

Part III – Administrative, Procedural, and Miscellaneous

Qualified Student Loan and Qualified Mortgage Bonds

Notice 2024-32

SECTION 1. PURPOSE

This notice provides guidance regarding qualified student loan bonds under § 144(b) of the Internal Revenue Code (Code)¹ 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). Specifically, this notice addresses eligibility of borrowers of loans through State Supplemental Loan programs and the loan size limitation for State Supplemental Loans. This notice also provides guidance regarding whether an issue of State or local bonds the proceeds of which are used to finance or refinance qualified student loans (as defined in § 1.150-1(b)) or to finance qualified mortgage loans (as defined in § 1.150-1(b)) is a refunding issue.

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

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

applicable percentage or more of the net 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 (FFELP) 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. 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 is not treated as described in § 144(b)(1)(B) if such program is described in § 144(b)(1)(A).

.01 Eligible borrower.

Notice 2015-78, 2015-48 I.R.B. 690, provides guidance regarding qualified

student loan bonds, including the use of the proceeds of these bonds to make loans that refinance qualified student loans (refinancing loans). Section 3.1 of Notice 2015-78 provides that 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 on behalf of a child who is a student. Section 3.1 of Notice 2015-78 further provides that an eligible borrower of a refinancing loan under a State Supplemental Loan program is the student or parent borrower of the original loan.

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are aware of questions that have arisen as to whether, if the student was the original borrower, the parent of that student is an eligible borrower of a refinancing loan, and similarly, if the parent was the original borrower, whether the student on whose behalf the original loan was made is an eligible borrower of a refinancing loan. Section 4.01 of this notice clarifies that an eligible borrower of a refinancing loan includes either of these parties, regardless of which was the original borrower.

.02 Loan size limitation.

Notice 2015-78 also addresses the loan size limitation for a State Supplemental Loan. The amount of an original State Supplemental Loan must not exceed the difference between the total cost of attendance and other forms of student assistance for which the student may be eligible. Section 3.3 of Notice 2015-78 provides, for an original loan, that an issuer may rely on a certification of these amounts by the higher education institution at which the student is enrolled. For a refinancing loan, section 3.3

of Notice 2015-78 provides that (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.

The Treasury Department and IRS are aware of issuers' questions about how to establish, for purposes of a refinancing loan, that the original loan met the loan size limitation under § 144(b)(1)(B) and issuers' concerns regarding the attendant administrative burden. Refinancing loans generally are sought after the students have finished their educations, and several years may have passed since the higher education institutions provided the information needed to determine the original loan amounts. Often, however, the original loans were made under the FFELP, another loan program under Title IV of the Higher Education Act, a State Supplemental Loan program, or other student loan program subject to the same loan size limitation as in § 144(b)(1)(B) or a stricter one. Section 4.02 of this notice provides that original loans made under these programs will be treated as meeting the loan size limitation under § 144(b)(1)(B). Section 4.02 of this notice also provides issuers with sources that can be used to ascertain the amounts of (1) the original loan, (2) the student's total cost of attendance, and (3) other forms of student assistance for this purpose.

.03 Refunding bonds.

Section 1.150-1 provides definitions for all purposes of §§ 103 and 141 through 150, which are applicable to tax-exempt bonds. Section 1.150-1(d)(1) defines a "refunding issue" generally to mean an issue of obligations the proceeds of which are used to pay principal, interest, or redemption price on another issue, provided the

obligor on both issues is the same person or a related party (as defined in §1.150-1(b)). For this purpose, if proceeds are used to finance a purpose investment (as defined in § 1.148-1(b)), the obligor means the conduit borrower of the purpose investment rather than the actual issuer of the bonds, except that, for qualified mortgage loans, qualified student loans, and similar program investments (as defined in § 1.148-1(b)), the obligor does not include the ultimate recipients of the loans (for example, the homeowner or the student). Section 1.150-1(d)(2)(iii) provides, with one exception, that the actual issuer's use of the proceeds of an issue that refunds a purpose investment determines whether that issue is also a refunding of the issue that originally financed the purpose investment. Section 1.150-1 does not provide a definition of "proceeds" for this purpose.

Questions have arisen regarding the determination of whether an issue that is used to refinance qualified student loans is a refunding issue. Issuers are concerned that if the borrowers of the refinancing loans repay their original loans and the issuer then uses the funds to redeem the bonds that financed the original loans, the bonds might be treated as refunding bonds and, given that this redemption would frequently occur more than 90 days after the issuance of the bonds financing the refinancing loans, potentially treated as taxable advance refunding bonds. If this were the case, issuers would be prevented from issuing tax-exempt bonds to refinance the qualified student loans of their existing borrowers. Another question concerns whether the use of investment proceeds from the repayments of qualified student loans or qualified mortgage loans allocated to one issue to redeem bonds of another issue, a practice sometimes referred to as "cross-calling," results in bonds of the former issue being

treated as taxable advance refunding bonds. An issuer engaged in cross-calling first uses proceeds of the issue to make qualified student loans or qualified mortgage loans and then uses the repayments of the loans to redeem bonds, generally selecting bonds with the highest interest rates. Section 4.03 of this notice addresses these questions.

SECTION 3. SCOPE

Sections 4.01 and 4.02 of this notice apply for purposes of the requirements applicable to State Supplemental Loan programs financed with qualified student loan bonds under § 144(b). Section 4.03 of this notice applies to qualified student loan bonds under § 144(b) and qualified mortgage bonds under § 143.

SECTION 4. APPLICATION

.01 Eligible borrower. An eligible borrower of a refinancing loan under a State Supplemental Loan program includes the student or parent borrower of the original loan. An eligible borrower of a refinancing loan under a State Supplemental Loan program also includes a parent of the student borrower of an original loan (or a refinancing loan) and a child of a parent who borrowed an original loan (or a refinancing loan) on the child's behalf.

.02 Loan size limitation.

(1) For purposes of establishing that the original loan to be refinanced met the loan size limitation under § 144(b)(1)(B), the original loan will be treated as having met the loan size limitation under § 144(b)(1)(B) if—

(a) The original loan was made under a student loan program that applied the same loan size limitation as in § 144(b)(1)(B) or a stricter one during the period when the original loan was made; for example, the FFELP and other loan programs under

Title IV of the Higher Education Act and State Supplemental Loan programs (as described in § 144(b)(1)(B)), whether or not financed with tax-exempt bonds; or

(b) The previous lender, other holder, or loan servicer of the original loan certifies that the original loan amount did not exceed the difference between the total cost of attendance and other forms of student assistance as reported on the original loan application.

(2) In addition, to establish that the original loan to be refinanced met the loan size limitation under § 144(b)(1)(B), an issuer may rely on--

(a) The amount of the original loan as stated on the promissory note for the original loan or as otherwise provided by the previous lender, other holder, or loan servicer of the original loan; and

(b) The amounts of the student's total cost of attendance and other forms of student assistance for the academic period for which the original loan was made--

(i) As reported on the original loan application and provided by either (A) the previous lender, other holder, or loan servicer of the original loan; or (B) the educational institution the student attended for the academic period of the original loan, or

(ii) As stated in the student's financial aid award letter that is from the educational institution the student attended for the academic period and includes the amount of the original loan.

.03 Refunding bonds. An issue is not a refunding issue to the extent that the actual issuer reasonably expects as of the issue date of the issue to use net proceeds of the issue within two years of the issue date to refinance one or more obligations that

are qualified student loans. For purposes of determining whether an issue is a refunding issue, proceeds means any sales proceeds, investments proceeds, or transferred proceeds (all as defined in § 1.148-1(b)), except that proceeds does not include investment proceeds (or transferred proceeds allocable to investment proceeds) received from investing in a qualified student loan or a qualified mortgage loan.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Sections 4.01 and 4.02 of this notice amplify Notice 2015-78.

SECTION 6. EFFECTIVE DATE

This notice applies to bonds sold on or after April 15, 2024. An issuer may apply this notice to bonds sold before April 15, 2024.

SECTION 7. 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 Jason Deirmenjian or Johanna Som de Cerff at (202) 317-6980 (not a toll-free call).