



CLIENT ALERT

MEMORANDUM

TO: State and Local Government Clients **DATE:** February 22, 2010
FROM: Douglass P. Selby, Esq. **FILE:** 99999. 502
 Caryl Greenberg Smith, Esq.

Georgia Application Process for Re-Allocation of Recovery Zone Volume Cap Authority

This memorandum may be of interest to a local government if your community either (1) did not receive sufficient authorization for “recovery zone financing” from the initial allocations made by the federal government in June 2009 or (2) did not receive any allocation and you wish to pursue an economic development project. If either of these apply, you should be aware of the “Georgia Recovery Zone Reallocation Process” and the associated deadlines.

The Georgia Department of Community Affairs (“DCA”) now has “Allocation Application” forms available for local governments and other “Eligible Issuers”¹ in Georgia to apply for re-allocation of volume cap authority to issue Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds (together, “**Recovery Zone Bonds**”). Allocations were initially made directly to Georgia Counties and large municipalities pursuant to an Internal Revenue Service (“IRS”) notice released June 12, 2009. Under procedures later developed by the Georgia State Financing and Investment Commission (“GSFIC”) local governments in Georgia seeking to retain allocations of volume cap from the IRS were required to file a “Notice of Intent to Issue” with DCA. Pursuant to the GSFIC procedures (hereinafter referred to as the “**Georgia Re-Allocation Process**”), allocated amounts not accounted for in a Notice of Intent were “deemed waived” and were automatically transferred to the State as of November 2, 2009.

Recovery Zone Bond authorization which is now held by the State of Georgia will be made available to local governments through a competitive process based upon criteria, including, among others, whether a given project is an area impacted by economic distress and which favors regional cooperation. Because the amount of Recovery Zone financing is limited (i.e., “volume is capped”) and the program expires December 31, 2010, the earlier applications are filed, the greater a community’s chances of receiving allocation becomes.

¹ Eligible Issuers of Recovery Zone Bonds include: (i) states, (ii) political subdivisions, (iii) entities empowered to issue bonds on behalf of a state or political subdivision (e.g. statutory, local act or constitutional development authorities and other such entities) and (iv) otherwise-eligible issuers in conduit financing issues (as defined in § 1.150-1(b) of the Treasury Regulations).

DCA recently released a summary of the total amount of Recovery Zone Bonds currently available for re-allocation (as of February 1, 2010) as shown on the chart attached as an exhibit to this memorandum and as summarized below:

Recovery Zone Economic Development Bonds (RZEDBs)

— Total Amount of RZEDBs initially available to Georgia	-	\$355.8 mm
— Amount Issued as of 2/1/2010	-	\$26.1 mm (7.3%)
— Amount for which Notices of Intent were received by 11/2/09 Deadline	-	\$271.6 mm (76.3%)
— Amount currently Available for Re-allocation due to Waiver or Deemed Waiver	-	\$58.03 mm (16.4%)

Recovery Zone Facility Bonds (RZFBs)

— Total Amount of RZFBs initially available to Georgia	-	\$533.7 mm
— Amount issued as of 2/1/2010	-	\$10.5 mm (2.0%)
— Amount for which Notices of Intent were received by 11/2/09 Deadline	-	\$429.7 mm (80.5%)
— Amount currently Available for Re-allocated due to waiver of deemed waiver	-	\$93.5 mm (17.5%)

As described in Hunton & Williams', October 2, 2009 Recovery Zone Client Alert,* local governments which declared their intent to issue Recovery Zone Bonds and fail to issue all or a part of their allocation by July 1, 2010 will have such allocations "deemed waived" and such allocation will be transferred to the State of Georgia, unless an extension request is filed with DCA by June 15, 2010. As a result, the **amounts listed in the preceding chart as currently available for re-allocation are expected to increase significantly after July 1, 2010, and all such additional amounts must be used by December 31, 2010 (unless extended by the Federal government).**

DCA has circulated a form of application for re-allocation which we have attached to this memorandum. Project information requested by the application includes total project cost, amount of jobs created and/or retained by the project and a general project description. Applications will be accepted by DCA through November 1, 2010. All applications must be for even amounts of \$1,000.00 and must include the following attachments:

- (1) \$250 Application Fee

* For a copy of prior Hunton & Williams' Client Alerts, send e-mail to dselby@hunton.com.

- (2) Issuer Designation Certification - certificate from the Eligible Issuer that (a) the Eligible Issuer has properly designated a Recovery Zone within its jurisdiction or area of operation, and (b) the project to be financed with the proceeds of the bonds is located within such Recovery Zone;
- (3) Opinion of Legal Counsel: - written opinion or opinions of legal counsel, addressed to DCA, that (i) the issuer is authorized under the laws of the state to issue bonds to finance the project contemplated by the application and (ii) bonds which are covered by the application will, based upon all information available at the time to legal counsel, qualify as recovery zone economic development bonds or recovery zone facility bonds, as applicable, when issued;
- (4) Financial Commitment Letter - With respect to recovery zone facility bonds only, a written letter of intent from a lender, financial institution, underwriter, investment banker, or other purchaser, to purchase the bonds upon satisfaction of certain conditions in the market; and
- (5) Any other information as reasonably required by DCA (thus far, no further requirements have been released).²

Under the Georgia Re-Allocation Process, Eligible Issuers who are awarded re-allocation by the State will receive a written Notice of Re-Allocation from GSFIC. Within 100 calendar days of receiving such notice, an Eligible Issuer must use the allocation and evidence such use by filing "confirmation of issuance" with DCA or the Notice will expire. Issuers who do not expect to issue bonds within 100 days of receiving a Notice of Re-Allocation may file a written statement to request a 30 day extension. Extension requests must be filed prior to the 100 day expiration date and DCA has sole discretion in granting an extension request.

Please contact me or my partner, Caryl Greenberg Smith, if you have any questions or require any assistance in applying for re-allocation.

DPS
CGS

² The Application Attachment list in Section 10 of the attached application form, indicates that DCA may request information related to the need for the project and the impact that such project will have on the recovery zone. It may therefore be helpful to include some of this information in the General Project Description portion of the application.

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(3) Enclosures

- (1) Chart Depicting Current Status of Allocations (DCA)
- (2) RZB Application for Bond Allocation (DCA)
- (3) Georgia Recovery Zone Bond Re-Allocation Process (as provided by DCA)