

Part III - Administrative, Procedural, and Miscellaneous

Qualified Student Loan Bonds

Notice 2015-78

SECTION 1. PURPOSE

This notice provides guidance regarding qualified student loan bonds under § 144(b) of the Internal Revenue Code (Code) to clarify certain requirements for tax-exempt bond financing for loan programs of general application approved by a State under § 144(b)(1)(B) (State Supplemental Loan programs). (Except as otherwise expressly provided, section references in this notice are to the Code.) This notice addresses: (1) eligibility of borrowers of loans through State Supplemental Loan programs; (2) the application of the requirement under § 144(b)(3) that the student have a nexus to the State (student nexus requirement) for loans made to refinance student loans (refinancing loans); (3) the loan size limitation for State Supplemental Loans; and (4) the types of student loans that may be refinanced with a State Supplemental Loan.

SECTION 2. BACKGROUND

Section 144(b)(1) defines a “qualified student loan bond” for which tax-exempt private activity bonds may be issued to mean any bond issued as part of an issue the applicable percentage of the proceeds of which are to be used directly or indirectly to make or finance student loans (that is, loans to pay the costs of postsecondary education) under two types of loan programs.

The first type of loan program, described in § 144(b)(1)(A), is the Federal Family Education Loan Program under the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat 1219 (Higher Education Act), under which education loans are indirectly Federally guaranteed (FFELP loans). The FFELP loans that are eligible for tax-exempt bond financing under § 144(b)(1)(A) include, among other types of loans, loans made to parents of undergraduate students under the program known as the “PLUS” loan program. H.R. Conf. Rep. No. 99-841, at II-712 (1986); Sen. Rep. No. 99-313, at 842 (1986). The FFELP guarantee authority extends only to loans originated before July 1, 2010, and was discontinued for loans originated on or after that date. Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, § 2201, 124 Stat 1029, 1074 (2010).

The second type of loan program, described in § 144(b)(1)(B), is for State Supplemental Loans. Section 144(b)(1)(B) describes a State Supplemental Loan program as a program of general application approved by the State if no loan under such program exceeds the difference between (1) the total cost of attendance and (2) subject to certain stated exceptions, the other forms of student assistance for which the student borrower may be eligible. A program shall not be treated as described in § 144(b)(1)(B) if such program is described in § 144(b)(1)(A).

The student nexus requirement applies to both FFELP loans and State Supplemental Loans financed with proceeds of qualified student loan bonds. Section 144(b)(3) provides that a student loan shall be treated as being made or financed under a program described in § 144(b)(1) with respect to an issue only if the student is (1) a resident of the State from which the volume cap under § 146 for such loan was derived,

or (2) enrolled at an educational institution located in such State.

Several questions have arisen concerning loans made by State Supplemental Loan programs that are eligible to be financed with the proceeds of qualified student loan bonds. Specifically, questions have arisen regarding (1) the eligibility of parents to borrow for their child's education; (2) how the student nexus requirement applies in the context of refinancing loans; (3) the loan size limitation; and (4) the types of student loans that may be refinanced with a State Supplemental Loan.

SECTION 3. SCOPE AND APPLICATION

Section 3.1. Eligible Borrowers. For purposes of § 144(b)(1)(B), an eligible borrower of an original loan under a State Supplemental Loan program is a student (with or without a co-obligor or guarantor) or a parent (with or without a co-obligor or guarantor) borrowing for the benefit of a child who is a student. An eligible borrower of a refinancing loan under § 144(b)(1)(B) is the student or parent borrower of the original loan.

Section 3.2. The Student Nexus Requirement. The student nexus requirement applies to the student beneficiary of the loan, even if the borrower is the parent of the student beneficiary. An original loan meets the student nexus requirement if, at the time the original loan is originated, the student beneficiary is a resident of the State from which the volume cap for the qualified student loan bonds that finance the original loan is derived or is enrolled at an educational institution located in that State. A refinancing loan meets the student nexus requirement if: (1) at the time the original loan was originated, the student beneficiary was a resident of the State from which the volume cap for the qualified student loan bonds that finance the refinancing loan is derived or

was enrolled at an educational institution located in that State; or (2) at the time the refinancing loan is originated, the student beneficiary of the original loan resides in the State from which the volume cap for the qualified student loan bonds that finance the refinancing loan is derived or is a student enrolled in an educational institution located in that State. In the case of refunding bonds for which no volume cap is required under § 146, the student nexus requirement is applied with respect to the State from which the volume cap on the refunded bonds (or in a series of refundings, the original bonds) was derived.

Section 3.3. The Loan Size Limitation. Under § 144(b)(1)(B), the amount of a State Supplemental Loan may not exceed the difference between the total cost of attendance and other forms of student assistance for which the student may be eligible. For this purpose, for an original loan, an issuer may rely on a certification of the student's total cost of attendance and other student assistance by the institution of higher education at which the student is enrolled. Further, for this purpose, certifying institutions may use the definition of "total cost of attendance" under § 472 of the Higher Education Act, 20 U.S.C. § 1087II, and the definition of "estimated financial assistance" under § 428(a)(2)(C)(ii) of the Higher Education Act, 20 U.S.C. § 1078(a)(2)(C)(ii), respectively. For a refinancing loan, (1) the original loan must have met the loan size limitation under § 144(b)(1)(B) and (2) the stated principal amount of the refinancing loan may not exceed the sum of the refinanced loan's outstanding stated principal amount and any accrued but unpaid stated interest as of the date of the refinancing.

Section 3.4. Types of Loans Eligible for Refinancing. Under § 144(b)(1)(B), a State Supplemental Loan may refinance an original loan that was a State Supplemental

Loan or another type of original loan, for example, a FFELP loan or a student loan made by a private lender, provided that the refinancing loan meets all of the requirements for a State Supplemental Loan.

SECTION 4. APPLICABILITY DATE

This notice applies to loans originated on or after February 11, 2016. Issuers may apply this notice to loans originated before February 11, 2016.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Johanna Som de Cerff or David White at (202) 317-6980 (not a toll-free call).