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**§ 1.141-10. Coordination with Volume Cap. [Reserved]**

[This section was added and reserved. See 62 FR 2275, 2298, Jan. 16, 1997.]

[T.D. 8712, 62 FR 2275, 2298, Jan. 16, 1997]

[EFFECTIVE DATE NOTE: 62 FR 2275, 2298, Jan. 16, 1997, added and reserved this section, effective May 16, 1997.]

Sec. 141

**§ 1.141-11. Acquisition of Nongovernmental Output Property. [Reserved]**

[This section was added and reserved. See 62 FR 2275, 2298, Jan. 16, 1997.]

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[EFFECTIVE DATE NOTE: 62 FR 2275, 2298, Jan. 16, 1997, added and reserved this section, effective May 16, 1997.]

**§ 1.141-12. Remedial Actions.**

(a) **Conditions to taking remedial action.** An action that causes an issuer to meet the private business tests or the private loan financing test is not treated as a deliberate action if the issuer takes a remedial action described in paragraph (d), (e), or (f) of this section with respect to the nonqualified bonds and if all of the requirements in paragraphs (a)(1) through (5) of this section are met.

(1) **Reasonable expectations test met.** The issuer reasonably expected on the issue date that the issuer would meet neither the private business tests nor the private loan financing test for the entire term of the bonds. For this purpose, if the issuer reasonably expected on the issue date to take a deliberate action prior to the final maturity date of the issue that would cause either the private business tests or the private loan financing test to be met, the term of the bonds for this purpose may be determined by taking into account a redemption provision if the provisions of § 1.141-2(d)(2)(ii)(A) through (C) are met.

(2) **Maturity not unreasonably long.** The term of the issue must not be longer than is reasonably necessary for the governmental purposes of the issue (within the meaning of § 1.148-1(c)(4)). Thus, this requirement is met if the weighted average maturity of the bonds of the issue is not greater than 120 percent of the average reasonably expected economic life of the property financed with the proceeds of the issue as of the issue date.

(3) **Fair market value consideration.** Except as provided in paragraph (f) of this section, the terms of any arrangement that results in satisfaction of either the private business tests or the private loan financing test are bona fide and arm's-length, and the new user pays fair market value for the use of the financed property. Thus, for example, fair market value may be determined in a manner that takes into account restrictions on the use of the financed property that serve a bona fide governmental

purpose.

(4) **Disposition proceeds treated as gross proceeds for arbitrage purposes.** The issuer must treat any disposition proceeds as gross proceeds for purposes of section 148. For purposes of eligibility for temporary periods under section 148(c) and exemptions from the requirement of section 148(f) the issuer may treat the date of receipt of the disposition proceeds as the issue date of the bonds and disregard the receipt of disposition proceeds for exemptions based on expenditure of proceeds under § 1.148-7 that were met before the receipt of the disposition proceeds.

(5) **Proceeds expended on a governmental purpose.** Except for a remedial action under paragraph (d) of this section, the proceeds of the issue that are affected by the deliberate action must have been expended on a governmental purpose before the date of the deliberate action.

**(b) Effect of a remedial action—**

(1) **In general.** The effect of a remedial action is to cure use of proceeds that causes the private business use test or the private loan financing test to be met. A remedial action does not affect application of the private security or payment test.

(2) **Effect on bonds that have been advance refunded.** If proceeds of an issue were used to advance refund another bond, a remedial action taken with respect to the refunding bond proportionately reduces the amount of proceeds of the advance refunded bond that is taken into account under the private business use test or the private loan financing test.

**(c) Disposition proceeds—**

(1) **Definition.** Disposition proceeds are any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue.

(2) **Allocating disposition proceeds to an issue.** In general, if the requirements of paragraph (a) of this section are met, after the date of the disposition, the proceeds of the issue allocable to the transferred property are treated as financing the disposition proceeds rather than the transferred property. If a disposition is made pursuant to an installment sale, the proceeds of the issue continue to be allocated to the transferred property. If an issue does not meet the requirements for remedial action in paragraph (a) of this section or the issuer does not take an appropriate remedial action, the proceeds of the issue are allocable to either the transferred property or the disposition proceeds, whichever allocation produces the greater amount of private business use and private security or payments.

(3) **Allocating disposition proceeds to different sources of funding.** If property has been financed by different sources of funding, for purposes of this section, the disposition proceeds from that property are first allocated to the outstanding bonds that financed that property in proportion to the principal amounts of those outstanding bonds. In no event may disposition proceeds be allocated to bonds that are no longer outstanding or to a source of funding not derived from a borrowing (such as revenues of the issuer) if the disposition proceeds are not greater than the total principal amounts of the outstanding bonds that are allocable to that property. For purposes of this paragraph (c)(3), principal amount has the same meaning as in § 1.148-9(b)(2) and outstanding bonds do not include advance refunded bonds.

**(d) Redemption or defeasance of nonqualified bonds—**

(1) **In general.** The requirements of this paragraph (d) are met if all of the nonqualified bonds of