

The IRS announced on January 13, 2014, in [Notice 2014-9](#), that it will allow issuers to refund tax-exempt Recovery Zone Facility Bonds (RZFBs) with another issue of RZFBs, if the refunding RZFBs meet certain conditions. This Notice is important because issuers would not otherwise be able to refund RZFBs with tax-exempt RZFBs, as the authority to issue RZFBs expired on January 1, 2011. The Notice applies the approach that the IRS has taken for disaster area bonds (such as Gulf Opportunity Zone bonds), the issuance of which was similarly subject to an expiration date. This approach solves the expiration date problem that would otherwise prevent an issuer from refunding an issue of RZFBs.

Congress created RZFBs in the American Recovery and Reinvestment Act of 2009 to allow issuers to issue tax-exempt bonds to finance qualifying private projects in certain areas that were hit hard by the recession, even though those projects did not fall into one of the discrete categories of "exempt facilities" (such as airports) that may be financed with tax-exempt bonds. The issuer had to designate the targeted area as a "recovery zone," obtain RZFB issuance authority (similar to volume cap), and designate the bonds as RZFBs. The RZFB statutory provisions are silent on whether RZFBs could be refunded. The public finance community tentatively assumed that RZFBs could not be refunded, given the limitations on the amount of bonds that could be designated as RZFBs and the inability to issue RZFBs on or after January 1, 2011.

The Notice changes that. It allows an issuer to issue tax-exempt bonds to refund an issue of RZFBs in a current refunding if the issue price of the refunding RZFBs is no greater than the outstanding amount of the RZFBs. If the RZFBs had more than a de minimis amount of original issue discount or premium, then the "present value" of the RZFBs is used in that test instead of the outstanding amount.

The issuer need not redesignate the recovery zone or redesignate the bonds as RZFBs. The refunding bonds still need to meet the general requirements that apply to tax-exempt private activity bonds (such as the requirement that the weighted average maturity of an issue of RZFBs cannot exceed 120% of the weighted average useful life of the assets financed by the RZFBs). The Notice does not cover other types of bonds, such as Build America Bonds and their close cousins, Recovery Zone Economic Development Bonds.

Unlike many current refunding transition rules, the Notice does not limit the maturity of the refunding bonds to the maturity of the original RZFBs. Thus, subject only to the 120% useful life/weighted average maturity limitation mentioned above, the refunding bonds can have a final maturity or a weighted average maturity that is longer than that of the refunded RZFBs. However, an issuer would be required to obtain a new "TEFRA approval" after a public hearing if the refunding bonds extended the weighted average maturity of the RZFBs.

The Notice provides welcome relief from the harsh effects of the expiration date for RZFBs. If you have any questions about the Notice, please contact the Squire Sanders public finance lawyer with whom you usually work.