



Government Finance Officers Association

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December 20, 2007

Ms. Rebecca Harrigal
Chief Counsel, Tax-Exempt Bond Branch
Office of the Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: CC:PA:LPD:PR (REG-106143-07), *submitted electronically*

Dear Ms. Harrigal:

On behalf of our 17,000 members, thank you for the opportunity to comment on the proposed rulemaking on arbitrage guidance for tax-exempt bonds. GFOA has provided comments to Treasury on arbitrage rebate regulations for over forty years, as these rules are very important to state and local governments.

The proposed regulations are seen as mostly positive by our members, and our specific comments on certain sections are provided below.

Rebate Overpayments. One area of concern is that the proposal does not allow for the IRS to provide interest on an issuer's arbitrage rebate overpayment. We believe that this is unfair since an issuer must pay interest to the IRS on any underpayments, and the IRS pays interest on other types of overpayments. We are unaware of any reason for the denial of interest on overpayments and, at a minimum, an explanation of the rationale would be helpful. For example, if the IRS does not believe it has the authority to pay such interest, a legislative change could be pursued. We also note in this context that some of our members have waited nearly 18 months to receive their reimbursement check. We believe that the lengthy time frame that it takes to return the monies to governments should be shortened and should include interest. We would also recommend that the reimbursement checks include a letter or some type of information related to the overpayment. Again, some of our members have commented that their government will receive a check in the mail from the IRS without any information, thus making it difficult for the government, which could receive hundreds of checks a day, to know that this is related to the arbitrage repayment.

We would greatly appreciate discussing these issues with you in greater detail, so that the overpayment reimbursement program can work more efficiently for both the IRS and issuers.

Interest Rate Swap Rules. The proposed rules related to interest rate swaps and hedges are very helpful and provide needed clarification in this area. This is especially true of the following two issues - new hedge integration rules related to LIBOR-based swaps, which are often used in advance refunding transactions, as well as other types of financings; and the permitted use of yield reduction payments for escrow funds established in advance refundings. We request, however, clarification that the ability to make yield reduction payments in connection with advance refunding escrows be retroactive.

We also request further clarification that these changes are prospective (absent an election by the issuer) and that transactions that occurred prior to these new regulations taking affect should be grandfathered. In particular, there is an issue with regard to housing bonds and some other transactions, which, based on prior guidance from the IRS led issuers to conclude that LIBOR-based swaps could qualify for “superintegration” treatment. Issuers of such bonds should not be at risk for the IRS asserting that the provisions of the new regulations mean that, for bonds issued prior to the effective date of those new regulations, superintegration of LIBOR-based swaps is not permitted.

Additionally, the requirement that the hedge be identified within 15 days is a substantial improvement but the IRS should clarify that this means within 15 days of there being a binding written contract.

We note that the Securities Industry and Financial Markets Association is submitting comments in which they raise concerns with the provisions of the new regulations related to the correspondence between the rate on an interest rate swap and rate on the bonds.

We support SIFMA’s comments that the requirement that hedges and bonds closely correspond as evidenced by the use of a 25 basis point historical and snapshot test will be problematic in many circumstances and should be substantially modified or eliminated.

We would ask that these issues be clarified in the final regulation to limit confusion and marketplace disruption.

Safe Harbor Bidding Procedures for Guaranteed Investment Contracts. We are greatly appreciative of the modification allowing for the use of electronic bidding procedures. Ensuring that electronic bidding does not conflict with the “last look” rule is reassuring to our members and reflects current marketplace practices.

Procedures when the SLGS window is closed. Expanding on the existing IRS procedure to allow issues to make yield reduction payments with respect to advance refunding escrow investments with Treasury closes the SLGS window is very helpful.

We are aware that other issuer groups will be commenting on the proposed regulations and that the National Association of Bond Lawyers will be submitting technical comments. We support these comments and encourage you to carefully review their comments for helpful insights as the regulations are finalized.

As discussions on arbitrage rebate regulations continue in 2008, we are hopeful that the IRS and Treasury will confront issues that remain outstanding. Most importantly, regulations on issue price would be of great assistant to issuers and the marketplace, as noted in NABL’s August 2006 *Determination of the Issue Price* recommendations.

We look forward to continuing to work with you on this and other issues of interest to issuers of tax-exempt bonds.

Sincerely,

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Susan Gaffney
Director, Federal Liaison Center

cc: John Cross III, Associate Tax Legislative Counsel, Office of Tax Policy, Department of Treasury