

INSIGHTS

## Proposed Treasury Regulations Bring the Public Notice Requirements into the 21st Century

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Recently released [proposed regulations](#) (the “Proposed Regulations”) relating to the public notice and approval requirements for private activity bonds (the “Public Approval Requirement”) – sometimes referred to as the TEFRA approval – streamline the process and recognize the prevalence of the Internet as a means of communication. Although the Proposed Regulations technically won’t be effective unless and until they are made final, issuers may elect to apply the Proposed Regulations to any public approval after September 28, 2017.

The most common way that issuers satisfy the Public Approval Requirement is by obtaining approval from the applicable elected representative of the appropriate governmental unit after a public hearing following reasonable public notice. Recognizing that technological advances have made the current rules outdated and responding to other critiques of the current rules, the Proposed Regulations aim to reduce the burden of, and add flexibility to, the Public Approval Process.

The Proposed Regulations encompass a host of changes and clarifications, but we believe issuers should take particular note to the following:

### **Public Notification via the Internet**

The Proposed Regulations add electronic posting on the approving governmental unit’s public website to the list of approved posting methods. However, perhaps limiting the utility of electronic posting, the governmental unit must also offer a reasonable, publicly known alternative method for obtaining the information for residents without access to the Internet (e.g., telephone recordings).

### **Less Specific Description of the Project**

While issuers are still required to provide a general functional description of the type and use of the financed project in the public notice, the Proposed Regulations limit the level of specificity required to a reference to the category of bond and the type and use of the project (e.g., “exempt facility bonds for an airport pursuant to section 142(a)(1)”). In addition, the Proposed Regulations clarify that the requirement to identify the location of the project may be met by a description based on geographic boundaries. Furthermore, a consolidated description of the location (e.g., a college campus) is sufficient if multiple projects or facilities are located on the same site or an adjacent or proximate sites.

**Post-Approval Changes**

The Proposed Regulations continue to provide that “insubstantial deviations” do not invalidate the approval secured by an issuer under the Public Approval Requirement, but provide welcome guidance on what is insubstantial (e.g., changes in the maximum stated principal amount of the bonds that are no more than 10% than the amount approved). Recognizing that circumstances change, the Proposed Regulations also allow supplemental post-issuance public approvals to cure certain substantial deviations that occur after the issuance of the bonds if certain requirements are met.

If you have any questions regarding the Proposed Regulations or would like information as to their effect on a particular issue, please do not hesitate to contact [\*\*Brian Teaff\*\*](#).