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Attention BAB Issuers: Extraordinary Optional Redemption is Available - Orrick

For more than 10 years, as the subsidy for direct payment Build America Bonds (BABs) has been less than originally promised due to sequestration, issuers have wondered if sequestration constituted an "extraordinary event" that would trigger their right to seek extraordinary optional redemption.

A recently concluded court case provides favorable guidance for issuers. Although the specific language must be reviewed in each case, we believe extraordinary optional redemption is available for issuers of BABs in most cases.

Key Context

Most BABs were issued with an extraordinary optional redemption feature (less costly) and a make whole call feature (more costly). The extraordinary optional redemption was intended to be available if the 35% subsidy rate was reduced for reasons other than the fault of the issuer.

The 35% subsidy for BABs has been reduced since 2013 through sequestration.

An issuer's ability to exercise the extraordinary optional redemption turns on whether there has been an "extraordinary event" as defined in the extraordinary optional redemption provision for the specific bonds.

Continue reading.

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