

City of Pompano Beach

Recovery Zone Facility Bonds Program Information

I. Introduction

The City of Pompano Beach (the City) is accepting Applications from parties interested in making use of the City's Recovery Zone Facility Bond (RZFB) allocation for private development projects. The City's Tax-Exempt Recovery Zone Facility Bond Program (RZFB) was enabled by the American Recovery and Reinvestment Act of 2009 (ARRA) and is designed to aid certain businesses through the issuance of tax-exempt bonds. The RZFB Program increases the breadth and depth of borrowers that may access tax-exempt debt to finance capital projects. In addition, the program expands the types of private activity projects which may be financed. Whereas traditional private activity bond offerings for corporate borrowers has been limited to small-issue industrial development, solid waste disposal, airport/port facilities and certain power generator providers, RZFBs may be utilized to finance a wide array of projects, with few limitations.

In this program, the City will serve as a conduit issuer, thereby enabling eligible borrowers to access the tax-exempt market. RZFBs issued by the City do not constitute a debt, liability, or obligation of the City and bondholders shall never have the power to compel the exercise of ad valorem taxation for their payment.

II. RZFBs—Frequently Asked Questions

1. What are Recovery Zone Facility Bonds?

The American Recovery and Reinvestment Act of 2009 (the Act), passed by Congress in February 2009, created several new bond programs. One of these is the "Recovery Zone Facility Bond" (RZFB) program which is available to private entities. These bonds allow State and local governments to borrow funds for eligible projects at lower borrowing costs based on Federal tax incentives. These bonds are not direct grants or appropriations like some stimulus programs. RZFBs offer tax-exempt financing rates for private projects that otherwise would be financed on a taxable basis. The bonds are sold to a bank or other qualified financial institution or privately placed with qualified financial institutions. The proceeds of the bonds are loaned to the business. The bonds are secured solely by the loan repayments and other collateral pledged by the business to secure the bonds.

2. What are "Recovery Zones" and how does a county or large city "designate" a recovery zone?

These bonds can only be used in designated recovery zones. A recovery zone, among other factors, is an area designated by a State, county or large city as having significant poverty, unemployment, rate of home foreclosures, or general distress. The U.S. Treasury guidance indicates that State and local governments that receive volume cap allocations may designate recovery zones in any reasonable manner as they determine in good faith in their discretion. On October 27, 2009 the City Commission designated the entire City as a recovery zone.

3. How much allocation of RZFB has the City received and how was that amount determined?

The Act requires making the allocations based on employment declines in 2008. The employment date comes from the Bureau of Labor Statistics. The U.S. Treasury provided the local numbers to make this program as easy as possible for State and local governments. The U.S. Treasury had no discretion in the allocations. The City of Pompano Beach received an allocation of RZF bonding capacity in the amount of \$6,014,000. The State of Florida allocated this amount to the

City based on its population, as well as relative decline in employment in 2008, as compared to other Cities in the State and Broward County.

4. Where can I find more information on the recent Treasury guidance on the program and the total bond authority for a specific county or large City?

To find the Treasury guidance on Recovery Zone Bonds in IRS Notice 2009-50, please visit:

<http://www.irs.gov/pub/irs-drop/n-09-50.pdf>
<http://www.irs.gov/taxexemptbond/article/0,,id=206034,00.html>

To find information regarding bond authority totals, please visit:

http://www.treas.gov/press/releases/docs/rzballocation-local_AR-ZS.pdf

5. Is this a grant or loan from the City?

No. This is not a direct funding program. The RZFB program allocates the issuance authority to the City to issue tax-exempt facility bonds to bond investors in order to assist in financing private activity projects. The City is serving as a "conduit" issuer for a for-profit entity to be able to obtain project financing at a lower cost. Funds to finance the project must be provided by a bank willing to buy the bonds and hold the loan that secures the bond (a "private placement") or from sale of the bonds in the public markets arranged by an underwriter and supported by a letter of credit from a highly rated bank (a "public sale"). The City simply uses its issuance role to obtain the favorable tax treatment for the bonds to lower the cost of the financing for the borrower. The credit risk is taken by the purchaser of the bonds. Payment terms and security requirements are negotiated between the borrower and the bond purchaser. The for-profit owner of the qualifying project will be required to repay the loan. The facility bonds will not be considered a general obligation of the City and shall be payable solely from the credit and properties of the for-profit entity. In this respect, qualifying projects and for-profit entities must be able to demonstrate adequate financial capacity to repay the principal and interest on the facility bonds without any assistance or credit enhancement from the City. For-profit entities interested in receiving an allocation will be expected to initiate the funding process with a financial institution of their choice to facilitate the bond financing through the City.

6. What can these bonds be used for?

RZFBs can be used by qualified private businesses for depreciable capital projects (e.g., buildings and equipment) for original use in active businesses in recovery zones. A qualified business is any trade or business except the business of renting residential real property located in the Recovery Zone to others or any of the following uses: private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling or any store that sells alcohol for consumption off premises. The funds cannot be utilized to finance inventory or working capital expenditures, to purchase land, or to refinance old debt. The Treasury Department's guidance gives States, counties, and large cities that receive volume cap allocations broad discretion to use those allocations themselves or to allocate it to others for eligible projects in any reasonable manner in their discretion.

The following costs are permitted to be paid from proceeds of the bonds (all costs must be incurred after October 27, 2009): (a) rehabilitation of property; (b) new construction; (c) acquisition of new equipment; and (d) acquisition of property, if there will be "substantial" rehabilitation to the property (for purposes of the foregoing, rehabilitation is considered "substantial" if rehabilitation costs are at least equal to the cost of acquiring the property or \$5,000, whichever is greater). Costs associated with the financing, such as bond counsel fees, lender fees, and placement agent fees, may also be paid from the proceeds of the bonds, up to a limit of 2% of the initial principal amount of the bonds.

7. What are some of the benefits to a for-profit business for financing a project with RZFBs?

The RZFB does two things (if a bank purchases the bonds):

- The bank loaning money to the for-profit entity for the project will receive a bond designation (RZFB) which **exempts the bank from having to pay federal TAXES on the INTEREST accrued** over the life of the loan to the for-profit entity.
- This allows the bank to offer a **reduced interest rate for the loan to the for-profit entity/project** (1% to 2% reduced interest rate).

As noted above, by issuing the bonds on a tax-exempt basis, the *for-profit* business is able to lower the cost of its financing.

8. Is the Davis-Bacon Act applicable to RZFBs

The Davis-Bacon Act of 1931 is a United States federal law which established the requirement for paying prevailing wages on public works projects. All federal government construction contracts, and most contracts for federally assisted construction over \$2,000, must include provisions for paying workers on-site no less than the locally prevailing wages and benefits paid on similar projects.

Federal guidelines governing RZFBs does not mandate compliance with the Davis-Bacon Act.

9. What is the minimum or maximum allocation that the City may make to a business/project?

Given the expense of issuance, a bond amount of less than \$2,000,000 will most likely not be deemed cost effective. As the City's RZFB allocation is limited to \$6,014,000, this is the maximum amount that may be allocated to a particular business/project.

10. How long does it typically take to issue a bond?

A borrower should anticipate it taking at least 3 months, from the date of approval of an allocation by the City, to complete the required public hearing process and bond issuance.

11. Is there a deadline for issuance of RZFBs and completion of projects to be financed?

As mandated by federal regulations, the bonds must be issued by December 31, 2010 and the business must reasonably expect to expend proceeds within 36 months of issuance. However, to ensure that the bonds are issued by December 31, 2010, the City will require that the bond closing occur by November 30, 2010.

12. I still have questions, who do I contact to get additional information?

Please contact Suzette Sibble, Finance Director, at 954-786-4680 or by e-mail at suzette.sibble@copbfl.com.

III. Minimum Threshold Requirements Checklist

The checklist below was developed to enable interested applicants to make a quick determination as to eligibility for RZFB program participation prior to completing the attached application package.

	YES	NO	UNKNOWN
1. Is the project in the Recovery Zone (within City limits)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Are the assets being financed depreciable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the project being bond-financed <u>exclude</u> land, residential rentals, short-term assets or refinancing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the project <u>exclude</u> a golf course, country club, racetrack, gambling facility, store whose principal business is sale of alcohol for offsite consumption, hot tub or sun tanning facility, or massage parlors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the project meet the eligibility requirements for financing through RZF bonds (e.g. all costs incurred after 10/27/09, the project consists of new construction, rehabilitation, acquisition of new equipment or acquisition of property with "substantial" rehabilitation)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Has the Borrower secured a commitment letter or credit enhancement from a rated bank or a purchase commitment from an institutional investor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the Borrower be able to issue bonds no later than November 30, 2010?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the Borrower be able to complete the project within 36 months from issuance of the bond?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answer YES to ALL of these questions, you may complete the attached "Request for Recovery Zone Facility Bond Application and Project Certification Form" and contact Suzette Sibble, Finance Director at 954-786-4680 or suzette.sibble@copbfl.com for additional information. If you answer NO to ANY of these questions, your company does not qualify to apply for a bond through this program.

IV. Qualitative Evaluation Criteria

General criteria for eligibility of projects for Recovery Zone Facility Bonds have been established in the American Recovery & Reinvestment Act of 2009. The City of Pompano Beach selection process will be guided by eligibility criteria by federal, state, and local laws governing the issuance of these bonds.

Eligible projects/activities for funding from Recovery Zone Facility Bond (RZFB) financing will be selected by the RZFB Selection Committee based upon, but not limited to, the following information:

a. Financial preparation

1. Financing in place for RZFB
2. Financing in place for entire project

- b. Type of Industry;
- c. Number of current and/or projected employees;
- d. Average wage of employees;
- e. Capital investment;
- f. Average job growth;
- g. Financial stability;
- h. New product development;
- i. Growth of sales;
- j. Percentage of product or service exported out of City;
- k. Results of an economic impact study;
- l. Location of project;
- m. Commitment to local procurement and local hiring;
- n. Regional impact;
- o. Project Status;
- p. Project "Shovel Ready" Site Plans; and
- q. Any such other activity or factor proposed by the applicant that can be demonstrated in a satisfactory fashion to the selection committee and City Commission to promote economic development within the City.

V. Minimum/Maximum Allocation

- Due to the fixed closing costs associated with a Recovery Zone project, a bank loan in excess of \$2,000,000 will likely receive the greatest benefit from the program.
- As the City's RZFB allocation is limited to \$6,014,000, this is the maximum allocation that a business/developer may receive under the program.

VI. Costs

Application Fees

An initial application fee of \$100 for bond applications is required at time of submission. An additional fee of \$1,400 will be due from any business selected and approved by the City Commission to receive a bond allocation. These fees are non-refundable and should be made payable to the City of Pompano Beach. These fees will compensate the City for staff's time to review and process application submissions, as well coordinate the issuance of the bond(s).

Fees for Consultants/Costs of Issuance

In addition, borrowers/applicants will be required to pay all costs of issuance associated with the bond issuance. This would include the City's costs for bond/tax counsel or any due diligence deemed necessary by the City's financial advisor. Up to 2% of the proceeds of the bonds may be applied to pay costs of issuance.

Note: The City will retain City Bond Counsel for all proposed financings for consistency purposes. Fees and expenses incurred with the Bond Counsel shall be paid directly by the applicant or from the proceeds of the bonds, subject to applicable limits. Applicants are advised to contact the Bond Counsel early in the process, but not before the City Commission have authorized an allocation of RZFB financing, to determine the amount of the fee to be charged.

City Bond Counsel

Denise Ganz, Shareholder
Ruden McClosky
200 East Broward Boulevard
Suite 1500
Fort Lauderdale, FL 33301
Direct 954-527-2410 | Fax 954-333-4010
Denise.Ganz@ruden.com | www.ruden.com

It is anticipated that the amount of the fee will vary based upon the size and complexity of the proposed bond issue. It is important to note that this should in no way restrain or inhibit the applicant from retaining its own legal counsel. Regardless, all fees and expenses of all such law firms shall be paid by the applicant.

VII. Anticipated Process

Step One: Application Submission

Applicants are required to submit the attached "**Request for Recovery Zone Facility Bond (RZFB) Allocation Application and Project Certification Form**" (the **Application**). The Application is designed to provide sufficient project information to allow the City's Selection Committee to determine if the project meets the minimum threshold requirements as listed above, as well as provide detailed project information and anticipated impact on the City's local economy. Applicants may attach additional pages if additional space is needed and must attach any documents requested by the City as part of the Application submission package.

- The completed and signed Form must be mailed as follows:

City of Pompano Beach
Finance Department, Room 480
100 W. Atlantic Blvd.
Pompano Beach, FL 33060
ATTN: Suzette Sibble

- Applications will be reviewed by the Selection Committee and applicants will be notified, in writing, no later than July 31, 2010, if the project fails to meet the minimum eligibility requirements.

Step Two: Application Review and Ranking for RZFB Allocation

If the project meets the minimum requirements, the Selection Committee will review submissions and may request additional due diligence information or elect to meet with select applicants. In addition, the City may require financial information to be reviewed by the City's Financial Advisor, as deemed appropriate.

The Selection Committee will at a minimum evaluate applications based on the evaluation criteria outlined above and rank the applications with recommendations for an allocation amount. The Selection Committee reserves the right to make a recommendation that 100% of the City's RZFB allocation be made to a single business/developer or that allocations be made to multiple applicants. As local economic growth and job creation is the major objective of the program, the Selection Committee will provide great weight to applicants who can demonstrate the greatest impact on the City's economy (i.e. *temporary and permanent job creation, commitment to the procurement of local goods and hiring within the City and long term impact on the City's sales and property tax base*).

Once the Selection Committee has ranked the Applications and made a recommendation as to RZFB allocation(s), the ranking order will be presented to the City Commission for approval.

Step Three: Issuance of Bond(s)

Once City Commission approval has been obtained as to the ranking order for RZFB allocation(s), City staff will take action necessary to secure a reservation of Recovery Zone Facility Bonds allocation, including the following:

- Staff will recommend a TEFRA (Federal Tax Equity and Fiscal Responsibility Act)/inducement resolution to the City Commission
- Staff will recommend City Commission approval of a "Notice of Intent to Issue".
- The applicant must produce all remaining documentation and work with City staff to complete the bond financing documentation.

Once all required evidence of project financing and related bond documentation is completed, staff will take actions to issue the RZFB prior to November 30, 2010.

Any questions should be addressed to:

Suzette Sible, Finance Director
Finance Department
(954)786-4680
suzette.sible@copbfl.com