AMERICAN PUBLIC POWER ASSOCIATION
Powering Strong Communities

ISSUE BRIEF June 2026

Sequestration of Bond and Tax Credit Payments

- The American Public Power Association (APPA) strongly supports legislation to end the threat of sequestration of federal payments related to Build America Bonds (BABs) and elective payment energy tax credits.
- APPA believes that sequestration of payments to BAB issuers and other direct payments bonds is tantamount to a breach of contract for financial deals negotiated more than a decade ago.
- APPA believes that the threat of sequestration of elective payment tax credits needlessly clouds investment decisions for public power utilities and electric cooperatives, which collectively serve nearly 30 percent of the nation's retail customers.

Background

During the 2008 credit crisis, traditional municipal bond investors pulled out of the market and interest rates soared. To provide liquidity to these markets—and in turn encourage the sorts of infrastructure investments that municipal bonds finance—the American Recovery and Reinvestment Act (ARRA) of 2009 (P.L. 111-5) created the BAB. A BAB meets the same requirements as any other government-purpose municipal bond, but instead of the interest being tax-exempt, the bond issuer receives a credit payment from the Treasury Department equal to 35 percent of the interest paid. Of the $181 billion in BABs issued, 108 BABs worth $16 billion financed power-related projects.[1] Of those power-related BABs issuances, roughly $13 billion remain outstanding.[2] New Clean Renewable Energy Bonds (New CREBs) are another form of "direct payment" bonds intended as an alternative to energy tax credits for which public power utilities were not eligible. Roughly $540 million in New CREBs were issued by public power utilities, and roughly $460 million remain outstanding.[3] BABs were authorized to be issued in 2009 and 2010 only, and the ability to issue New CREBs was repealed in 2017. Additionally, certain energy tax credits can be claimed as elective payment tax credits, making them directly available to public power utilities for properties they own. Without elective payment, public power utilities could not claim such credits.

A failure to meet deficit reduction targets under the Budget Control Act of 2011 (BCA) triggered the Department of Treasury to implement automatic cuts to federal mandatory (entitlement) spending programs beginning March 1, 2013, through a process called sequestration. Ignoring earlier statements by the Treasury Department[4] and congressional intent,[5] the White House Office of Management and Budget (OMB) decided in 2012 that BAB and New CREB credit payments to BAB and New CREB issuers were subject to sequestration.[6] BCA sequestration cuts were originally supposed to end after 2021, but Congress has repeatedly extended the period and annual cuts of 5.7 percent will now last through fiscal year (FY) 2031. According to OMB, BAB and New CREB credit payments have been cut by approximately $3.7 billion since 2013. APPA estimates that these payments will be cut by another roughly $370 million before sequestration ends at the end of FY 2031.

1 U.S. Department of Treasury, Treasury Analysis of Build America Bond Issuances and Savings, at 2 (May 16, 2011).
2. Bloomberg L.P., MSRC Screen ("active municipal" and "ARRA program" as criteria) on June 2, 2023.
3. Id.
4. Tax Exempt and Taxable Government Bonds: Hearing before the H. Subcomm. on Select Revenues of the H. Comm. on Ways & Means, 111th Cong. 12 (2009) (Serial No. 111-22) (Statement of Alan B. Krueger, Assistant Sec'y. of Treasury of the United States).
5. John Buckley, Remarks at the Urban-Brookings Tax Policy Center and George Mason Center for State and Local Government Leadership panel discussion Fallout from Federal Tax Reform: Implications for State and Local Revenues (Sept. 21, 2012) (Buckley, who as chief tax counsel for the House Ways and Means Committee helped write the BAB provision in ARRA, called OMB's decision "extraordinary and strange").
6. Office of Mgmt. & Budget, Exec. Office of the President, OMB Report Pursuant to the Sequestration Transparency Act of 2012 (P.L. 112-155), at 157 (Sept. 24, 2012).

Further cuts could also be made under the Statutory Pay-as-You-Go Act of 2010 (PAYGO), which requires that any increase in the deficit caused by new tax or entitlement spending laws also triggers sequestration cuts to eliminate those deficits. These cuts are automatic unless PAYGO is waived, either as part of the new law or in subsequent legislation. For example, in November 2025, Congress voted to waive the budget effects of the One Big Beautiful Bill Act of 2025 (P.L. 119-21), which added $3.4 trillion in deficit spending to the PAYGO "scorecard" and threatened to force the elimination of most mandatory spending, including payments to issuers of direct payment bonds and to refund payments of elective pay tax credits. However, future legislation that increases deficits through mandatory spending increases or revenue reductions again will raise the specter of PAYGO sequestration. This is unfair to issuers of direct payment bonds and needlessly clouds investment decisions by public power utilities seeking to take advantage of elective pay tax credits.

Congressional Action

On June 10, 2026, President Trump signed into law S. 2, the Secure Act (P.L. 119-98). The new law provides $69.5 billion in new direct spending for Customs and Border Patrol and Immigration and Customs Enforcement, with no comparable offsetting direct spending cuts or revenue increases. As a result, APPA estimates that unless subsequent legislation waiving the budget effects of S. 2 is enacted, PAYGO cuts of 0.9 percent could take effect beginning in January 2027. As noted above, this cut would apply to both direct payment bond payments and elective pay tax credits.

APPA Contact

John Godfrey, Senior Government Relations Director, 202-467-2929 / jgodfrey@publicpower.org

> The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government and protect the interests of the more than 55 million people that public power utilities serve and the 100,000 people they employ.

© 2026 American Public Power Association.