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Expansion of Qualified Private Activity Bond Categories Under the Infrastructure Investment and Jobs Act : Ballard Spahr

On November 15, President Biden signed the Infrastructure Investment and Jobs Act ([PL 117-58](#)) into law. This Act introduces more than \$550 billion in new infrastructure spending in addition to reauthorizations of existing programs for a total of \$1.2 trillion in federal infrastructure investment in local communities over the next eight years. The spending covers broadband infrastructure; air quality improvements; road, bridge, and tunnel repairs and reconstruction; rail and transit improvements; and clean water infrastructure.

The Act amends the tax-exempt bond provisions of the Internal Revenue Code (Code) to enhance the financing options available to state and local government to address the highlighted infrastructure needs. Specifically, the package adds two new categories of exempt facility private activity bonds (PABs) and additional volume cap for transportation PABs.

Here is what you need to know about the new PAB provisions:

Broadband Projects. The Act introduces qualified broadband projects as a new category of exempt facility PABs under Section 142(a) of the Code. Qualified broadband projects include facilities for the provision of broadband internet access to census tracts in which a majority of households lack broadband access prior to the date of issuance of qualifying bonds. Notably, this new category of PABs enjoys a 75% exemption from the volume cap requirements for privately owned projects and a 100% exemption from volume cap for government-owned projects.

Carbon Capture Facilities. The Act also adds qualified carbon dioxide capture facilities as a new category of exempt facility PABs under Section 142(a) of the Code. Qualified carbon capture facilities include key clean energy technologies such as eligible components of industrial carbon dioxide emitting facilities used to capture and process carbon dioxide, and direct air capture facilities. An eligible component is further defined by the Act as any equipment that is used to capture, treat, or store carbon dioxide produced by industrial carbon dioxide facilities or is related to the conversion of coal and gas byproduct into synthesis gas. Section 45Q(e) of the Code, relating to the business tax credit for carbon capture, defines a direct air capture facility as any facility which uses carbon capture equipment to collect carbon dioxide directly from air. Together, these technologies seek to capture and sequester emissions produced by power plants and industrial facilities that contribute to climate change. This new category of exempt facility PABs also enjoys a 75% exemption from the volume cap requirements for qualifying projects. As a partial offset, however, any otherwise available carbon capture credit is reduced by up to one-half if bonds are issued under this provision to finance the qualifying assets.

Qualified Transportation PABs. Additionally, the Act adds \$15 billion to the national volume cap limitation available for qualified highway or surface freight transfer facilities. The prior volume cap limitation of \$15 billion had largely been exhausted. The limitation for qualified highway or surface freight facilities is available by application to the U.S. Department of Transportation.

by Marybeth Orsini, Charles S. Henck, Jean S. Everett, Sheila Kles, and Andrew T. Wang

November 15, 2021

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