

Headline News:

7/2012: Rick Hill: Indian Gaming Magazine 2012 Eagle Visionary Award
(www.indiangaming.com)

7/27/12: Tribe celebrates 'victorious day' as Senate ratifies casino compact
(southcoasttoday.com)

7/19/12: Fitch upgrades San Manuel Entertainment Authority bonds to 'BBB+'
(www.marketwatch.com)

7/11/12: Poarch Creeks plans second mega casino in Wewetumpka (www.al.com)

7/4/12: Casino going up at Twin Arrows
(www.azdailysun.com)

7/2/12: ND tribal refinery gets final permit approval
(www.jamestownsun.com)

New TEDB Guidelines: What's Different Now?

By David Howard

This past month, the IRS issued new guidelines for allocating Tribal Economic Development Bonds ("TEDBs"). Unlike the 2009 allocation process, we believe several key changes have been made that will facilitate a Tribe's ability to benefit from this program. Combined with the current debt capital markets environment, this could be an unprecedented opportunity for Tribes to access capital at low interest rates and with increased structural flexibility.

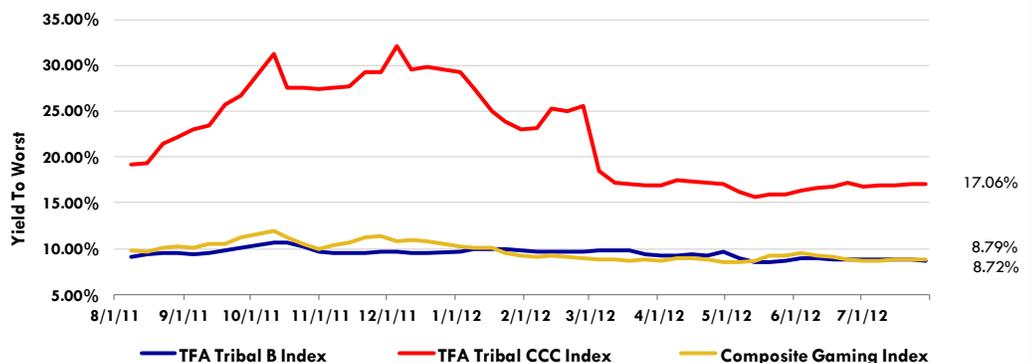
INITIAL ALLOCATION OF TEDBs

In June 2009, the IRS issued Notice 2009-51, which indicated under the American Reinvestment and Recovery Act the IRS could provide up to \$2.0 billion of allocations to qualified tribal entities to issue TEDBs. Although initially there was significant excitement about TEDBs, that enthusiasm was short lived.

A number of issues made it challenging to successfully complete a TEDB deal. The primary problem was that most allocations were granted to deals that were inherently not financeable – that is the underlying transaction was structurally flawed because there was an inability to adequately meet debt service. Other hurdles included deal size (allocations were limited to \$30 million per Tribe) and in some cases confusion that the allocations were considered federal grants. Let's not forget the cash flow challenges many Tribes faced from 2009 to 2011 as Tribal gaming enterprises confronted unprecedented operating challenges that reduced cash flow available to Tribal governments – in many cases, this called into question a Tribe's "credit worthiness". The combination of these factors translated to only about 10%, or roughly \$200 mil-

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TFA Index Chart: A Comparison of HY Bond Interest Rates



Source: Wall Street High Yield Research

Notes: Yield to Worst represents the current average interest rate on bonds that comprise each index. Composite Gaming Index represents the average market interest rate of over 80 corporate and Tribal high yield gaming issues

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lion, of the initial allocations actually being used.

WHAT'S DIFFERENT THIS TIME?

Financeability Standard. Addressing TEDBs biggest issue, the IRS has implemented a financeability standard. A Tribe must show that not only does the project being financed (or refinanced) qualify, but that the financial markets would likely participate in such a transaction. An independent third party is required to review the marketability of a transaction, which inherently would include evaluating the financial condition or credit quality of the Tribe, the structure of the proposed financing and identifying likely investors of the proposed tax-exempt debt. In short, a Tribe must demonstrate that a deal can get done before it receives an allocation.

Larger Allocations Available. A single allocation is now up to 20% of the remaining volume cap of \$1.8 billion (around \$360 million now) or \$100 million if the remaining volume is \$500 million or less. This provides greater flexibility to finance larger projects or refinance existing debt and addresses one of the technical hurdles limiting successfully completing a TEDB transaction (i.e., small deal size).

180 Days – Use It or Lose It. Once issued the allocation, the Tribe has 180 days to issue the bonds. That's why thorough review of the financeability is important.

In Indian Country, 180 days is not a lot of time to issue a bond if the initial legwork and the support of the Tribal Council are not in place ahead of time.

Possible Forfeiture Impairment. Unlike the original allocation process, the IRS will take into consideration any Tribe that forfeits an allocation under the new standards. This reinforces that Tribes must be adequately prepared to complete a transaction once an allocation is received.

Stable Cash Flows & Strong Debt Capital Markets. The combination of Tribal cash flows stabilizing (primarily because gaming enterprises have also stabilized) combined with strong debt capital markets are translating into attractive financing opportunities for Tribes and greater interest in sovereign Tribal debt.

WHY TFA IS EXCITED ABOUT TEDBs

This is a great opportunity for Tribes to refinance debt associated with hotel, parking garage and other economic development projects (note, all allocations must satisfy the IRS' "qualified project" requirement). It is also an opportunity to finance other Tribal business operations such as convenience stores, gas stations and other commercial businesses. The tax-exempt status of TEDBs helps to lower the overall interest on debt and can save the Tribe money, which can be applied to other governmental needs.

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