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Proposed Regulations Affect Arbitrage Rules for Tax-Exempt Bonds: Kutak Rock

On March 12, 2026, the United States Treasury Department and the Internal Revenue Service published proposed regulations (the “Proposed Regulations”) affecting the arbitrage bond provisions of Section 148 of the Internal Revenue Code of 1986 (the “Code”) and the Treasury Regulations thereunder (the “Regulations”). The Proposed Regulations are available under [REG-117298-21](#) in the Federal Register. We are evaluating the potential impacts of the Proposed Regulations on existing and future tax-exempt bond issuances and will provide updates to clients as warranted. Members of our [national public finance tax group](#) will work closely with industry associations to provide comments to the Treasury Department regarding the Proposed Regulations.

The caption of the Proposed Regulations suggests the Proposed Regulations address “Guidance on Tax-Exempt Refunding Bonds.” However, the refunding guidance in the Proposed Regulations is modest, as most of the Proposed Regulations address matters other than refundings. The following is a summary of certain provisions contained in the Proposed Regulations.

1. Restricting Certain Allocations of Proceeds to Expenditures

The Proposed Regulations would limit allocations of bond proceeds in transactions involving multiple funding sources unless such other sources are on hand at the time an expenditure is paid. For issuers and participants in housing transactions or transactions where bonds represent only a portion of the funding mix, the Proposed Regulations may complicate the allocation of proceeds to expenditures that are appropriate under the Code. The scope of the Proposed Regulations is limited to Section 148 of the Code, suggesting that this change in law may not be intended to apply to certain other provisions affecting tax-exempt bonds. We will continue to review the impact of this proposed change on issuers and believe particularly issuers of housing bonds and those involved in structuring housing transactions should take note of the potential change to the allocation rules.

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