

## Proposed Tax Reform Legislation Would Increase Financing Costs for Issuers of Tax-Exempt Bonds

---

November 17, 2017

The U.S. House of Representatives has passed its Tax Cuts and Jobs Act (the "[House Bill](#)"), and while much of the national media has focused on its impact on corporate and individual tax rates and deductions, the bill also contains provisions which would eliminate the ability to issue tax-exempt bonds for certain types of projects or for certain refinancings of existing bonds.

The House Bill, which passed on Nov. 16, 2017, would prohibit tax-exempt advance refundings (i.e., refinancings with more than 90 days between the date of issue of the refunding bonds and the call date of the refunded bonds). The ability to refinance outstanding bonds at lower interest rates has saved municipal, state, university, K-12 schools, charter schools and many other tax-exempt bond issuers significant debt service costs, and advance refunding bonds currently represent at least 25 percent of the tax-exempt municipal market.

The House Bill would also stop all tax-exempt borrowings for "private activity bonds," including bonds issued for 501(c)(3) non-profit entities such as hospitals and private colleges, low-income housing authorities, airports, and student loan authorities. It would also disallow most types of public-private partnership or tax-exempt "P3" financings. The House Bill also eliminates various categories of tax credit bonds.

The House Bill, if adopted, would take effect on Jan. 1, 2018. Importantly, the House Bill does not provide any "transitional rules," which would allow "private activity" bond issuers to refinance existing tax-exempt debt. Additionally, even if a governmental issuer has received state volume cap to issue tax credit bonds, those bonds could not be issued after Dec. 31, 2017.

On Nov. 9, the Senate Finance Committee released its version of tax reform legislation (the "[Senate Proposal](#)"). The Senate Proposal also contains provisions that are harmful to municipal bond issuers, but contains some key differences from the House Bill:

- The Senate Proposal does not eliminate "private activity bonds." This is crucial, because 501(c)(3) entities, public-private partnerships, airports, low-income housing, and student loan authorities, private colleges and universities, and many others, could still borrow at lower tax-exempt rates.
- The Senate Proposal does not eliminate tax credit bonds. This would allow governmental issuers to continue to issue direct-pay tax credit bonds, such as qualified school construction bonds and qualified energy conservation bonds, at highly subsidized interest rates.

However, the Senate Proposal, like the House Bill, will stop all advance refundings effective Jan. 1, 2018. This change alone will cost issuers of tax-exempt debt, because issuers will forego refinancings at lower interest rates. Also similar to the House Bill, the Senate Proposal does not offer transitional relief.

**Continued**

---

While the outlook on a comprehensive tax reform package is highly uncertain at this point, and there will be changes to the final product as the Senate Proposal and the House Bill undergo the reconciliation process, we encourage our clients to contact their lobbyists and congressional representatives to make the case for the preservation of "advance refundings" and "private activity bonds." We also encourage you to contact any member of our Public Finance Group with questions relating to the proposed legislation and its impact on your outstanding tax-exempt bonds and future debt issuances.