Treasury will Consider Changes to Proposed Reissuance Regulations.

BONITA SPRINGS, Fla. — A senior Treasury official said Thursday that consideration will be given requests by municipal bond market trade groups for allowing issuers of tax-exempt bonds to elect to declare when a reissuance has occurred.

Treasury also will consider requests for allowing qualified tender bonds to be remarketed at a premium after being converted to fixed interest rates to maturity, John Cross, associate tax legislative counsel at the Treasury's Office of Tax Policy told attorneys attending a National Association of Bond Lawyer conference here.

"We are certainly receptive to relooking at that issue," Cross said in reference to the request for permission to continue the remarketing at a premium.

Cross noted it wasn't included in the proposed Internal Revenue Service rule on reissuance because of technical reasons.

All four industry groups that submitted comments on the proposed rule requested a continuation of the practice that allows remarketing reissuances at a premium.

The request was made in separate letters by NABL, the Bond Dealers of America, the Government Finance Officers Association and the Securities Industry and Financial Markets Association.

"If qualified tender bonds are forced to be sold only at par to avoid a reissuance, demand will decrease and issuer costs will increase, GFOA said. "Similarly, if a transaction does trigger a reissuance because they are sold at a premium, issuers would incur extra issuance costs."

SIFMA said, "A rough estimate of the cost to a municipal securities issuer, of issuing par bonds instead of premium bonds, is approximately a 30-60 basis point differential on a 30-year level debt service structure."

"Particularly in a rising interest rate environment, as a result of the de minimis rule, investors have an incentive to purchase premium bonds," wrote Leslie Norwood, SIFMA managing director and associate general counsel.

The request for issuers to be able to declare a reissuance came from NABL but GFOA's letter signed by Emily Brock, director of the federal liaison center, also asked for clarity as to when a reissuance takes place.

"Case in point – as state and local governments and entities continue to suffer the economic costs related to the loss of advanced refundings, many are looking for different ways to achieve the benefits that advance refundings provide, including interest savings for taxpayers," GFOA wrote. "This includes executing 'Cinderella' bond transactions where taxable advance refunding bonds convert to tax-exempt bonds at the time of the call date for the refunded bonds."

The BDA letter pointed out that remarketing at a premium has been allowed under IRS rules issued in 2008 as part of Notice 2008-41.

Cross, in his opening remarks for a panel discussion on reissuance, said tender bonds have become less important since the 2008 financial crisis and amounted to about $10 billion annually over the last two years.

“Since that time, the topic of tender option bonds has become less significant in the market because of the Fed’s zero interest policy and the last 10 years worth of really low interest rates,” Cross said. “Just to illustrate, in 2007 there were probably $100 billion in primary market tender option bonds.”

However, Cross emphasized that Treasury does not intend to use the proposed rules to change its policy. He said Treasury will “continue the special protection for the structure of tender option bonds and otherwise send people to the general significant modifications standard in Section 1001.”

As an illustration of how the proposed regulations will not change current practices, Cross said, “For tax exempt bond purposes, the intent was that both that the existence and exercise of qualified tender rights, basically the put option with certain features, do not give rise to a reissuance nor does the change in interest rate mode in the connection with the exercise of one of these puts.”

The comment letters submitted by NABL and GFOA also requested that Treasury address the phase-out of Libor and the transition to SOFR.

Cross said that issue will be addressed separately.

“We expect IRS and Treasury to put out guidance,” Cross said. “It’s really in more general tax guidance that would provide pretty broad relief for movement from Libor to some benchmark of this new benchmark rate by the Fed called SOFR.”

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 03/07/19 03:19 PM EST