Bonds and the Recovery Act

A Guide to Municipal Bonds Enabled Under the 2009 American Recovery and Reinvestment Act and Their Potential Impacts on New York Communities

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Good Jobs New York

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About Good Jobs New York

GJNY investigates and publicizes the way in which public resources are allocated in the name of corporate retention. With this knowledge we hold government officials and companies accountable to taxpayers.

GJNY is a joint project of the Fiscal Policy Institute (FPI) and Good Jobs First (GJF). FPI (www.fiscalpolicy.org) is a nonpartisan research and education organization that focuses on the broad range of tax, budget, economic and related public policy issues that affect the quality of life and the economic well being of New York State residents. Good Jobs First (www.goodjobsfirst.org) is a non-profit, non-partisan national resource center for constituency-based groups and public officials, promoting corporate and government accountability in economic development and smart growth for working families.

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Executive Summary

A lesser-known aspect of the $787 billion American Recovery and Reinvestment Act (ARRA) is the provisions it sets forth concerning the municipal bond market. By targeting investors through enhanced returns and novel financing options, and by creating new categories of bonds, these provisions provided a boost to public credit that has helped offset the shrinkage in private credit markets. This has brought fiscal relief for states and localities, and helped sustain investments in the nation's infrastructure and promote economic development. Many of the new ARRA bond programs are having a beneficial effect, facilitating financing for schools, infrastructure, and sustainable energy projects.

The impacts of Recovery Act bonds are potentially enormous, and yet there is little public discussion about how these bonds work, how they shape public policy, and whether they lead to development that creates good jobs. This report seeks to address that.

The Recovery Act contains provisions that affect both governmental and private activity bonds. Historically, Good Jobs New York has been focused on the latter, since these bonds require public hearings prior to issuance, and therefore present the greatest opportunity to hold officials and companies accountable. However, we believe the limited opportunities for public participation in governmental bond issuances, which remain unchanged under the Recovery Act, should be a matter of public concern, especially since these issuances represent much larger sums of money than private activity bonds, and since the projects they finance have substantial impacts on public infrastructure systems that will last for generations.

We include governmental bonds in this report to give readers a sense of the overall extent to which the Act emphasizes bonds as a tool for economic recovery, and because, given ARRA's emphasis on accountability and transparency, this may be a good time for groups that follow the activities of New York's public authorities to advocate for more democratic principles in the way governmental bonds are issued. For example, we recommend that public input be required for *all* Recovery Zone Bond issuances, and not just Recovery Zone Facility Bonds, as a way to ensure the projects they finance meet the Recovery Act's intent and standards.

In New York City, Good Jobs New York has used the public hearings required for tax-exempt private activity bond issuances to facilitate broader citizen participation in projects ranging from the redevelopment of Lower Manhattan after the September 11th attacks, to the new Yankee Stadium in the South Bronx to the redevelopment plans for the Kingsbridge Armory in Northwest Bronx.

Early ARRA private-activity bond issuances in New York City confirm that nothing has altered the insufficient standards of transparency and accountability that existed prior to the bill's enactment. For example, City Point, a stalled retail complex in Downtown Brooklyn, received approval for $20 million in tax-free financing through the ARRA-authorized Recovery Zone Facility Bond program. City Point replaced an older, successful mall that was razed as part of a larger gentrification process that is disrupting the economic and social stability of longtime businesses and residents, a majority of whom are low-income African-Americans.

Over the past several years, Downtown Brooklyn residents have participated robustly in hearings held by the NYC Industrial Development Agency concerning prior bond allocations for City Point. Their demands were concrete and reasonable, but they were ignored. Stronger provisions in the Recovery Act could have helped ensure that ARRA bonds be leveraged to finally require City Point developers to meet some of the needs of incumbent residents in the area who were left out by gentrification, and then doubly hurt by the economic crisis. Such provisions would have been solidly in keeping with Recovery Act goals.

Should the private activity bond provisions of the Recovery Act be renewed—and news reports suggest this is likely with most ARRA bonds—this would present Congress with a renewed opportunity to attach stronger accountability and transparency standards. Good Jobs New York recommends that binding provisions be added to guarantee specific benefits to taxpayers and residents who most need them. Bankers and investors will surely request adjustments to these programs, and communities should too.

The bottom line is this: For taxpayers seeking to ensure that the Recovery Act is fair and effective, knowing how bond programs work, how to intervene in their issuance, and how to monitor the outcomes of bond-financed projects is critical. This report is an introduction to Recovery Act bonds and, where public hearing opportunities exist, a guide on how to hold officials allocating them accountable.

A summary of the ARRA bond provisions covered in this report—including public hearings, expiration dates, and prevailing construction wage requirements via the Davis-Bacon Act—are included in the tables below.

Private activity bonds altered or newly created under the Recovery Act

Name of Bond	Recovery Zone Facility Bonds	Industrial Development Bonds
National Volume Cap	$15 billion	$31 billion for 2009
NY State Volume Cap	$555 million	$1.7 billion for 2009
Bond Type	Qualified Private Activity Bond; Tax-Exempt	Qualified Private Activity Bond; Tax-Exempt
New or Expanded	New	Expanded
Category	Economic Development	Economic Development
Public Hearing Requirement	Yes	Yes
Davis-Bacon Applicable	No	No
Expires	1/1/2011	No

Governmental bonds altered or newly created under the Recovery Act

Name of Bond	Build America Bonds	Recovery Zone Economic Development Bonds ("Super BABs")	Qualified Energy Conservation Bonds	New Clean Renewable Energy Bonds	Qualified Zone Academy Bonds	Qualified School Construction Bonds	Tribal Economic Development Bonds
National Volume Cap	None	$10 billion	ARRA increased from $800 million to $3.2 billion	ARRA increased from $800 million to $2.4 billion	ARRA increased to $1.4 billion, from $400 million	$11 billion each for 2009 and 2010	$2 billion to be shared among all Indian tribal governments
NY State Volume Cap	None	$370 million	$202 million	Applications for New CREB volume cap allocations must have been filed or before8/4/09.	$90 million for 2009. Allocations for 2010 have not been specified.	$192 million	N/A
Bond Type	Governmental Bond; 35% Tax Credit	Governmental Bond; 45% Tax Credit	Includes Governmental and Private Activity Component; Qualified Tax Credit	Governmental Bond; Qualified Tax Credit	Governmental Bond; Qualified Tax Credit	Governmental Bond; Qualified Tax Credit	Qualified Tribal Bond; Tax-Exempt
New or Expanded	New	New	Expanded	Expanded	Expanded	New	New
Category	Economic Development	Economic Development	Energy Conservation Projects	Public Sector Renewable Energy Projects	Education (excluding construction)	Education	Economic Development
Public Hearing Requirement	No, but local procedures already in place may apply	No, but local procedures already in place may apply	No	No	No	No	No, but tribal governments may have a process
Davis-Bacon Applicable	No	Yes	Yes	Yes	Yes	Yes	No
Expires	1/1/11; but could be extended	1/1/11	No	Valid for three years after the date of allocation.	New volume cap must be allocated by 1/1/11	Unclear	Round 1 must be issued by 12/31/10 Round 2 by 12/31/11

There's more to the American Recovery and Reinvestment Act of 2009 (also referred to as "ARRA," "the Recovery Act" or "the stimulus") than just rebuilding the economy and putting people back to work; it's also a historic opportunity to engage ordinary citizens in shaping the outcome of publicly-financed projects, and to raise standards of accountability and transparency in order to ensure that such projects generate good jobs and other community benefits.

To learn about proposed private activity bond projects in New York City sign-up for GJNY's monthly subsidy alert at gjny@goodjobsfirst.org

While there continues to be much public debate about the Recovery Act's impact, the significance of the municipal bond provisions is largely elusive to those not immersed in legislation and finance. And yet bond-financed projects can have significant impacts on local and regional economies, underscoring the need for tools that facilitate public scrutiny of new bond provisions. Communities need to know how the Act changes (or does not change) the types of projects that are eligible for public financing, the process by which bonds are issued, and how they can have a say.

Not all ARRA bonds provide opportunity for public input—most do not. This report is therefore designed to help communities identify points of entry where the most meaningful and effective organizing and advocacy efforts can occur, namely around private activity bonds, which mandate public hearings before a bond can be issued.

In instances where bond issuances provide limited or no opportunity for public participation—with Build America Bonds or certain energy bonds, for example—we demystify how these bond programs work and what they are intended to achieve so that groups can monitor their allocation, assess whether or not greater accountability measures are in order, and focus their organizing accordingly.

Good Jobs New York believes that analyzing these bond provisions through the lens of the Recovery Act's goals is in and of itself valuable. Most explanations of these bonds are prepared by law firms and government agencies, and are not written to be accessible to ordinary citizens or to encourage public discussion. Making people aware of these new provisions and how they work fulfills a public good, and has value beyond the Recovery Act, as bonds continue to be a central mechanism used by state and local governments to finance public infrastructure and stimulate economic development.

"Bonds in the Recovery Act" reveals how New York economic development officials plan to allocate bonds so that, where appropriate, residents can ensure that ARRA bond-financed projects are consistent with the goals of the Recovery Act, which include:

- to preserve and create jobs and promote economic recovery

- to assist those most harmed by the recession
- to provide investments needed to increase economic efficiency by spurring technological advances in science and health
- to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits
- to stabilize State and local government budgets, in order to minimize reductions in essential services and/or state and local tax increases.

This report explains how the different ARRA-authorized bonds work, what they can finance, which entities issue them, and the amounts allocated to New York City and State. It also highlights where opportunities for public review and input exist, and where they currently do not. Where possible, we also analyze selected ARRA bond-financed projects already approved in New York City, and the extent to which these projects promise to produce tangible benefits and good jobs for those who most need them. For a sample of these projects please refer to the charts on the following page.

Selected ARRA private activity bond approvals (tax-exempt) in New York City

Issuer	New York City Capital Resource Corporation (NYCCRC)	NYCCRC	NYCCRC
Bond Type	Recovery Zone Facility Bond	Recovery Zone Facility Bond	Industrial Development Bond
Private Borrower	Averne by the Sea LLC	Arthur Management Corporation	Stellar Services
Amount	$16 million	$19.8 million	$5 million
Projects	A supermarket and parking facility in Far Rockaway, Queens	A parking garage for St. Barnabas Hospital in the Bronx	Commercial condominium space in Manhattan for an information technology consulting company

Selected ARRA governmental bond issuances in New York State

Issuer	Battery Park City Authority	Oneida County, New York	New York State Dormitory Authority
Bond Type	Build America Bond	Build America Bond and Recovery Zone Economic Development Bond	Build America Bond
Amount	$56.1 million	$14.1 million	$755.8 million
Projects	Infrastructure including a new parks conservancy headquarters, seawall reconstruction, street modifications for Goldman Sachs headquarters	Airfield redevelopment, computerization, asbestos abatement, road and bridge construction and improvement	Various State University of New York facilities

The economic recession of 2007-2009 precipitated the sharpest decline in state and local tax revenue in decades, stalling governments' plans for a range of public and private projects, and creating a need for stimulus that would bring fiscal relief to states and localities.

In order to provide states and localities with access to low-cost capital and restart job creation, the federal government introduced, as part of the Recovery Act, new tools designed to stimulate the municipal bond market.[1] These new provisions are distinct from other aspects of ARRA in that they are designed to revive the economy not through tax breaks, grants or contracts, but by making it easier for state and local governments and, to a lesser extent, private industry, to *borrow* money. The goal of these new provisions is to help states and localities jumpstart infrastructure projects, thereby creating jobs and economic development.

The Recovery Act stimulates the bond market in two ways, by:

- changing rules on certain existing bond programs so as to expand their use; and
- creating new tax-exempt and tax-credit bond programs. ARRA bond provisions affect both governmental and tax-exempt private activity bonds.

Private activity bonds are used to finance the projects of private companies or developers, such as shopping centers and office buildings. Tax-exempt (or "qualified") private activity bonds must be used for projects that, though they are used to construct private structures, are deemed by officials to serve the public purpose of economic development.

Governmental bonds are used to finance public facilities and services such as schools and mass transit.

A majority of the ARRA bond provisions are temporary, and currently apply only to bonds issued in 2009 and 2010, though this is widely expected to change.[2] Several are subject to the Davis-Bacon Act, which requires contractors to pay prevailing construction wages.

These new and expanded bond programs enable a quantitative surge and a qualitative shift in public debt; for example, two energy bond programs under ARRA authorize large increases in financing available for sustainable energy projects.

A shift toward tax-credit versus tax-exempt bonds

The ARRA bond provisions covered in this report include both tax-exempt and tax-credit bonds issued by state and local governments, and by public authorities.

- Tax-exempt bonds pay investors with interest that is not taxable (and therefore lower than taxable private bonds).

- Tax-credit bonds pay taxable interest; instead, the bondholder (or in some cases the issuer) receives a federal payment worth a share of the interest costs.

A notable feature of ARRA is its greater emphasis on tax-credit versus traditional tax-exempt bonds. The greater volume of tax-credit bonds (also known as “subsidized taxable bonds”) was purportedly intended to bring in new types of investors such as pension funds.

So far, the outcome of this new strategy appears mixed; for example, Qualified School Construction Bonds (QSCBs) are having trouble finding a strong market, apparently because investors don’t have enough tax liability for them to make economic sense, and lack confidence in the longer-term market prospects for these bonds.[3] On the other hand, Build America Bonds (BABs) have found strong demand: Over $50 billion have been issued since the Recovery Act's passage.[4]

BABs have been a huge success in part because they contain a feature called the “Direct Payment Option.” This provision allows the issuer to opt for a payment directly from the federal government equal to a share of the total interest cost.

In numerous reports, government officials praise BABs, claiming that, net of the subsidy, their borrowing costs are lower than they would have been with a traditional tax-exempt bond.[5] In one recent Treasury report, for example, the Chicago Public School System estimates that by using BABs, it will save $130 million compared with issuing traditional tax-exempt debt. Most, if not all, BAB issuances to date have been executed using the Direct Payment Option.[6]

In a sign that the federal government may move to address market reactions to tax-credit bonds, Congress is currently debating legislation that would allow QSCBs to be structured more like BABs.[7]

Assessing the overall impact of ARRA bonds

At this mid-point of the two-year Recovery Act, the overall impact of these new bond provisions on job creation and local economic development is still unfolding. Because many city agencies only report on bond issuances annually and do not always include job figures, it will be difficult to assess the impact of ARRA bond projects on employment, even after the Recovery Act expires.

In New York City, this situation could be improved if the City included bond projects in its NYC Stimulus Tracker, a website which is regularly updated, and contains jobs data from ARRA grants and contracts awarded in the City. The Stimulus Tracker is the City's best-ever effort at transparency on spending, but by itself it does not produce accountability; it challenges taxpayers to ensure the city is fulfilling its projections concerning jobs and other community benefits.

Good Jobs New York urges the Bloomberg Administration to enhance its Tracker by adding data on ARRA bond projects where possible.

Some issuances of private activity bonds under ARRA have been met with controversy, notably in New York City, while others have been welcomed by community and labor groups. In many of the issuances closely monitored by Good Jobs New York in New York City, authorities have failed to leverage the new subsidies sufficiently to ensure that good jobs and economic development will reach those most in need. Other issuances lack public review processes and are more challenging to assess. As the economy begins to rebound and the municipal finance market recovers, Good Jobs New York will continue to monitor and report on whether ARRA bonds are fulfilling the Recovery Act's intended goal of assisting communities worst hit by the recession.

> Industrial Development Agency (IDA) Private Activity Bond Hearing Process in NYC: Thirty days prior to a hearing, (which generally is held on the second Thursday of the month) a notice of proposed IDA projects is published in the classified section of the New York Post, and on the agency's website. Five business days before the hearing, the agency releases a cost/benefit analysis and application materials, which include a range of information, including data on projected job creation, public and private costs of the project and potential environmental impacts. The agency's board of directors generally votes on the project three business days after the public hearing.

Public hearing requirements

Of the Recovery Act bond programs discussed in this report, only private activity bond issuances are subject by law to a public approval requirement.[8] Public hearings are generally not required for governmental bond issuances, though in some cases, local policies allowing public participation in state and municipal budget processes may provide opportunities for the public to influence how they are allocated. Because these vary across the state according to bond type and issuer, Good Jobs New York recommends that local advocates verify what opportunities may be available when specific projects are announced.

The public approval requirement for private activity bond issuances can be met by a voter referendum or a public hearing following "reasonable notice." In general, federal law allows governments to select their own procedures for executing public hearings as long as these hearings announce the location and nature of the proposed project and provide a "reasonable opportunity" for individuals to express their views, both orally and in writing.

Agencies and authorities charged with conducting public hearings are required to give residents of potentially affected communities "reasonable public notice" concerning a project. Notices must state the time and place for the hearing, and are presumed reasonable if published no fewer than fourteen days prior to the hearing in one or more newspapers of general circulation available to residents of the locality, or announced by broadcast medium to those residents.[9]

Disclosure requirements

Once allocated, both tax-exempt and tax-credit bonds are subject to the same disclosure requirements as other municipal securities, including issuance of Official Statements. Those interested in accessing reports on approved bond projects can do so online using the EMMA database of the Municipal Securities Rulemaking Board.

> To learn more about the impact of ARRA grants on public services in other states, visit States for a Transparent and Accountable Recovery and the Coalition for an Accountable Recovery online.

In addition to the online EMMA database, those interested in accessing reports on private projects approved for bond financing in New York City should review the New York City Economic Development Corporation (NYCEDC) annual report known as Local Law 48 (LL48). LL48 contains data on projects financed by the Industrial Development Agency and the Capital Resource Corporation, including property sold by the New York City Economic Development Corporation, and estimates of jobs and tax revenues generated.

Recovery Zone Bonds

The Recovery Act authorizes the issuance of $25 billion in two new kinds of “Recovery Zone” Bonds: Recovery Zone Facility Bonds (RZFBS), which are private activity bonds, and Recovery Zone Economic Development Bonds (RZEDBs), which are governmental bonds. RZEDBs are discussed in the following section under Governmental Bonds.

Allocation of both kinds of Recovery Zone Bonds is restricted to projects within designated “recovery zones.” ARRA defines recovery zones as: any area with significant poverty, unemployment, rate of home foreclosures, or general “distress;” any area economically distressed due to the closure or realignment of a military installation; or any area where a federal Empowerment Zone or Renewal Community designation is in effect. The vague wording of these criteria gives localities wide discretion in designating recovery zones.

Recovery Zone Facility Bonds ($15 billion authorized nationally)

Recovery Zone Facility Bonds, or RZFBs, are a new tax-exempt private activity bond.[10] Private businesses may use RZFBs to finance a broad range of construction projects, including office buildings, industrial facilities or retail complexes.[11] They may not be used for facilities such as casinos or other gambling establishments, racetracks, or golf courses.[12]

The New York City Industrial Development Agency (NYCIDA) has issued six criteria for determining which projects will qualify for RZFB financing. While these criteria apply in addition to the federal guidelines, they do not necessarily raise standards of transparency and accountability because they are vague and not easily enforceable. For example, IDA states that projects must “contribute to the city’s quality of life,” and “contribute to the economy of the neighborhood in which the facility is to be located.” These phrases are open to wide interpretation, making it impossible to ensure that these projects will produce concrete benefits for low-income and unemployed New Yorkers or incumbent neighborhood residents. [13]

Allocation and Public Hearing Process
Federal tax law imposes annual state volume caps on private activity bonds. ARRA apportions the $15 billion national RZFB volume cap to the states using a formula based on each state's share of U.S. job loss during 2008.[14] States in turn are directed to apportion bonding authority among counties and large municipalities, again based upon their respective shares of job loss during 2008. [15]

Using this formula, New York State will be able to allocate approximately $555 million in RZFBs, of which about $121 million will be assigned to New York City.[16]

Industrial Development Agencies have bonding authority and will issue RZFBs. As with IDBs, in New York City, both the IDA and CRC have this authority.

In addition to the federal guidelines on establishing recovery zone status, the New York City IDA has established additional criteria for designation. Such zones must have:

- a poverty or public assistance rate of at least 20 percent
- an unemployment rate of at least 1.24 times the statewide unemployment rate, or median family income not in excess of 70 percent of the statewide level

Areas within federal Empowerment Zones, state Empire Zones, "IDA Highly Distressed Tracts," or "New Market Tax Credits Distressed Areas" may also qualify. [18]

The IDA and CRC are subsidiaries of the New York City Economic Development Corporation, which has been following a regular public hearing schedule and procedure in issuing bonds as mentioned in the overview section.

The Capital Resource Corporation has approved five RZFB projects:

- $20 million for "City Point", a large retail facility in Downtown Brooklyn. Expected job creation: 68 permanent FTE/108 construction[17]
- $16 million for a supermarket and parking facility in Far Rockaway, Queens. Expected job creation: 174 FTE/250 construction
- $19.8 million for a parking garage for St. Barnabas Hospital in the Bronx. Expected job creation: 6 FTE/87 construction
- $17 million for a private medical facility in Queens. Expected job creation: 52 FTE/91 construction
- $2.2 million for a cultural and arts facility in a private Harlem condominium. Expected job creation: 50 FTE/25 construction

Approvals and Comments

A survey by Good Jobs New York of several IDAs throughout New York State in the fall of 2009 revealed that many were not readily familiar with RZFBs. Only New York City had begun to issue them.

Since ARRA establishes a new separate volume cap for RZFBs, this program could increase the overall number of projects financed through tax-exempt bonds; however, it is not clear at this stage how many IDAs throughout the state will take advantage of RZFBs. Many smaller IDAs in particular may not have the resources to coordinate financing under a new, time-limited program.

In August of 2009, Ulster County, New York announced that it was seeking authority to issue $8.8 million in Recovery Zone Facility Bonds.[19] As of December, 2009 the County does not appear to have allocated any of these bonds, and information on what kinds of projects this allocation could finance is not yet available.

In early June 2009, the New York City Capital Resource Corporation (NYCCRC) announced that it was seeking approval from its board of directors to allocate Recovery Zone Facility Bonds. Final board approval was granted at a public hearing in July 2009.

In the fall of 2009, NYCCRC approved an early round of RZFBs for City Point, a large retail facility being developed by Albee LLC. The project will receive $20 million in triple tax-exempt financing, and was especially controversial because it will likely include big box retail chains that typically generate low-paying, part-time jobs with no benefits. The project was also controversial because it will replace the former Albee Square Mall which, until it was demolished in 2007, housed dozens of successful locally-owned businesses, many if not most of them minority-owned.

City Point was approved for financing without ensuring it will benefit the residents of the Recovery Zone, many of whom are African-Americans living in public housing. Those who testified against the project were concerned about job quality, including the lack of full-time employment, local hiring, or living wage requirements. Small-business advocates also unsuccessfully pressed the IDA to set aside 10 percent of the space in the new facility for displaced tenants from the old Albee Square Mall. They also argued that there are many other pressing needs in Downtown Brooklyn, such as an affordable grocery store.

Families United for Racial and Economic Equality (FUREE), a community–based, member-led group that organizes residents, was slated to negotiate with the developer this past fall on the possibility of concessions for small businesses displaced by the removal of Albee Square. The outcome of these meetings is pending.

In Far Rockaway Queens, $26 million in bonds were approved for a supermarket and parking facility in a neighborhood that lacks access to groceries. This proposal was met with approval from local residents and the United Food and Commercial Workers Union, Local 1550.

In December 2009, $19.8 million in tax-free Recovery Zone Facility bonds were approved on behalf of Arthur Management Corp. to finance the construction of a parking facility in the Bronx. The facility will serve St. Barnabas Hospital, which created the for-profit entity Arthur Management in order to be eligible for the financing.

NYCCRC estimates the new facility will create six permanent jobs, but according to the Garage Employees Local Union that represents 28 employees at the site, the new, automated facility will result in a loss of 22 jobs. In testimony at the NYCCRC public hearing, Good Jobs New York and the Committee of Interns and Residents (CIR) questioned the logic of using stimulus bonds intended to "contribute economically to the neighborhoods in which projects are located," as the city's own criteria state, for a project that will eliminate permanent jobs.[20]

There was no public comment on the proposal for a medical facility in Queens.

A project proposed for Harlem called My Image Studios received community support. All five people who testified spoke in favor of financing for an art and cultural facility, which would be housed at the Kalahari Condominium.

As the City Point and St. Barnabas projects demonstrate, the vague targeting criteria adopted by the NYCIDA in June 2009, which was allegedly intended to focus resources on distressed neighborhoods, do not ensure that unemployed residents or small businesses will benefit or that accountability will improve.

Policy Recommendation: Should ARRA bond programs be made permanent, GJNY recommends that requirements be attached guaranteeing that projects financed with Recovery Zone Facility Bonds create good jobs and needed services benefitting New Yorkers most hurt by the recession. This would ensure that the Recovery Zone Bond program lives up to its stated principles. Requirements should include more inclusive public hearing standards, which would help connect the use of these bonds to projects with broad public benefit.

Specifically on job quality, it is significant that IDBs and RZFBs are silent on both construction-phase wages and permanent-job wages.

Industrial Development Bonds ($31 billion authorized nationally)

Industrial Development Bonds, or IDBs, are tax-exempt private activity bonds used to finance private development projects that serve the public purpose of economic development. IDBs are not new, but the Recovery Act expands the range of projects they can finance through January 1, 2011.

Prior to ARRA, 95 percent or more of the net proceeds of IDBs had to be used for the acquisition, construction, reconstruction, or improvement of land or property used in a manufacturing facility, such as an auto-parts plant, or a food processing facility. Facilities could qualify only if they produced tangible physical property.[21]

The Recovery Act broadens the definition of manufacturing, making facilities that produce "intangible property" eligible for IDB financing.[22] This change was made to allow inclusion of the creation of computer software, patents, and intellectual property associated with biotechnology and pharmaceutical companies.[23]

The Recovery Act also makes certain manufacturing-related facilities eligible for full financing. Prior to ARRA, not more than 25% of the net proceeds of the bond issuance could be used to finance property that is "functionally related" to the core manufacturing facility. The bill removes this restriction as long as the related facility is on the same site as the core facility. Functionally related space is eligible as long as most of the company's work is not performed there.

The Treasury Department distinguishes between "qualified small-issue bonds," which are intended to finance smaller projects, and "exempt facility bonds," which do not have size restrictions.

*Qualified small-issue bond*s can be issued in amounts up to $1 million, $10 million, and $40 million. These limits are determined by aggregating the principal amounts of some prior bond issuances together with the face amount of the bond issue in question. Other rules and considerations apply depending on the size of the issuance.[24]

Exempt facility bonds do not carry size restrictions and are issued to finance various types of facilities owned or used by private entities, including airports, docks and certain other transportation-related facilities; water, sewer and certain other local utility facilities; and solid and hazardous waste disposal facilities.[25]

Allocation and Public Hearing Process
Federal tax law imposes state volume caps on private activity bonds. ARRA apportions the $31 billion national private activity bond volume cap for 2009 to the states by multiplying a certain dollar amount per person (determined each year by the IRS), by the state's official population (as estimated by the Census Bureau).
The volume cap on IDBs for each state for calendar year 2009 is the greater of $90 multiplied by each state's population, or $273 million. Using this formula, New York State was able to allocate $1.7 billion in private activity

bonds last year. [26]

Based on the existing formula, the national volume cap on private activity bonds will increase by 0.8 percent for 2010.[27]

In New York State, Industrial Development Agencies have authority to issue IDBs. In New York City, both the Capital Resource Corporation (CRC) and the Industrial Development Agency (IDA) have this authority. These agencies, subsidiaries of the New York City Economic Development Corporation, follow a regular public hearing schedule and procedure for IDBs.

Approvals and Comments
In October 2009 the CRC approved its first bond issuance under ARRA-expanded IDB provisions for 4U Services, Inc., d/b/a Stellar Services.[28] The company provides information technology consulting services and products primarily to federal, state, and local government agencies in New York, New Jersey, and Georgia.

Stellar Services received approval for financing the acquisition and renovation of approximately 7,200 square feet of commercial condominium space located in Midtown Manhattan. The company intends to consolidate its New York City operations in the new facility. According to the application released by CRC, Stellar pledged to create six full-time positions over the next three years.[29]

Expanding the definition of manufacturing for IDBs under ARRA represents a significant shift in policy. Previously, small-issue IDBs were not available to facilities producing intangible property, preventing, for instance, many technology companies from benefiting from their use. The new rules make low-cost capital more available to new economic sectors, reflecting larger changes in our economy.

If this change is made permanent, this would mean a fundamental shift in the types of projects tax-exempt private activity bond programs can finance. Accountable economic development advocates should be on alert to ensure that IDB projects continue to serve the Old Economy as well as the New Economy.

Policy Recommendation: Should ARRA bond provisions be made permanent, GJNY recommends that requirements be attached to ensure that tax-exempt IDBs create direct benefits for taxpayers. More inclusive public hearing requirements should be put in place to help connect the use of these bonds to projects with broad public benefit. For example, to address, the City's "digital divide" when IDBs are proposed for high-technology projects, program rules should ensure that the projects are tied to training programs assisting New Yorkers who most need jobs, to better enable them to benefit from the New Economy."

Build America Bonds (no volume limitation)

Build America Bonds, or BABs, are new government-purpose bonds. Under ARRA, they expire on January 1, 2011, but the financial media suggest that because of their popularity, they are likely to be extended, and possibly made permanent.[30]

BABs are intended to assist state and local governments in financing projects at low borrowing costs, and thereby stimulate the economy and create jobs.[31] Projects must have a public benefit, and private projects are not eligible.

BABs are *not* tax-exempt—the interest on these bonds is taxable—but they can be issued for any project for which municipal bonds are traditionally used. In place of tax-exemption, BAB investors are eligible for a federal tax credit equal to 35 percent of the interest earned on the bonds. Most BAB issuers, however, are instead choosing an alternative arrangement that is uniquely available through Build America Bonds: the *Direct Payment Option*. This option represents a significant change in the federal government's approach to subsidizing municipal obligations.

Under the Direct Payment Option, the issuer receives a direct payment from the U.S. Treasury as of each interest payment date. The subsidy allows the issuer to pay a higher interest rate, thereby providing an incentive to the bond buyer, while still having a portion of that cash left over for other uses. Issuers can choose which option works best for them depending upon the circumstances. It is not clear how issuers are using these federal cash payments, which appear unaccountable. Under the Direct Payment Option, *only* the issuer, and not the bondholder, receives a tax credit.

Trade press reports claim that BABs using the Direct Payment Option have enjoyed high volumes because they give state and local governments lower effective borrowing costs than would have been the case with traditional tax-exempt bonds; however, Good Jobs New York encourages more analysis of this issue.

Indian tribal governments that have received an allocation of Tribal Economic Development Bonds (which are tax-exempt), may elect to issue those bonds as Build America Bonds instead. The availability of BABs to tribal communities reportedly significantly expands the financing options they have historically had at their disposal.[32]

Allocation and Public Hearing Process
BABs can be issued by state and local governments, including counties, and a variety of Public Authorities.

Federal law does not require public approval for BAB issuances. However, local governments with authority to issue BABs may have existing mechanisms in place as part of their capital budget processes that provide opportunity for public input (see discussion below on Recovery Zone Economic Development Bonds, which are a subset of BABs).

Approvals and Comments
In late 2009, BAB issuances took off nationally, and in New York State, these bonds saw significant activity. The table below lists BAB issuances we are aware of in New York State to date.

According to a report by Bloomberg News, the six leading Build America Bonds underwriters nationally by dollar volume to date are:

- Goldman Sachs Group Inc., with $7.4 billion in sales
- JPMorgan Chase & Co., with $7.3 billion
- Bank of America Corp.'s Merrill Lynch & Co., at $6.9 billion
- Citigroup Inc., with $4.3 billion
- Barclays Plc, at $3.1 billion, and
- Regions Financial Corp.'s Morgan Keegan & Co., with $1.8 billion.[33]

BAB Issuer	Metropolitan Transit Authority	Nassau County	Suffolk County Water Authority	The City of New York	Battery Park City Authority	New York State Dormitory Authority
Amount	$364 million	$26 million	$100 million	$560 million	$56.1 million[34]	$755.8 million[35]
Project	Unspecified commuter and transit projects	Capital projects, judgments and settlements	Projects relating to water infrastructure	"Capital purposes" and costs of issuance	New parks conservancy headquarters, seawall reconstruction, street modifications for Goldman Sachs headquarters	Various SUNY facilities

Recovery Zone Economic Development Bonds ($10 billion authorized nationally)

Recovery Zone Economic Development Bonds (RZEDBs, or "Super BABs"), are a subset of Build America Bonds. Under The Recovery Act, they expire on January 1, 2011.

RZEDBs must be used for "government purpose projects or programs," and can include public infrastructure and public facilities as well as job training and educational programs. [36] Private projects are not eligible.

Like other kinds of BABs, RZEDBs are taxable; their biggest difference is their geographic targeting to designated "recovery zones" (although we have observed that such targeting is minimally restrictive). RZEDB bondholders are also eligible for a larger tax credit than other BABs—worth 45 percent of the interest they earn on the bonds— but, as discussed above with BABs, investor tax credits are apparently proving less popular than the Direct Payment Option, which pays issuers an interest subsidy from the U.S. Treasury as of each interest payment date.

Allocation and Public Hearing Process
ARRA apportions the $10 billion RZEDB volume cap to the states using a formula based on each state's share of U.S. job loss during 2008.[37] States in turn are directed to apportion bonding authority among counties and large municipalities, again, based on their respective shares of job loss during 2008. [38]

Using this formula, New York State is allocated approximately $370 million in RZEDBs, of which about $81 million will be assigned to New York City. RZEDBs may be issued by counties and by municipalities with populations of 100,000 or greater. In New York State, county executive offices have been issuing RZEDBs.[39]

Federal law does not require a public approval process for issuances of RZEDBs. In New York State, however, authorities with the ability to issue these bonds appear to have existing mechanisms in conjunction with the budget process that provide opportunities for public input.

Approvals and Comments
Despite a deeper subsidy than traditional BABs, the RZEDB program has been slow to get started, but now appears to be picking up steam.[40] As of December 2009, RZEDBs have been issued in Adrian and Grand Haven, Michigan; Honolulu, Hawaii; Crystal Lake, The Village of Cary, and Kankakee County, Illinois; El Paso, Texas; Lafayette, Louisiana; Toledo, Ohio; Dane County, Wisconsin; Gwinnett County, Georgia; Itasca County, Minnesota; Pettis County, Missouri; Racine County, Wisconsin, Washoe County, Nevada; and Oneida County, New York.[41]

Oneida County issued $14.1 million in Build America Bonds, of which a portion were RZEDBs.[42] This issuance will finance 18 separate projects, including redevelopment of an airfield, a county-wide computerization effort, asbestos abatement, construction and improvement of roads and bridges, and repairs and upgrades to public buildings and other infrastructure such as sewage and water systems.[43]

According to the Oneida County comptroller's office, the County sought recovery zone status in order to finance general infrastructure projects. Recovery Zone designation was adopted by the County Board of Legislatures by a simple majority vote. No public hearing on the designation was required or undertaken.

Oneida County projects proposed for RZEDB financing are enfolded into a multi-step process already in place. First, the county's Capital Projects Review Committee assesses proposals and makes a selection for the County Executive to review. The County Executive then reviews and recommends projects at his or her discretion. These recommendations are presented to the County Board of Legislators, which approves projects to enter the budget process. All of this occurs over a period of about eight months. During the budget proceedings, two public hearings, conducted by the Board, are required before anything can be approved and the bonding process can begin. According to the county executive's office, several of the projects that will be financed by Oneida County's recent issuance of RZEDBs were "shovel-ready" because they had already been adopted during the budget process in the fall of 2008.

Policy Recommendation: Of the two Recovery Zone Bond programs—RZFBs and RZEDBs—only RZFBs require public hearings. Although both programs are limited to "recovery zones," that designation is so vague, it does not effectively target projects. Should ARRA bond programs be made permanent, GJNY recommends that issuances of *both* types of Recovery Zone Bonds require the same degree of public participation as RZFBs. We also recommend that the targeting standard be revised to effectively target both areas most in need of recovery and workers most harmed by the recession.

Energy-Related Bonds

The Recovery Act expanded two tax-credit bond programs intended to finance various types of sustainable energy projects: Qualified Energy Conservation Bonds (QECBs), and New Clean Renewable Energy Bonds (New CREBs)

Both QECBs and New CREBs are issued with a zero percent interest rate. The borrower pays back only the principal, and the bondholder receives federal tax credits in lieu of traditional interest payments at a rate set daily by the U.S. Treasury Department. Tax credits issued through the program are treated as interest and included in the bondholder's taxable income. [44]

Qualified Energy Conservation Bonds ($3.2 billion authorized nationally)

Qualified Energy Conservation Bonds, or QECBs, are a tax-credit bond program expanded under the Recovery Act from a national limit of $800 million to $3.2 billion.[45] QECBs can be used to finance programs that reduce greenhouse gas emissions as well as for other energy conservation purposes, including: reducing energy consumption in public buildings; municipal solar and energy efficiency projects and renewable energy production; research and development; mass commuting facilities that reduce energy consumption; energy-related demonstration projects; rural development involving the production of electricity from renewable energy resources, and public energy efficiency education campaigns.

The tax credit rate for QECBs is set daily by the U.S. Treasury Department; however, QECB bondholders will receive 70 percent of the full rate. Credits exceeding a bondholder's tax liability may be carried forward to the succeeding tax year, but cannot be refunded. For example, the tax credit rate for QECBs issued on January 13th, 2010, based on a ten-year term to maturity, was listed at 5.52 percent. The longer the term to maturity is, the higher the rate of return.[46]

QECBs are hybrid bonds because they have both a governmental and a private activity component under ARRA: at least 70 percent of a State's allocation must be allotted as governmental bonds and no more than 30 percent of each State's allocation may be issued as private activity bonds (i.e., the financed property may be privately owned and operated.)[47]

Renewable energy facilities that are eligible for QECBs are also eligible for Clean Energy Renewable Bonds (CREBS), which are discussed below.

Allocation and Public Hearing Process
ARRA apportions the $3.2 billion national QECB volume cap to the states based upon each state's share of U.S. population as of July 1, 2008. States in

turn are directed to apportion bonding authority among “large local governments" on the same basis. [48]

New York State will be able to allocate approximately $202 million in QECBs, of which about $87 million will be assigned to New York City.

Eligible issuers of QECBs include states, political subdivisions, and tribal governments. In New York State, Industrial Development Agencies can issue QECBs for private activity. As of December 2009, NYCIDA had not issued any QECBs for private projects. As with all private activity bonds, a public hearing would be required for any QECBs issued with a private activity component.

At the county level and possibly in other contexts, hearings attached to the budget process would provide the public with an opportunity to comment on any pending QECB issuances. See discussion in above section on “Recovery Zone Economic Development Bonds” for an example of how one county's process works.

Approvals and Comments

While QECBs existed prior to the Recovery Act, the program’s expansion under ARRA will likely allow many more projects to secure financing.

News reports suggest that QECBs are being issued across the country. Examples include Boulder County, Colorado, where the *Longmont Times* reported that in November 2009 voters authorized the issuance of up to $6.1 million in QECBs for energy-conservation improvements to county government buildings and properties. As of November, 2009 the EMMA database did not report any QECB issuances yet for the state of New York.

New Clean Renewable Energy Bonds ($2.4 billion authorized nationally)

Clean Renewable Energy Bonds are existing tax-credit bonds that were expanded by the Recovery Act—hence the term "New CREBs." They can be used to finance public sector renewable energy projects.[49]

Eligible facilities must be owned either by a public power provider, a state or local government, or a cooperative electric company. They may include: wind energy, biomass, geothermal, solar, small irrigation power, landfill gas, trash combustion, hydropower, marine and hydrokinetic energy, or refined coal production facilities.

A qualified project may also include a facility owned by the borrower that is functionally related and subordinate to the qualifying facility.[50]

Allocation and Public Hearing Process
The Recovery Act increases the amount of funds available to issue CREBs from the national limit of $800 million to $2.4 billion. New CREB allocations are valid for three years after the date of allocation.

Unlike other bonds discussed in this report, which are allocated to states according to a formula, the federal government allocates CREBs based on a competitive process. Potential issuers must have filed project applications with the U.S. Department of Treasury before August 4, 2009. Only issuers whose projects are approved by Treasury will receive bond allocation.

CREBs can be issued by public power providers, cooperative electric companies, state, local, and tribal governments, new CREB lenders, and not-for-profit electric utilities that have received loans or loan guarantees.

Approvals and Comments
A report released by the U.S. Treasury Department in November, 2009 announced that CREB allocations had been awarded to cooperative electric companies in Alaska, Arizona, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Michigan, New York, Ohio, Oregon, Pennsylvania, Texas, Virginia, and West Virginia. Issuances to governmental bodies were made in Arizona, California, Delaware, Illinois, Indiana, Iowa, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New York, Oregon, South Carolina, Vermont, Washington, and Wisconsin.

As of November 2009, two projects in New York State will receive CREB financing: Steuben Rural Electric Cooperative will receive $1.5 million for a biomass facility in Bath, and Chautauqua County will receive $2 million, also for a biomass facility, in Jamestown.

In New York City, the Industrial Development Agency is able to issue CREBs. But research suggests that urban allocations have historically been too small to justify incurring the cost of a bond issuance. CREBs were advocated for by rural electric cooperatives and they have typically been the active issuers and beneficiaries.

The New York Power Authority (NYPA), which is a public power provider, has authority to issue CREBs, but according to their staff, NYPA has not done so because the allocation is very small relative to the demand for low-cost financing for renewable energy, and because NYPA has other financing options, giving it little incentive to use the program.[51]

ARRA expanded the Qualified Zone Academy Bond program (QZABs), and created a new program, Qualified School Construction Bonds (QSCBs). Both are intended to finance various types of public school and education-related projects.

Both QZABs and QSCBs are tax-credit bonds. In lieu of interest, the bondholder receives a tax credit from the federal government. The tax credit rate is set daily by the Treasury Department and, for each issuance, is determined on the date that there is a binding contract for the sale of the bond.[52]

The federal government reportedly created QSCBs in part to encourage a market for tax-credit bonds. But reports suggest that this has not happened because not enough investors have sufficient tax liabilities to make it worth their while, and because there seems to be a lack of confidence in the longer-term market prospects for these bonds. In response to this situation, Congress is currently debating legislation that would allow QSCBs to be structured more like Build America Bonds (BABs).[53]

Qualified Zone Academy Bonds ($1.4 billion authorized nationally)

QZABs are governmental, tax-credit bonds and were created in 1997. They enable public schools serving low-income populations to borrow at little or no interest cost.

QZABs may be used to renovate and repair school buildings, purchase equipment and modernize technology, develop curricula, and train teachers. The bonds can also be used to pay interest on loans. The proceeds of the bonds may not be used for new construction.

ARRA increases the national cap for QZABs from $400 million per year to $1.4 billion for both 2009 and 2010. New York's allocation for 2009 is approximately $90 million. Bonds must be allocated by January 1, 2011.

Allocation and Public Hearing Process
ARRA apportions the $1.4 billion in QZABs based on each state's share of population below the poverty line (as determined by the United States Office of Management and Budget). States are in turn directed to apportion bonding authority among state education agencies.

In order to be eligible for QZABs, schools must be located either in an Empowerment Zone or Enterprise Community, or be a school in which at least 35 percent of the school's students are eligible for free or reduced-price lunch under the federal lunch program. The school must also have private business contributions that match 10% of the project costs. In addition, public schools must have an education plan that is approved by the school districts, and that subjects students to the same standards and assessments as other students in the district.

Approvals and Comments

Disclosure statements on EMMA indicate that as of December 2009, Oklahoma and Wisconsin were the only states that had allocated QZABs.

Qualified School Construction Bonds ($11 billion authorized nationally)

Qualified School Construction Bonds, or QSCBs, are new governmental tax-credit bonds that allow schools to borrow at little or no interest cost.

QSCBs may be used for construction, rehabilitation, or repair of public school facilities, or for the acquisition of land on which a public school is to be constructed. Bond proceeds may also be used to acquire equipment for use in the part of the facility that is being constructed, rehabilitated, or repaired.

The Recovery Act sets the volume cap for QSCBs at $11 billion for both 2009 and 2010. Except for un-issued bonds that can be carried forward into the next year, there is no volume cap after 2010. The total QSCB allocation for New York State for 2009 was approximately $192 million. The 2010 cap has yet to be apportioned to the states.

Allocation and Public Hearing Process
ARRA apportions the $11 billion in QSCBs based on states' eligibility under the Elementary and Secondary Education Act of 1965 for the most recent fiscal year ending before the calendar year. States are in turn directed to apportion bonding authority among large local educational agencies.

Unlike with Qualified Zone Academy Bonds, discussed above, there is no mandate that schools meet requirements for student demographics or location; administer specific types of education programs; or receive a percentage of project costs from business.

According to the IRS, QSCBs in New York have been allocated to Buffalo City School District ($34.4 million), New York City ($700 million), and Rochester City School District ($29.5 million).[54]

Up to $400 million in QSCBs may be issued nationwide by tribal governments in both 2009 and 2010. Any tribal school eligible for Bureau of Indian Affairs funding may use these bonds to finance new construction or improvements.

Approvals and Comments
As of November 2009, QSCBs have been issued in Arizona, Arkansas, California, Iowa, Kansas, Massachusetts, Michigan, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, South Dakota, Texas, Washington, and Wisconsin.[55]

The Dormitory Authority of New York issued $192.5 million in QSCBs in 2009 to fund the Expanding our Children's Education and Learning (EXCEL) state aid capital program.[56]

Despite some issuances nationally, many states have seen minimal activity with QSCBs, and members of congress are currently pressing the Treasury Department to alter the rules on these bonds to make them more marketable.[57]

Prior to passage of the Recovery Act, Indian tribes could issue tax-exempt bonds only for certain "essential governmental functions," as defined by the federal tax code. Tribal Economic Development Bonds, or TEDBs, are new tax-exempt bonds that allow tribes to borrow for a much wider variety of projects, including but not restricted to essential governmental functions.

Tribes that receive TEDB allocation can use them to finance anything that state governments can finance, as long as the project is located on an Indian reservation, and as long as bond proceeds are not used to finance property used in gaming or any portion of a building in which gaming occurs.

TEDBs can finance tribal projects that were previously ineligible for tax-exempt financing, including hotels and convention centers, golf courses and other resort enhancements, HUD-insured loans to first-time tribal homebuyers, energy development and transmission facilities, solid waste systems (such as landfills), a variety of public-private enterprise bonds, and privately owned manufacturing facilities

Tribes may also use Tribal Economic Development Bonds to refinance more expensive outstanding taxable debt.

Allocation and Public Hearing Process
Under ARRA, the U.S. Treasury Department, in consultation with the Department of the Interior, will decide how the $2 billion national TEDB volume cap is to be apportioned among tribal governments. The specifics have not yet been determined, but allocations may be based on project feasibility, tribal membership, reservation population, economic need, job creation, or any number of other factors.

It is important to note that tribal governments may have their own processes that allow community input regarding proposed bond projects.

Approvals and Comments
The Treasury Department releases an allocation schedule as each pool of TEDBs is approved.[58] The first pool included 58 applications, totaling $1 billion in the following states: Arizona, California, Colorado, Florida, Iowa, Michigan, Minnesota, Montana, Nebraska, New Mexico, New York, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wisconsin. Of these applicants, 51 provided disclosure consent, and seven did not.[59]

The Oneida Indian Nation of New York was allocated $22.6 in TEBDs for "refinancing."

Endnotes

1 More information about the American Recovery and Reinvestment Act can be found at www.recovery.gov

2 Peter Schroeder, "Push to Expand ARRA," *The Bond Buyer*, December 22, 2009

3 Christopher Flavelle, "Schools Have Trouble Tapping Stimulus Funds," *Pro Publica*, December 24, 2009

4 Stephen Gandel, "A Stimulus Success: Build America Bonds Are Working," Time.com, November 17, 2009

5 U.S. Treasurer, "Chicago Mayor Touts Benefits of Build America Bonds Program," (press release TG-502) US Treasury, January 6, 2010

6 The Municipal Securities Rulemaking Board, "Build America Bonds: Issuance and Trade Activity," July 2009

7 Christopher Flavelle, "Schools Have Trouble Tapping Stimulus Funds," op. cit.

8 Section 147(f) of the Code and section 5f.103-2 of the Treasury regulations define the specific rules for this requirement.

9 TaxAlmanac, a free online resource for Tax Professionals

10 Tax-exempt private activity bonds are often referred to as "qualified" private activity bonds and the terms are interchangeable.

11 "Mayor Bloomberg Announces New Stimulus–Funded Bond Program to Spur Commercial and Industrial Projects in all Five Boroughs" (press release PR-261-09) June 10, 2009 states office and retail complexes are eligible for RZFB financing.

12 Internal Revenue Service, Notice 2009-50, "Part III: Administrative, Procedural, and Miscellaneous, Recovery Zone Bond Volume Cap Allocations," http://www.irs.gov/pub/irs-drop/n-09-50.pdf

13 Second Amended and Restated Uniform Tax Exemption Policy of the New York City Industrial Development Agency as approved on December 12, 2006 by the Board of Directors of the New York City Industrial Development Agency

14 The American Recovery and Reinvestment Act sets the specific formula for state allocations as the difference in the number of individuals employed in a state in December 2007 compared with the number employed in December 2008.

15 A "large municipality" is defined by ARRA as having a population of more than 100,000.

16 The amounts allocated to each state, including a breakdown among counties and large municipalities, are listed in this IRS document: http://www.treas.gov/press/releases/docs/rzballocation-local_AR-ZS.pdf

17 FTE stands for Full-Time Equivalent

18 Maps of Recovery Zones are found on the New York City Economic Development Corporation's website: www.nycedc.com.

19 "Ulster may seek 'Recovery Zone' status," Mid-Hudson News Network, August 27, 2009

20 Additional information available at www.clawback.org, December 16, 2009, "NYC Approves Recovery Zone Bonds for Project that Won't Aid Recovery"

21 "Industrial Development Bonds-Tax-Exempt Financing of Manufacturing Facilities Effects of the Stimulus Act", May 6, 2009, Power Point Presentation of Hunton & Willams, LLP to the Council of Development Finance Agencies.

22 The U.S. Treasury defines intangible property as "any patent, copyright, formula, process, design, pattern, know-how, format, or other similar item."

23 "Industrial Development Bonds-Tax-Exempt Financing of Manufacturing Facilities Effects of the Stimulus Act", May 6, 2009, Power Point Presentation of Hunton & Willams, LLP to the Council of Development Finance Agencies.

24 $10 million issuances must also take into account, for instance, certain capital expenditures incurred during the three years prior and the three years following the bond issuance.

25 As defined by the Municipal Securities Rulemaking Board

26 The Council of Development Finance Agencies lists volume caps on private activity bonds for 2009 and 2010: http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/volumecapabout.html

27 Ibid

28 Details on the Nimble program are available at: http://www.nycedc.com/FinancingIncentives/Financing/Nimble/Pages/Nimble.aspx

29 Stellar's application for benefits and the CRC's cost/benefit analysis can be found on the website of the Economic Development Corporation, www.nycedc.com

30 Ryan J. Donmoyer and Jeremy R. Cooke, "Obama may extend Build America Bonds,

nominee says," Bloomberg.com, November 4, 2009

31 "IRS issues guidance on new Build America Bonds," (press release IR-2009-33), US Internal Revenue Service April 3, 2009

32 There is no restriction on what the tribal borrower does with the 35% subsidy payments. See Orrick, Herrington and Sutcliffe, "Tribal Economic Development Bonds (In Plain English)," http://www.orrick.com/fileupload/1936.pdf

33 Ryan J. Donmoyer and Jeremy R. Cooke, "Obama may extend Build America Bonds, nominee says," op. cit.

34 *Municipal Securities Rulemaking Board,* Electronic Municipal Market Access (EMMA) database

35 Ibid

36 NYS Economic Recovery Handbook, http://www.recovery.ny.gov/Handbook/InfrastructureEconomicDevelopment5.htm

37 The American Recovery and Reinvestment Act sets the specific formula for state allocations as the difference in the number of individuals employed in a state in December, 2007 compared with the number employed in December, 2008.

38 The amounts allocated to each state, including a breakdown among counties and large municipalities, are listed in this IRS document: http://www.irs.gov/pub/irs-tege/rzblocalreallocations.pdf

39 The New York State Comptroller's office could not provide more detailed information (beyond what is already stated in ARRA) about the specific authorities that will be issuing RZEDBs, and recommended those who have questions about this contact their Legal Division at (518) 474-5586.

40 Lisa Lambert, "Slow start for U.S. recovery zone bond program," Forbes.com, August 18, 2009

41 *Municipal Securities Rulemaking Board,* Electronic Municipal Market Access (EMMA) database

42 "Build America Bonds" Issues (through August, 2009), *The Bond Buyer*, http://www.bondbuyer.com/pdfs/20090510A6SR01FZ-1-BABs_CHART.pdf

43 Ibid

44 Database of State Incentives for Renewables and Efficiency, http://www.dsireusa.org/

45 ibid

46 U.S. Department of the Treasury, Bureau of the Public Debt website has CREB rate tables: https://www.treasurydirect.gov

47 Orrick, Herrington and Sutcliffe, "Qualified Energy Conservation Bonds: IRS Notice 2009-29 – Allocation and Guidance," www.orrick.com

48 The Treasury Department defines large local governments as municipalities and counties with populations of 100,000 or more.

49 The federal Energy Policy Act of 2005

50 National Rural Electric Cooperative Association, "Clean Renewable Energy Bonds ("CREBs")," http://www.nreca.org/documents/publicpolicy/cleanrenewableenergybonds.pdf

51 Call between Allison Lirish Dean, GJNY research analyst, and Brian Ross at NYPA on October 29, 2009

52 The applicable maximum maturity, the discount rate for determining the maturity, and QSCB credit rate are published for that date by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: https://www.treasurydirect.gov.

53 Christopher Flavelle, "Schools Have Trouble Tapping Stimulus Funds," op. cit.

54 Internal Revenue Bulletin, Notice 2009-35: "Qualified School Construction Bond Allocations for 2009", http://www.irs.gov/irb/2009-17_IRB/ar08.html

55 *Municipal Securities Rulemaking Board,* Electronic Municipal Market Access (EMMA) database

56 "DASNY Board Approves $5.66 Billion in Financings," (press release) September 23, 2009

57 Christopher Flavelle, "Schools Have Trouble Tapping Stimulus Funds," op. cit.

58 The allocation schedule for the first tranche of TEDBs can be found at http://www.irs.gov/pub/irs-tege/tedb_allocation_schedule-2.pdf

59 According to the firm Dorsey and Whitney LLP, each applicant is requested by the IRS to consent to disclosure by the IRS of: (1) the name of the issuer, (2) the type and location of the project, and (3) the amount of the allocation that is awarded. Applicants are not required to consent to such disclosure in order to receive an allocation.