



## Draws Under Draw-Down Loans and Issuances Under Commercial Paper Programs After 2010 Cannot Qualify as BABs or Recovery Zone Bonds or for AMT Relief

On November 23, 2010 the Internal Revenue Service issued [Notice 2010-81](#), providing guidance as to the expiration of certain favorable bond provisions enacted in the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (ARRA). These provisions include authorization to issue Build America Bonds, Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds, as well as authorization to issue certain tax exempt private activity bonds that pay interest free of alternative minimum tax preference-item status. Under ARRA, these provisions apply only to bonds issued on or before December 31, 2010. In summary, the Notice states that, in the case of "draw-down" loans and commercial paper programs, only the portion of such loans that has been drawn, or the amount of commercial paper actually issued and accruing interest by December 31, 2010, can qualify for those ARRA provisions. The important practical effect of the Notice is that issuers seeking to issue these ARRA bonds will not be able to satisfy the December 31, 2010 expiration date for an entire draw-down issue or commercial paper program by borrowing an initial amount under either arrangement in 2010 and then funding further draws or issuances after 2010. However, with respect to the more generous "bank qualified" or "qualified tax-exempt obligation" limits and the applicability of the 2-percent *de minimis* rule to financial institutions enacted in ARRA, the Notice confirms the existing IRS position that an entire draw-down loan

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will be treated as issued on the date that draws equal to the lesser of \$50,000 or 5 percent of the entire loan are made.

If you have any questions, please contact any of the lawyers listed in this Alert, the Squire Sanders public finance lawyer with whom you normally work or any of our [public finance lawyers](#).

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2010

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