

Chapman Client Alert

January 28, 2020

Current Issues Relevant to Our Clients

New Form 8038-CP for Direct Pay Bonds

The Internal Revenue Service (“IRS”) has released a new Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, along with new instructions. The new form and instructions are now available on the IRS website (<https://www.irs.gov/forms-instructions>). Form 8038-CP is used by issuers to claim payments from the federal government representing all or a portion of interest payable on direct pay bonds, including Build America Bonds, Recovery Zone Economic Development Bonds, Qualified School Construction Bonds, Qualified Zone Academy Bonds, New Clean Renewable Energy Bonds and Qualified Energy Conservation Bonds.

Issuers should use this new January 2020 version of Form 8038-CP for new submissions to the IRS. Using the old version of Form 8038-CP may cause a delay in a request for credit payment. Issuers should not submit the new form if they have already mailed an older version of Form 8038-CP to the IRS.

Please note that the numbering of the lines on the new Form 8038-CP is different from the old Form 8038-CP, so issuers should be careful in filling out the new form.

The Form 8038-CP includes a new question (line 24) confirming that the issuer has already paid or reasonably expects to pay all of the interest payable to bondholders on or before the reported interest payment date. The issuer is required to attach an explanation detailing circumstances surrounding any nonpayment of interest. There is also a new question (line 23) that asks whether the debt service schedule for the bonds has changed to help the IRS determine whether or not the issuer has provided the latest version of the debt service schedule to the IRS.

The new instructions explain that if an issuer takes an action that results in a significant modification or reissuance of direct pay bonds, then such bonds may no longer be eligible for a payment from the federal government and the issuer may no longer be entitled to request a payment using Form 8038-CP.

The new instructions also explain that the IRS has previously issued guidance concerning certain remedial actions that the issuer may take concerning the failure to timely spend proceeds of the bonds or concerning certain nonqualified use of property financed with proceeds of the bonds. In certain circumstances, the issuer may reduce the payments from the federal government claimed on the Form 8038-CP allocable to such actions. The new instructions explain the requirements of a revised debt service schedule and when such schedule is necessary, such as in the event of a remedial action or in the event of the redemption, defeasance or reissuance of certain bonds.

Please visit the Interactive Form 8038-CP and Important Processing Changes page on <https://www.irs.gov/tax-exempt-bonds/interactive-form-8038-cp-and-important-processing-changes> for more information.

[For More Information](#)

If you would like further information concerning the matters discussed in this article, please contact a member of our Public Finance Group or visit us online at chapman.com.

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