

IRS Provides Guidance On Current Refunding Of Bonds Issued Under Targeted Bond Programs

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IRS Notice 2019-39 sets forth certain requirements for preserving the tax-exempt or tax-advantaged status of current refunding bonds that are issued to refinance bonds that were originally issued under targeted bond programs. From time to time, Congress has established these statutory programs to facilitate lower borrowing costs for governmental entities by providing a tax incentive for investing in bonds that are issued to provide disaster relief or boost economic development. These programs include Gulf Opportunity Zone Bonds, established to provide relief after Hurricane Katrina, and certain Recovery Zone Facility Bonds, which were designed to foster economic development in distressed areas after the Great Recession.

These types of bonds are often subject to special volume caps and issuance deadlines. However, the statutes authorizing these programs are often silent as to the permissibility of refunding these bonds after the applicable deadlines and without receiving additional allocations of volume cap. Previously, the IRS has issued guidance on a program-by-program basis to address concerns about the ability to issue refunding bonds with the same tax advantages as the original bonds issued under these programs. Notice 2019-39 now provides a blanket rule for all existing and future targeted bond programs, subject to the provisions of the actual statutes themselves.

The Notice sets forth three requirements for issuing tax-exempt bonds to refund bonds originally issued under a targeted bond program. First, the original bonds must have been issued with any required volume cap allocation and before any applicable time deadline. Second, the issue price of the refunding bonds must be no greater than the outstanding stated principal amount of the refunded bonds. Under this second requirement, if the refunded bonds were issued with more than a de minimis amount of original issue discount or premium, the present value of the refunded bonds must be used instead of the outstanding stated principal amount when determining the maximum issue price of the refunding bonds. Finally, the refunding bonds must meet all of the applicable requirements for issuing bonds under the Internal Revenue Code and the targeted bond program, such as the requirements of Section 149(g) with respect to hedge bonds, and Section 147(b) with respect to the maximum average maturity of certain private activity bond issues.

If all of these requirements are satisfied, the refunding bonds may be issued without an additional allocation of volume cap and without regard to any issuance time deadline. The Notice describes the policy for permitting the issuance of these refunding bonds, stating that “[c]urrent refunding issues within appropriate size limits that do not increase the outstanding amount of tax-exempt bonds generally are favored transactions for economic and policy purposes because these transactions are done primarily to reduce borrowing costs and these transactions also reduce the Federal costs of the associated tax benefit.”

Given the policy considerations, the Notice explicitly applies to both current and future targeted bond programs and will apply to any bonds issued on or after May 22, 2019, and may also be applied retroactively to bonds issued before that date.

Please contact [Eugene G. Bernardo II](#) or [David M. DiSegna](#) at [Partridge Snow & Hahn LLP](#) if you have questions about this IRS Notice.

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