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# **Using Your Locality's Recovery Zone Bond Allocations**

*Procedures & Deadlines Under Virginia's Executive Order 94*

Presented by:

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# Welcome to the McGuire Woods Recovery Zone Bond Webinar

# Panel Members

- Arthur E. Anderson II
- Bonnie M. France
- Douglas E. Lamb
- David L. Richardson

# McGuireWoods

- Full service law firm with more than 900 attorneys in 18 offices
- 30 Public Finance Lawyers in offices in Chicago, New York, Charlotte, Atlanta, Baltimore, Richmond, Tysons Corner and Washington, D.C.
- Ranked in top three bond counsel firms in Southeast for first half of 2009 by *The Bond Buyer*
- No. 1 firm in Virginia for total issue volume

# Outline of Presentation

- What are Recovery Zone Bonds?
- What is Executive Order 94?
- How do I comply with Executive Order 94?
- Questions and Answers

# What Are Recovery Zone Bonds?

- There are two types of Recovery Zone Bonds that were created by the American Recovery and Reinvestment Tax Act of 2009 (the “Stimulus Act”)
  1. Recovery Zone Economic Development Bonds (“RZEDBs”)
  2. Recovery Zone Facility Bonds (“RZFBs”)

# Recovery Zone Bonds

- RZEDBs
  - Direct Payment Bonds (taxable); a/k/a Subsidy Bonds
  - For “qualified economic development purposes”
  - Expenditures for construction of public facilities or job training programs
- RZFBs
  - Tax exempt private activity bonds
  - For construction/acquisition of property for “qualified business”

# Recovery Zone Economic Development Bonds

- RZEDBs are a new type of bond
- They are a subset of Build America Bonds (Direct Payment) (“BABs”), which is another type of bond created by the Stimulus Act
- Issuers of direct payment BABs receive a subsidy payment from the U.S. Treasury equal to 35% of the interest paid on their BABs
- Issuers of RZEDBs receive a subsidy payment of 45%

# Recovery Zone Economic Development Bonds (cont'd)

- RZEDBs may be used for “qualified economic development purposes,” which are described as “expenditures for purposes of promoting development or other economic activity in a recovery zone,” including:
  - 1) capital expenditures paid or incurred with respect to property in the recovery zone
  - 2) expenditures for public infrastructure and construction of public facilities, and
  - 3) expenditures for job training and educational programs

## Recovery Zone Economic Development Bonds (cont'd)

- Like BABs, RZEDBs must follow all the rules of traditional governmental tax-exempt bonds
- Examples of projects that may be financed with RZEDBs include utilities, roads and transportation improvements, and other public infrastructure projects

# Recovery Zone Economic Development Bonds - Limitations

- May not be used for refundings
  - reimbursement rules apply
  - may be used to “refund” short-term financings issued after February 17, 2009
- Only 2% of sale proceeds may finance issuance costs
- Reasonably required reserve funds are allowed

# Recovery Zone Facility Bonds

- New type of tax-exempt private activity bond
- At least 95% of net proceeds used to finance “recovery zone property”:
  - (1) property constructed, reconstructed, renovated, or acquired by purchase by a taxpayer after the date of designation of a recovery zone,
  - (2) original use of the property in the recovery zone commences with the taxpayer, and
  - (3) substantially all of the use of the property is in the recovery zone and is in the active conduct of a “qualified business” by the taxpayer in the recovery zone
- Depreciable property located in a recovery zone
- 2% costs of issuance limitation

## Recovery Zone Facility Bonds (cont'd)

- A “qualified business” excludes: (i) rental of residential property and (ii) any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises
- No refinancings
- RZFBs do not count against the private activity bond volume cap for traditional private activity bonds

## Recovery Zone Facility Bonds (cont'd)

- The broad definition of “recovery zone property” permits the financing of a wide range of projects
- Examples of projects that may be financed by RZFBs include office buildings, hotels, shopping centers, and other commercial facilities

# What is a Recovery Zone?

- “Recovery Zone” means:
  - (1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress,
  - (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990, and
  - (3) any area for which a designation as an empowerment zone or renewal community is in effect as of February 17, 2009
- Designation may be by the locality if another entity is the issuer (i.e. an EDA).

# When may Recovery Zone Bonds be issued?

- Recovery Zone Bonds may only be issued in 2009 and 2010

# How many Recovery Zone Bonds may be issued?

- The national limit on the amount of bonds that may be issued is \$10 billion for RZEDBs and \$15 billion for RZFBs
- The amounts of RZEDBs and RZFBs that may be issued by each state have been allocated by the U.S. Treasury in proportion to each state's relative employment decline in 2008
- Virginia received an RZEDB allocation of \$104,396,000 and an RZFB allocation of \$156,595,000

# Who may issue Recovery Zone Bonds?

- Most Virginia localities received a portion of Virginia's allocation (a suballocation), which was again determined by the U.S. Treasury, in proportion to the locality's relative employment decline in 2008
- The list of these suballocations is attached to Executive Order 94 and is also available on the IRS website at <http://www.irs.gov/pub/irs-tege/rzbllocalreallocations.pdf>
- Issuer may be locality itself or other governmental entity (e.g., an economic development authority or a water and sewer authority)

# What is Executive Order 94?

- On September 30, 2009, Governor Kaine issued Executive Order 94 (the “Order”)
- The Order sets forth the requirements that localities must satisfy if they wish to use their allocations of RZEDBs and RZFBs
- If a locality fails to satisfy the requirements, the allocations are deemed to be waived and may be reallocated by the Commonwealth

# How do I comply with the Order?

- By **November 2, 2009**, a locality wishing to use all or any portion of its RZEDB or RZFB allocations must file a completed Notice of Intent with the Governor's Chief of Staff (the "Re-allocation Director")
- If a Notice of Intent is not filed, the locality's allocations will be deemed waived

# Forms

- Can be downloaded from the Governor's website:  
<http://www.stimulus.virginia.gov/docs/Forms%20for%20Implementation%20of%20EO%2094.DOC>

# How do I comply with the Order? (cont'd)

- By **December 15, 2009**, a locality that filed a Notice of Intent must file a Project Verification Report with the Re-allocation Director.
- Such documentation will include, as applicable:
  - Resolution of the locality (or issuer) designating the Recovery Zone
  - Resolution of the issuer approving the project (which may take the form of a reimbursement or inducement resolution)
  - Documentation of the appropriate governing body's approval of the project (i.e. following a TEFRA public hearing, if required)
  - An opinion of bond counsel
  - A commitment letter from the purchaser or underwriter of the bonds
- If a Project Verification Report is not filed, the locality's allocations will be deemed waived

# How do I comply with the Order? (cont'd)

- Within 30 days after the issuance of any Recovery Zone Bonds, the applicable IRS reporting form must be filed with the Re-allocation Director
- If the locality does not use its allocation (i.e., the bonds are not issued) by **March 15, 2010**, the locality's allocation is deemed waived
- All waived allocations will be re-allocated by the Re-allocation Director by a process that is yet to be developed



# Questions and Answers

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