

# Client Alert

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## Possible Cuts to Federal Subsidies for Build America Bonds and Tax Credit Bonds

On Friday, September 14, 2012, the Office of Management and Budget sent a report (the "*Report*") to Congressional lawmakers discussing major cuts in federal payments to issuers of Build America Bonds and other direct-pay bonds that will have to be made if Congress is forced to make \$1.2 trillion in across-the-board cuts to the federal fiscal 2013 budget under the Congressionally-mandated sequestration process. The Report is available [here](#).

In August 2011, bipartisan majorities in both the House and Senate voted for the threat of sequestration as a mechanism to force Congress to act on deficit reduction. The specter of harmful across-the-board cuts to defense and nondefense programs was intended to drive both sides to compromise. The sequestration itself was never intended to be implemented. It is important to note that Congress can take action to avoid sequestration by passing a comprehensive and balanced deficit reduction package.

It is also important to note that the estimates and classifications in the Report are preliminary. If sequestration were to occur, the actual results would differ based on changes in law and ongoing legal, budgetary, and technical analysis. The percentage cuts in the Report reflect the requirements of the laws that the Report is applying. With the single exception of military personnel accounts, the Obama administration cannot choose which programs to exempt, or what percentage cuts to apply. These matters are dictated by a detailed statutory scheme.

The Report shows that payments authorized for direct-pay bonds would be cut 7.6%, totaling \$255 million for Build

America Bonds (BABS), \$62 million for qualified school construction bonds (QSCBs), \$3 million for qualified zone academy bonds (QZABs) and \$2 million for qualified energy conservation bonds (QECBs). It is possible that cuts may also be made to New Clean Renewable Energy Bonds but the Report shows no cuts to them at this time. The amounts authorized prior to the sequestration for fiscal year 2013 were: \$3.351 billion for BABS; \$820 million for QSCBs; \$38 million for QZABs; and \$32 million for QECBs.

The Report provides preliminary estimates of the sequestration's impact on more than 1,200 budget accounts.

The Report is for fiscal year 2013. The fiscal year is the accounting period for the federal government which begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends; for example, fiscal year 2013 begins on October 1, 2012 and ends on September 30, 2013. The failure of Congress triggers automatic reductions in discretionary appropriations and direct spending to achieve the deficit reduction that Congress was supposed to achieve. Absent further congressional action, the Report states that the first of these reductions will be implemented on January 2, 2013, by a sequestration of non-exempt discretionary appropriations and non-exempt direct spending. Accordingly, it appears that the sequester's cuts take place over nine months, rather than twelve, because the 2013 fiscal year will have already started by January 2, 2013.

If you would like to discuss any of the issues addressed in this Client Alert or would simply like to find out more about Chapman, please contact any attorney in Chapman's Public Finance Department or visit us online at [chapman.com](http://chapman.com).

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