TEB VCAP Inventory Coordinator will request that the TEB Inventory Processing Unit establish a compliance activity within the TE/GE Reporting & Electronic Examination System ("TREES") for the TEB VCAP case. For this purpose, each individual Form 8038 series information return relating to the submission request is established as a separate compliance activity.

2. Once the compliance activity is established within TREES, the Manager, Compliance & Program Management ("CPM Manager") will assign the activity to a CPM specialist. A CPM team leader will concurrently be assigned as a reviewer.

7.2.3.2.2  (11-01-2008)
Case Development

1. Upon receipt of an assigned TEB VCAP case within TREES, the specialist will notify the issuer or its authorized representative of the specialist's contact information.

2. Upon initiation of the case, the specialist will update the case to status 12 within TREES and notify the TEB VCAP Inventory Coordinator of the status update. The specialist will review the submission request to determine if any additional information is necessary. If additional information is necessary, the specialist will request the information from the issuer or its authorized representative and will generally follow up with a written request specifying the information requested and the due date.

3. Upon receipt of all required information, the specialist (with the assistance of the assigned reviewer) will analyze the information, make a determination as to the recommended resolution of case, and take appropriate steps for case resolution.

If the violation identified in the submission request is covered in section 7.2.3.3, the specialist will prepare the Committee Briefing Memorandum following the applicable resolution standards and forward the Committee Briefing Memorandum through the reviewer to the CPM Manager for review and concurrence.

If the violation identified in the submission request is not covered in section 7.2.3.3, the specialist will prepare a Memorandum for Reviewers which will include a discussion of the key facts, applicable law, issuer’s proposed settlement offer, and specialist’s recommendation for case resolution. The specialist will forward the Memorandum for Reviewers through the reviewer to the CPM Manager for review and concurrence.

If it is determined to resolve the case through the execution of a closing agreement, upon concurrence of the CPM Manager, the specialist will prepare and forward both a Committee Briefing Memorandum and a draft closing agreement through the reviewer to the CPM Manager for review and concurrence.

If it is determined to resolve the case through correspondence (e.g. an anonymous request), upon concurrence of the CPM Manager, the specialist will prepare and forward both a Committee Briefing Memorandum and the appropriate resolution letter through the reviewer to the CPM Manager for review and concurrence.

7.2.3.2.3  (11-01-2008)
Case Resolution

1. If the proposed resolution requires approval of the TEB Closing Agreement Committee, the CPM Manager will forward the Committee Briefing Memorandum to the Closing Agreement Committee for review. If approved by the Committee, upon notification from the CPM Manager, the specialist will follow the closing agreement execution procedures provided in section 7.2.3.2.4. If disapproved by the Committee, the CPM Manager will notify the specialist of the need for further development.

2. If the proposed resolution does not require approval of the TEB Closing Agreement Committee, the CPM Manager will review the resolution letter and notify the specialist of concurrence or the need for further development. Upon approval of the CPM Manager, the specialist will prepare the case for closure.

7.2.3.2.4  (11-01-2008)
Closing Agreement Execution
1. Upon approval of the draft closing agreement by the CPM Manager, the specialist will forward the draft to the issuer or its authorized representative for comments. The specialist will discuss any comments with the reviewer and CPM Manager and make any necessary changes.

2. Once the closing agreement is finalized, the specialist will electronically send the final closing agreement, the transmittal letters (i.e., the execution cover letter and transmittal letter to power of attorney) to the TEB VCAP Inventory Coordinator. The Coordinator will make the required number of agreement copies (number of signatories plus one), coordinate the signing of the transmittal letters and mail the package to the issuer. A copy of the closing agreement and transmittal letter to the issuer will be mailed to the authorized representative.

3. The Coordinator will notify the specialist following the mailing of the packages. The specialist will notify the issuer or its authorized representative that the closing agreements have been mailed. The specialist will also remind the issuer or its authorized representative that: (i) the closing agreement payment (if any) must be submitted prior to execution; (ii) the executed agreements must be returned to the CPM office in St. Louis, Missouri; and (iii) a copy of the confirmation of the Electronic Federal Tax Payment System ("EFTPS") deposit (if any) must be included with the executed agreements.

4. Upon receipt of the closing agreement from the issuer, the Coordinator will verify that the agreement has not been altered, check for required signatures, and monitor receipt and proper accounting of the closing agreement payment, if applicable. Once the payment has been confirmed, the Coordinator will forward the closing agreement to the CPM Manager for execution and notify the specialist that the case is ready for closure.

7.2.3.2.5 (11-01-2008)
Case Closing

1. The specialist will electronically forward the final case closing letter and transmittal letter to power of attorney (if applicable) to the TEB VCAP Coordinator to coordinate signature and transmission.

   If the case resolution requires a closing agreement, the issuer is notified that the case is closed through the executed closing agreement letter transmitted with the executed copy(s) of the closing agreement.

   If the case resolution does not require a closing agreement, the issuer is notified that the case is closed through the approved resolution letter.

2. Upon the execution and mailing of the applicable closing letter, the Coordinator will notify the specialist that the applicable closing letter has been signed and transmitted. The specialist will then provide the issuer or its authorized representative with a status update, request closure of the case within TREES, and forward the paper file, if any, to the CPM Manager.

3. After reviewing the case, the CPM Manager will approve closure within TREES.

7.2.3.2.6 (11-01-2008)
Unresolved Case Resolution

1. In certain situations, it is appropriate to close a TEB VCAP case without a final resolution. For example, an issuer may withdraw the submission request. Alternatively, CPM may determine that an issuer’s nonresponsiveness to requests for additional information rise to the level of willful neglect for purposes of establishing eligibility for TEB VCAP under Notice 2008-31. In these or other situations, the specialist and reviewer will recommend to the CPM Manager to initiate an unresolved closure of the case.

2. The specialist will prepare the appropriate closing letter and forward through the reviewer to the CPM Manager for review and concurrence. Upon approval of the CPM Manager, the specialist will follow the case closing procedures in section 7.2.3.2.5.

7.2.3.3 (11-01-2008)
TEB VCAP Resolution Standards

1. Under Notice 2008-31, the Service requested comments regarding the operation of TEB VCAP, including suggestions with regard to the standardization of closing agreement terms and amounts that may be specified for particular violations. Additionally, on June 11, 2008, the Advisory Committee on Tax Exempt and Government Entities issued a report titled The Streamlined Closing Agreement For Tax-Exempt Bonds: A Cure For Common Violations providing recommendations for the creation of programs to provide streamlined treatment of certain tax law violations.

2. This section of IRM section 7.2.3.3 sets forth resolution standards under TEB VCAP for specific
violations. TEB anticipates expanding the list of resolution standards for specified violations over time.

7.2.3.3.1 (11-01-2008)
Objectives and Scope

1. The primary compliance objective of the TEB VCAP resolution standards identified in this section is to promote due diligence on the part of issuers and other parties to the tax-exempt bond or tax credit bond transaction in resolving violations. The Service recognizes that due diligence is encouraged by providing certainty to issuers and other parties in understanding the methodology available to resolve their particular violation(s).

2. The primary administrative objective of the TEB VCAP resolution standards identified in this section is to streamline the closing agreement process with respect to the specific violations resulting in the more efficient processing of cases.

3. The resolution standards under this section are not available when:
   A. The specific violation is not within the jurisdiction of TEB VCAP
   B. The specific violation identified in the TEB VCAP request is not a violation identified under this section.
   C. CPM determines that the violation is not appropriate for resolution under the terms described in this section.

7.2.3.3.2 (11-01-2008)
Identified Violations

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), 147(g), 1394(a), and 7871(c)(3)(B). These provisions allow for certain defined percentages of proceeds to be allocated to nonqualified purposes.

   A violation occurs when the amount of proceeds allocated to such nonqualified purposes exceeds the defined percentage limitations.

   When the issuer submits the request within 180 days of the date of the deliberate action, this violation may be resolved under the following closing agreement terms when the amount of proceeds allocated to nonqualified purposes exceeds the defined percentage: (1) The issuer (or the conduit borrower through the issuer) will pay an amount equal to 100% of the taxpayer exposure on the nonqualified bonds for the period beginning on the date of the deliberate action and ending on the date the nonqualified bonds are either redeemed or defeased; and (2) The issuer will redeem the nonqualified bonds prior to the date the closing agreement is executed by the IRS. If the nonqualified bonds cannot be redeemed prior to the execution date, the issuer will either: (a) redeem the nonqualified bonds on the earliest call date and calculate the amount described above to include the extended period of time that the nonqualified bonds will remain outstanding; or (b) prior to the date the closing agreement is executed by the IRS, establish a defeasance escrow to defease the nonqualified bonds on their first call date.

   When the issuer submits the request more than 180 days but within 1 calendar year of the date of the deliberate action, this violation may be resolved under the terms described in the above paragraph, substituting 110% of taxpayer exposure for 100% of taxpayer exposure in calculating the closing agreement payment.

2. Failure to Provide Notice of Defeasance. Under ITR sections 1.141-12(d)(3) and 1.150-5(a)(1), an issuer remediating nonqualified bonds through the establishment of an irrevocable defeasance escrow must provide written notice to CPM within 90 days of the date the defeasance escrow is established.

   A failure to successfully remEDIATE nonqualified bonds occurs when the issuer fails to timely provide CPM with written notice of the establishment of a defeasance escrow to remEDIATE nonqualified bonds under ITR section 1.141-12(d).

   This failure may be resolved under a closing agreement whereby the issuer agrees to pay an amount equal to the lesser of $1/day for the period beginning the date of the failure to notify and ending of the date written notification was provided to CPM or
3. **Failure to Defease Within 10.5 Years of Issuance.** Under ITR section 1.141-12(d)(4), an issuer may only remediate nonqualified bonds through the establishment of 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. A failure to successfully remediate nonqualified bonds occurs when all or a portion of the bonds comprising the issue are not callable within 10.5 years of the issue date. This failure may be resolved under a closing agreement whereby the issuer agrees to pay an amount equal to the taxpayer exposure on the bonds with the offending maturities for the period beginning on the date 10.5 years after the issue date and ending on the date the bonds will be redeemed under the defeasance escrow.

4. **Alternative Minimum Tax Adjustment.** Under IRC section 57(a)(5), the interest on certain qualified private activity bonds is treated as an item of tax preference for purposes of the alternative minimum tax. IRC section 57(a)(5)(C)(ii) provides an exception to this rule for qualified 501(c)(3) bonds. A violation occurs where a change in the use of the proceeds of a governmental issue occurs resulting in the bonds being recharacterized as certain qualified private activity bonds other than qualified 501(c)(3) bonds. When the issuer submits the request within 180 days of the date of the deliberate action, this violation may be resolved under a closing agreement requiring the payment of an amount equal to 100% of the alternative minimum tax adjustment with respect to the bonds of the issue from the date of the deliberate action to the date the bonds are no longer outstanding. When the issuer submits the request more than 180 days but within 1 calendar year of the date of the deliberate action, this violation may be resolved as described in the above paragraph, substituting 110% of the alternative minimum tax adjustment for 100% of the alternative minimum tax adjustment in calculating the closing agreement payment.

5. **Capital Expenditure Limitation Failure.** Under IRC section 144(a)(4), an issuer may elect for certain qualified small issue bonds to apply a $10,000,000 limitation on the sum of the aggregate amount of certain outstanding qualified small issue bonds described in IRC section 144(a)(2) and the aggregate amount of capital expenditures with respect to facilities described in IRC 144(a)(4)(B) (as modified by IRC section 144(a)(4)(G), when applicable). A violation occurs when the sum of outstanding bonds and capital expenditures to be taken into account for purposes of this requirement exceeds $10,000,000 (as modified by IRC section 144(a)(4)(G), when applicable). When the issuer submits the request within 180 days of the date of the deliberate action, this violation may be resolved under the following closing agreement terms: (1) The issuer (or the conduit borrower through the issuer) will pay an amount equal to 100% of the taxpayer exposure on the nonqualified bonds for the period beginning on the date the violation occurs and ending on the date the nonqualified bonds are either redeemed or defeased; and (2) The issuer will redeem the nonqualified bonds prior to the date the closing agreement is executed by the IRS. If the nonqualified bonds cannot be redeemed prior to the execution date, the issuer will either: (a) redeem the nonqualified bonds on the earliest call date and calculate the amount described above to include the extended period of time that the nonqualified bonds will remain outstanding; or (b) prior to the date the closing agreement is executed by the IRS, establish a defeasance escrow to defease the nonqualified bonds on their first call date. For this purpose, the nonqualified bonds are an amount of the bonds equal to the amount exceeding the applicable limitation which will not result in the average maturity of the remaining bonds being greater than the average maturity of the bond issue. When the issuer submits the request more than 180 days but within 1 calendar year of the date of the deliberate action, this violation may be resolved under the terms described in the above paragraph, substituting 110% of taxpayer exposure for 100% of taxpayer exposure in calculating the closing agreement payment.

6. **Maturity Exceeding 120% of Economic Life.** Under IRC section 147(b), 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.
A violation occurs when the average maturity of the bonds exceeds 120% of the average reasonably expected economic life of the financed property.

This violation may be resolved under a closing agreement where the issuer and conduit borrower agree to redeem or defease an amount of the bonds sufficient to reduce the weighted average maturity to 110% of the economic life of the financed property.

7. **Impermissible Advance Refunding.** Under IRC section 149(d), there is a general prohibition on 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. Under ITR section 1.150-1(d)(3), 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 and an advance refunding issue is defined as a refunding issue which is not a current refunding issue.

A violation occurs when the proceeds of a refunding issue are used to pay the principal or interest on a prior issue more than 90 days from the issue date of the refunding issue when the prior issue is not permitted to be advance refunded under IRC section 149(d).

When the issuer submits the request within 180 days of the date of the violation, this violation may be resolved under a closing agreement where the issuer agrees to pay an amount equal to 100% of the taxpayer exposure on the refunding bonds for the period 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.

When the issuer submits the request more than 180 days but within 1 calendar year of the date of the violation, this violation may be resolved under the terms described in the above paragraph, substituting 110% of taxpayer exposure for 100% of taxpayer exposure in calculating the closing agreement payment.

8. **Failure to Timely Reinvest Proceeds into 0% SLGS.** Under IRC section 148(a), an issue shall be treated as consisting of arbitrage bonds if any portion of the proceeds are intentionally used directly or indirectly to acquire higher yielding investments. For this purpose, definitions of materially higher yield are provided under ITR section 1.148-2(d). For 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 1/1000th of 1% higher than the yield on the bond issue.

A violation occurs where a party to the escrow agreement fails to meet their requirements under the agreement as a result of a failure to timely reinvest proceeds of a refunding issue as directed upon the maturity of investments (e.g., failure to reinvest in 0% U.S. Treasury Securities – State and Local Government Series (SLGS) in an efficient escrow).

When the issuer submits the request within 60 days of the next required computation date following the date of the reinvestment failure, this violation may be resolved under a closing agreement whereby the issuer (or the escrow agent through the issuer) agrees to pay an amount equal to the sum of the following: (1) An amount which, if treated as a payment with respect to the investments held in the escrow, reduces the yield on the escrow to the bond yield; plus (2) An amount equaling interest accrued at the underpayment rate under IRC section 6621 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 held by the trustee due to this reinvestment failure may be treated as invested at the applicable federal funds rate where the trustee certifies under penalty of perjury that its customary practice is to invest its overnight balances at a rate which approximates the applicable federal funds rate and the proceeds were likely invested in such a manner.

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