
State Housing Council Raises Concerns With Proposed Issue Price Definition.

Garth Rieman of the National Council of State Housing Agencies has raised concerns with changes to the definition of issue price under proposed regulations (REG-148659-07) on arbitrage investment restrictions applicable to tax-exempt bonds, urging the IRS to withdraw the proposed changes and work with municipal securities market stakeholders to develop an alternative approach.

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Courier's Desk

Internal Revenue Service

1111 Constitution Avenue, NW

Washington, DC

RE: REG-148659-07

To Whom It May Concern:

On behalf of the state housing finance agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) writes to express our strong concerns about the Internal Revenue Service's September 16 proposed rule modifying the definition of "issue price" for the purpose of determining arbitrage restrictions applicable to the sale of tax-exempt bonds.

While we appreciate IRS's desire to improve transparency in the municipal bond market, we believe that the proposed rule's new definition of "issue price" will increase the cost of capital for HFAs and other municipal issuers, produce higher yields, impose burdensome monitoring requirements on public agencies, and reduce the amount of money HFAs and other municipal issuers can dedicate to their public obligations. Further, we do not believe that there is good reason to alter the long-standing and effective "reasonable expectation" standard currently used.

NCSHA strongly urges IRS to rescind this proposal.

HFAs and Housing Bonds: Filling a Critical Need

NCSHA represents the state housing finance agencies for all 50 states, the District of Columbia, Puerto Rico, New York City, and the U.S. Virgin Islands. HFAs are state-chartered, public mission-driven organizations dedicated to providing affordable housing help to those who need it.

The use of tax-exempt housing bonds is a critical tool in helping HFAs to meet their affordable housing mission. Using single-family Housing Bonds, more commonly known as Mortgage Revenue Bonds or MRBs, state HFAs have made 3 million families homeowners for the first time. In 2012 alone, HFAs utilized funding from MRB sales to extend affordable home loans to 36,783 low- and moderate-income consumers.

HFAs also utilize multifamily Housing Bonds to support the development and rehabilitation of affordable apartments. The funding from such bonds has supported the development of over one million affordable rental units, many of which assist residents with special needs, including the elderly, those in assisted living, persons with disabilities, rural poor, and those that were formerly homeless.

Do Not Jeopardize HFAs' Ability to Fulfill Their Mission

The proposed rule, by requiring that HFAs and other municipal issuers use the actual sale price of the first 25 percent of bonds sold to determine the issue price of a maturity, is likely to increase HFAs' borrowing costs. Many municipal issuers and underwriters, to ensure they comply with the proposed requirements, are likely to issue bonds at prices that ensure they will be able to sell 25 percent of their bonds right away. Such prices will almost certainly produce a higher yield than HFAs and other municipal issuers would generally have to pay, prompting them to spend more on interest payments. Consequently, HFAs and other municipal issuers will have to issue more debt to raise the capital they need.

In addition, the proposal would burden HFAs with monitoring and compliance requirements that may be unworkable, particularly when it comes to negotiated sales. In order to comply, issuers will have to rely on information from municipal bond sales provided through a number of platforms, such as the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access database. However, the data provided on such platforms can often be outdated and incomplete, making it difficult for HFAs to determine whether they truly represent the actual sale price of their bonds. These logistical concerns are particularly problematic when HFAs and other issuers issue advanced refunding bonds and need to quickly set up a refunding escrow.

In short, the new compliance and monitoring requirements will elevate the already substantial administrative burden placed on HFAs and other municipal issuers, diminishing the amount of money that can be dedicated to their affordable housing mission.

Consider an Alternative Approach

In conclusion, the proposed rule will make it substantially harder for HFAs and other public agencies to meet critical public needs, while doing little to address the agency's concerns about the accuracy of issue prices. We strongly request that IRS not finalize the proposed rule, and instead work with all stakeholders in the municipal securities market to develop a mutually agreeable solution for increasing price transparency.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

Garth Rieman

Director of Housing Advocacy

and Strategic Initiatives

National Council of State Housing

Agencies