

WHAT IS THE GENERAL PROCESS FOR ISSUING PRIVATE ACTIVITY BONDS IN ARIZONA?



Lotzar Law Firm, PC



Private activity bonds are municipal securities. Proceeds from private activity bonds are used to cover construction costs for qualifying products, including utility facilities, docks and airports, and low-income rental properties.

Developers, nonprofits, manufacturers and other business owners benefit from private activity bonds (PABs). An experienced attorney can assist in understanding minimum qualifications requirements and in following the process for obtaining private activity bonds. Attorneys can serve as counsel for borrowers and issuers, or may serve as bond counsel. Attorneys can also help structure transactions so bond proceeds can be put towards the cost of issuance.

UNDERSTANDING THE GENERAL PROCESS FOR ISSUING PRIVATE ACTIVITY BONDS

Private activity bonds replaced Industrial Development bonds with the passage of the Tax Reform Act of 1986. The Tax Reform Act of 1986 established the use of private activity bonds for:

- Industrial and manufacturing facilities and equipment
- Single and multi-family housing units
- Private utility projects
- Municipal facilities

Small-issue private activity bonds are limited to \$10 million for bonds for manufacturing equipment and manufacturing facilities. Investors and organizations using bond proceeds may not expend in excess of \$20 million in the jurisdiction of the industrial development authority issuing the bond for a period three years prior to and three years after the issuance of the bond. This limitation is inclusive of the bond proceeds. Nationally, no company is permitted to have in excess of \$40 million in private activity bonds that are outstanding at any one period of time.

State guidelines establish basic parameters for issuing private activity bonds, but federal authorities determine the allocation and issuance process in state. The Arizona Commerce Authority allocates up to the state maximum amount of PABs following procedures established in Arizona Revised Statutes Section 35-901 through Section 35-913.

35-902 establishes allocation rules:

- 10 percent of the state ceiling on PABS is allocated to products designated at the discretion of the CEO.
- 35 percent of the state ceiling is allocated to qualified mortgage credit certificate programs or qualified mortgage revenue bonds.
- 10 percent of the state ceiling is allocated to qualifying residential projects. For at least 180 days, 30 percent of the allocations must go to rural rental projects.
- 20 percent of the state ceiling is allocated to qualifying student loan projects.
- 15 percent of the state ceiling is allocated to manufacturing projects.
- 10 percent of the ceiling is allocated to qualifying projects not otherwise described in the statute.



A confirmation that a portion of the state ceiling will be allocated to a project must be obtained before bonds are issued, before the sale of bonds, or before an issuer obtains mortgage credit certificates. Confirmations are attained by filing a request for allocation. Requests for allocation can be filed by:

- Qualified issuers of student loan bonds.
- Qualifying state universities.

- Industrial development authorities. In urban counties including Pima and Maricopa counties, urban Industrial Development Authorities (IDA) issue private activity bonds. In rural counties, the Arizona Housing Finance Authority or a local rural Industrial Development Authority issues private activity bonds.

The Arizona Department of Commerce accepts requests for allocation by mail. According to Section 35-904, a request filed by mail is deemed to be filed at 5:00 PM on the date that the request is received. Requests for allocation can also be personally delivered to the Arizona Department of Commerce. The request for allocation must include a refundable security deposit.



Hand delivery may be necessary as a practical matter because allocations are processed on a first-come, first-serve basis. All requests received at the same date and time are dated and numbered by lot. Confirmations on the requests

will be issued by lottery. When the aggregate amount of bonds and mortgage credit certificates exceed the state aggregate allocated amount, the State can decline to issue additional confirmations.

There are three periods in which applications for confirmations can be submitted. The periods run from January 2- June 30, July 1- December 16, and December 17-31. A confirmation issued on the 30th of June expires unless applicable bonds are issued or unless a qualified mortgage credit certificate program is established and a certificate of closing is filed within 90 days after the confirmation. If the 90th day is not a business day, the expiration occurs on the 1st business day after day 90.

A qualified attorney can assist with private activity bonds. Call today to schedule a consultation and learn more.

About the Author

Lotzar Law Firm, P.C. was founded in 2005, and serves clients throughout the U.S. We pride ourselves on the level of service we provide our clients and are determined to see each project through to positive results.

In addition to bringing a legal expertise to the table, we offer clients sound ideas and invaluable advice that enhances their business. One of our greatest attributes is our ability to approach projects from a business-owner perspective. Rather than narrowing in on the setbacks of a challenge and informing clients of what stands in the way, we prefer to seek innovative ways to transcend issues and create a better path for clients. With an unparalleled savvy in developing modern methods of financing, we can present you with viable and efficient options.

Our diversified portfolio of clients is comprised of entrepreneurs, real estate developers, contractors and property managers. We also do business with numerous nonprofit clients including Chicanos Por La Causa, Inc.; Tiempo, Inc.; and The Industrial Development Authority of the City of Tucson, Arizona.

We work in a team-based environment, supported by a skilled and caring staff, eager to answer your questions and provide you with consistent access to your team. Whether your needs are small or large in scope, we look forward to working with you.

Lotzar Law Firm, P.C.
7150 East Camelback Road, Suite 455
Scottsdale, AZ 85251
Phone: (480) 905-0300
Fax: (480) 905-0321
Email: info@lotzar.com
Website: www.lotzar.com