Submitted Electronically via the Federal eRulemaking Portal

April 30, 2015

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2015-27)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Response to Notice 2015-27

Dear Sirs:

This letter is in response to the invitation by the U.S. Department of Treasury and the Internal Revenue Service (IRS) for public comment on recommendations on items for inclusion in the 2015-2016 Priority Guidance Plan.

The Education Finance Council (EFC) and the National Council of Higher Education Resources (NCHER) are trade associations whose members include organizations that finance education loans by issuing tax-exempt Qualified Student Loan Bonds under Section 144(b) of the Internal Revenue Code ("Code"). Under Section 144(b), Qualified Student Loan Bonds are bonds issued to make or finance student loans under: (i) programs of general application to which the Higher Education Act of 1965 ("HEA") applies (Section 144(b)(1)(A)); and (ii) programs of general application approved by the state to which Part B of Title IV of the HEA does not apply (Section 144(b)(1)(B)).

Currently, student loan debt is a national issue that is front and center in the media every day. Students are leaving college with debt levels that are impacting their credit, spending habits, and ability to begin saving for a home, children, and even retirement. For many students, parents, and student loan borrowers, our members offer a potential source of lower cost financing and refinancing. By providing the guidance described below, our members will be able to do more to ease the burden that student loan debt presents for these individuals.

The three requests for guidance contained herein pertain to the financing of private educational loans under Section 144(b)(1)(B). The requests stem from discussions that representatives of one of

our common members had with the IRS last year, and from the language in a Private Letter Ruling[1] (the "Ruling") that addressed one of the issues raised during those discussions. Since those other issues were not resolved, guidance continues to be needed. Specifically, we ask that the 2015-2016 Priority Guidance Plan call for guidance with respect to: (1) the refinancing under Section 144(b)(1)(B) of private and federal loans made to students and parents, and clarification that in cases where the loan is not already owned by the issuer the required state nexus is applied at the time of the refinancing; (2) making educational loans to parents to pay for their children's college costs; and (3) the permissibility of financing the education loans described in (1) and (2) by issuing new bonds from private activity tax-exempt volume cap allocations as well as refunding bonds.[2] Earlier this year, we brought these issues to the attention of Mark Mazur, Assistant Secretary for Tax Policy, and John J. Cross, III, Associate Tax Legislative Counsel. Due to their importance, we ask that the issues be included in the 2015-2016 Priority Guidance Plan.

1. Need for Guidance on Refinancing.

The Ruling provides that, under Section 144(b)(1)(B), the issuer's Qualified Student Loan Bonds can refinance private education loans that the issuer previously financed. This leaves open the question of whether the issuer can refinance private education loans made by other lenders, or federal student loans (including loans made under both the Federal Family Education Loan Program (FFELP) and Federal Direct Loan Program). During the discussions leading up to the Ruling, IRS officials raised concerns about this question, espousing the view that references to "student borrower" in Section 144(b)(1)(B) and Section 144(b)(3) may foreclose the refinancing of these loans.

The introductory language to Section 144(b)(1) provides that a certain percentage (either 90 percent or 95 percent) of the net proceeds of Qualified Student Loan Bonds must be used directly or indirectly to make or finance student loans. Further, Section 144(b)(3) requires that a financed loan have a nexus to the state of the issuer. This section is entitled "Student Borrowers Must Be Residents of the Issuing State, etc." Both these provisions apply to Qualified Student Loan Bonds described in both Section 144(b)(1)(A) and Section 144(b)(1)(B). Because Parent PLUS Loans[3] (which are loans to parents) and Consolidation Loans[4] (which are refinancing loans) made under Title IV of the HEA are eligible for financing under Section 144(b)(1)(A), the references to "student loans" and "student borrowers" in these sections have been interpreted to authorize refinancing loans, including the refinancing of student loans after the borrower has left school. It should be pointed out that under the HEA a student loan borrower is not even eligible to apply for a Consolidation Loan until the borrower is in grace or repayment status[5] (i.e. is no longer enrolled at least half time). We believe the reference to "student borrower" in Section 144(b)(1)(B) should be read similarly also to encompass refinancing loans, including refinancing loans to borrowers who have left school. The fact that Section 144(b)(1) states that a Qualified Student Loan Bond is a bond issued "to make

[1] Private Letter Ruling Number 201447023, dated August 01, 2014 and released on November 21, 2014.
[2] For the purposes of the guidance, you should assume that no loan will exceed the difference between the cost of attendance and other forms of student assistance, a limitation that applies both to loans made under Title IV of the HEA and to private education loans financed under Section 144(b)(1)(B).
[3] Parent PLUS Loans (originally called Parent Loans for Undergraduate Students – or PLUS loans) are authorized by Section 428B of the HEA (20 U.S.C. 1078-2).
[4] Consolidation Loans are authorized by Section 428C of the HEA (20 U.S.C. 1078-3).
[5] Section 428C (a)(3(ii) of the HEA (20 U.S.C. 1078-3(a)(3)(ii)).

or finance student loans" also supports this conclusion. There would be no need to separately mention "financing" student loans unless what is being referred to is financing after a loan has already been made (i.e. refinancing).

Section 144(b)(3) requires that a financed loan have a nexus to the state of the issuer. For refinancing loans that are permitted under the Ruling, the IRS indicates that the nexus test was satisfied at the time the issuer made the original loans. If an issuer were to refinance a loan which it did not previously hold, we suggest that nexus be tested at the time of the refinancing.

Today, there are limited options available to students and parents for refinancing their private loan debt. Further, it is not possible to lower the interest rate on a federal student loan (both FFELP and Direct Loans) by consolidating (refinancing) the loan. With interest rates at historic lows, the refinancing of these loans under Section 144(b)(1)(B) would lower the borrowers' monthly payments and overall cost. In the Ruling, the IRS concluded that the issuer's tax-exempt bonds may refinance loans originally made by the issuer. However, this Ruling only benefits a narrow class of borrowers. Expanding the access to private refinancing loans to include borrowers of private student loans made by other lenders (including lenders that are no longer making new loans) and to borrowers of federal student loans would be appropriate and would be in line with the Consumer Financial Protection Bureau's position that student loan borrowers need more refinancing options.[6]

2. Need for Guidance on Making Loans to Parents.

In the discussions leading up to the Ruling, officials at the IRS seemed to take the view that the same references to "student borrower" in Section 144(b)(1)(B) and Section 144(b)(3) foreclose the ability of issuers to originate private education loans where the parent is the sole obligor. The statutory construction arguments in connection with item #1 above apply to this issue as well. Parent PLUS Loans are federal loans under Title IV of the HEA made to a parent to pay for educational expenses attributable to a dependent student. The student is not, and in fact under the HEA cannot be, a co-borrower or cosigner on a Parent PLUS Loan. The availability of tax-exempt financing to fund Parent PLUS Loans made under the FFELP is well-established. The references to "student loans" in the introductory language to Section 144(b)(1) and to "student borrowers" in the heading to section 144(b)(3), each of which applies to Qualified Student Loan Bonds used to finance FFELP loans made under Title IV, have not been found to prevent the financing of these parent loans. These statutory references, and the reference to "student borrower" in Section 144(b)(1)(B), similarly should not stand in the way of private education loan lending to parents where the student is not a co-borrower or co-signer.

Today, most private educational loans to students are also cosigned by the parent. In fact, the loans are generally underwritten based on the parents' credit, since the student borrowers do not have the credit necessary for loan approval. Nonetheless, when a student graduates and attempts to obtain credit, make purchases, rent an apartment, etc., the private student loan debt, along with any other loan debt including federal student loans, appears on his/her credit report. This combined debt has a negative impact on a recent graduate's purchasing power. A majority of the parents who are co-signing these loans intend to make the payments and question why this debt, based on their

[6] Consumer Financial Protection Bureau Report entitled "Student Loan Affordability" dated May 8, 2013.

credit score, should be negatively impacting their child's ability to get started in life. Allowing a parent to be the primary borrower, without the student on the loan note, would place the credit reporting where it should be and minimize the negative impact on the student's credit.

3. Need for Guidance on Refunding Bonds.

In the Ruling, the IRS permitted the tax-exempt refinancing of loans originally made by the issuer. However, it says that the bonds used to refinance the education loans "will be refunding bonds of the Prior Bonds." This assumption has raised some concern for which clarification is also needed. We believe issuers should be able to conduct refinancing using refunding bonds or, if new private activity cap is utilized, a new issue, and request confirming guidance.

In summary, the guidance we seek will resolve significant issues that are currently standing in the way of allowing issuers of Qualified Student Loan Bonds to help ease the burden of student loans for both parents and students. The guidance, which we believe is consistent with the language in the Code, will clear up current confusion. We believe the recommended guidance can be drafted in an easily understood manner and can be administered on a uniform basis. The guidance will have an overall positive impact on increasing access to postsecondary education and the U.S. economy.

We would be happy to discuss these recommendations with appropriate staff. Our contact information is set forth under our signatures below.

Sincerely,

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