HAWKINS ADVISORY

SPECIAL VOLUME CAP FOR HOUSING BONDS PROVIDED BY THE HOUSING AND ECONOMIC RECOVERY ACT OF 2008 (P.L. 110-289) ("HERA CAP") EXPIRES DECEMBER 31, 2010

This Hawkins Advisory is being sent to serve as a reminder that, under current law, HERA Cap is set to expire on December 31, 2010. To date, there is no legislation being considered to extend this deadline. Without such legislation, bonds utilizing this HERA Cap must be issued (paid for and delivered or Treasury NIBP taxable bonds reissued as tax exempt) by the end of this year. Absent a successful housing industry undertaking to extend this deadline, there remains only approximately 6 months for the HERA Cap to be used.

HERA Cap was provided as part of the housing stimulus legislation in July, 2008 that can be used for single-family mortgage revenue bonds, mortgage credit certificates (MCCs), or residential rental housing bonds. Carry forward elections (due no later than February 15, 2009) were only for 2 years (rather than the normal 3 years) and were not required to specify whether the HERA Cap would be used for single-family, MCCs or multi-family purposes. Also, IRS guidance provided that HERA Cap could be used prior to, at the same time as, or after regular volume cap, without regard to any normal chronological sequence.

We are aware that many issuers have remaining unused HERA Cap. It should also be recalled that if the bonds issued by means of this HERA Cap are for mortgage revenue bonds, all lendable proceeds must be used for mortgage loans within 12-months of the issue date of the bonds (rather than the normal 42-months) at which date an unexpended proceeds' redemption is required. Also, if using HERA cap for any NIBP escrow release, the NIBP will not permit the use of notes or convertible option bonds that otherwise might be contemplated for expiring volume cap.

Please contact a member of the Hawkins' Tax Department or Housing Group if you have any questions regarding expiring HERA Cap.

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