

# IRS Allows Telephonic TEFRA Hearings in Light of COVID-19

Update

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As a result of the prohibitions on public gatherings resulting from the COVID-19 pandemic, issuers of tax-exempt private activity bonds have been facing difficulty complying with the federal tax laws requiring that a public hearing be held to allow interested individuals to express their views on the bonds and the related project (commonly referred to as “TEFRA hearings”).

Recognizing this problem, the IRS has provided temporary relief in Revenue Procedure 2020-21 (“Rev. Proc. 2020-21”), which allows issuers to hold telephonic TEFRA hearings that are accessible to the residents of the approving governmental unit by calling a toll-free telephone number. Provided a toll-free telephone number is available, issuers may also offer additional access to the TEFRA hearing by other telephone numbers or by internet-based meeting technology.

The relief provided under Rev. Proc. 2020-21 is available from May 4, 2020, through the end of the calendar year. However, Rev. Proc. 2020-21 can be applied retroactively to telephonic TEFRA hearings held prior to May 4, 2020, due to the COVID-19 pandemic – which is helpful for issuers who have been conducting telephonic hearings (with a toll-free number) during the past several weeks with the hope that the IRS would eventually provide the relief granted under Rev. Proc. 2020-21.

In addition, if an issuer has already published (or made plans to publish prior to May 11, 2020) notice of an in-person meeting, but in light of Rev. Proc. 2020-21 would like to hold a telephonic hearing instead, the guidance provides that notice of the change will meet the requirement for providing a reasonable public notice (i.e., the typical 7-day notice period does not need to be restarted) if notice of the change is posted at least 48 hours in advance of the hearing on the entity’s primary public website in an area used to inform residents about events affecting residents.

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The relief provided in the Rev. Proc. 2020-21 was necessary because language in the Preamble to the Treasury Regulations relevant to TEFRA hearings noted that the Treasury Department and IRS had determined that a TEFRA hearing held solely by teleconference or webinar could not replace a conventional in-person public hearing.

## **Continued Monitoring of COVID-19 Fallout**

Bracewell's Public Finance Tax Attorneys will continue to closely monitor the effects of the COVID-19 pandemic as it relates to tax-exempt debt and will communicate any new developments. We are assisting various industry groups with legislative and administrative efforts, but also encourage issuers and other beneficiaries of municipal bonds to participate in raising awareness of the negative effect of the pandemic on the industry. In that regard, our Public Finance team, as well as the members of Bracewell's D.C.-based Policy Resolution Group, are ready to assist.