Education Finance Council™

Helping Families Plan & Pay for College℠

June 7, 2019

The Honorable Steven Mnuchin Secretary of the Treasury U.S. Department of the Treasury 1500 Pennsylvania Avenue NW Washington, DC 20220	The Honorable Charles P. Rettig Commissioner of Internal Revenue Internal Revenue Service 1111 Constitution Avenue, NW Washington, DC 20224

Re: Recommendations for 2019-2020 Priority Guidance Plan, Notice 2019-30

Dear Secretary Mnuchin and Commissioner Rettig:

On behalf of Education Finance Council (EFC), I appreciate the opportunity to provide input on the 2019-2020 Priority Guidance Plan, Notice 2019-30. EFC is the national trade association representing nonprofit and state-based higher education finance organizations. These organizations are public-purpose entities that operate with the mission of increasing postsecondary access, affordability, and success. Collectively, they serve as critical resources for students and families in their states, assisting families with every facet of the higher education financing experience.

In November 2015, the US Treasury (Treasury) and the Internal Revenue Service (Service) provided guidance (Notice 2015-78) that clarified Section 144(b) of the Internal Revenue Code, allowing student loan programs to use tax-exempt bonds to fund parent loans for students and to use tax-exempt bonds to refinance education loans for state residents or for students who attend a school in their state, regardless of the original lender. While Notice 2015-78 made significant progress toward allowing more individuals to refinance high-interest rate education loans at today's low rates, three technical issues resulted from this guidance restricting the ability of state-based, nonprofit higher education finance organizations from fully implementing this guidance.

To allow nonprofit and state-based organizations to fully implement the intent of Notice 2015-78 to use the proceeds of tax-exempt bonds to provide valuable low-cost education loan refinancing programs, EFC urges the Treasury and the Service to include the three technical issues outlined below in the 2019-2020 Priority Guidance Plan:

- Clarify in the case of a refinancing of an original education loan financed with tax-exempt bonds that the bonds issued for refinancing purposes will not be considered refunding bonds, particularly where the issuer is utilizing a new volume cap allocation to issue the bonds that will refinance the original education loans.

- Provide greater clarification as to how an issuer might obtain the required verification that private education loans being refinanced met the loan limit requirement (Cost of Attendance less other aid) at the time these loans were made.

- Clarify (a) that a former student may refinance an original loan that was a parent loan and vice versa; and (b) the student nexus requirement as it relates to a parent refinance loan.

This additional guidance from Treasury and the Service would enable borrowers, especially those with high-interest rate private education loans, to utilize state-based, nonprofit lenders to refinance their debt at significantly lower rates and better manage their education loan debt.

Background

By way of background, we offer the following supporting rationale for consideration in including these items in the 2019-2020 Priority Guidance Plan:

1. **The recommended guidance resolves significant issues relevant to many taxpayers.**

   According to Goldman Sachs, over 8 million taxpayers could benefit from refinancing higher interest rate education loan debt. State-based, nonprofit lenders have the ability to use the proceeds of tax-exempt bonds to refinance these higher interest rate education loans at significantly lower rates for the residents of their respective states, however, technical issues are standing in the way of allowing these organizations to do so.

   All EFC member refinancing programs offer a fixed-interest rate loan at 5.50 percent interest or lower; the lowest rate is 3.49 percent. These programs do not have any additional fees. In addition, EFC member refinancing programs cater to borrowers that many for-profit refinancing lenders will not serve — borrowers with credit scores as low as 650 and annual incomes as low as $35,000.

   The Washington State Institute for Public Policy recently published a study for the state legislature, who is considering offering a student loan refinancing program. The study's authors noted, "While fewer students have private student loan debt, they likely carry a much higher APR, which makes those loans much more beneficial to refinance."[1]

   The state of Maryland is also considering implementing a low-cost state-based refinancing program if this outstanding clarification issue is addressed.

[1] Barch, M., Hoagland, C., Hansen, J., & Haselkorn, A. (2018). *Student loan bill of rights: Student loan refinancing* (Document Number 18-11- 2301). Olympia: Washington State Institute for Public Policy.

2. The recommended guidance simplifies regulation of tax-exempt financed education refinancing loan programs.

The clarification we are requesting on these three technical issues would do just that — clarify existing guidance so that it may be implemented as intended in Notice 2015-78. Unfortunately, the absence of clear and reliable interpretation of the issues concerning the availability of tax-exempt bond proceeds for this purpose has limited state-financed education refinancing loans from reaching a broader range of borrowers.

By clarifying these points, Treasury and the Service would clear the path for lower interest rate, state-based, nonprofit education refinancing loans to be offered in states across the country.

3. The recommended guidance involves existing guidance that is insufficient.

As noted above, on November 13, 2015, the U.S. Treasury provided guidance (Notice 2015-78) that clarified Section 144(b) of the Internal Revenue Code, allowing state student loan programs to use tax-exempt bonds to fund parent loans for students and to use tax-exempt bonds to refinance loans for state residents or for students who attend a school in their state, regardless of the original lender. In providing this much-needed guidance, the Department has already helped to reduce the burden of education debt nationwide and provided an economic boost to students, families, and their communities.

Unfortunately, while Notice 2015-78 makes important progress toward allowing more families to refinance high-interest loans, it is insufficient and should be modified by addressing the aforementioned technical issues to allow state and nonprofit organizations to fully implement their programs, thereby helping millions of education loan borrowers refinance their debt and successfully manage and repay these loans.

4. The recommended guidance is in accordance with Executive Orders 13771 and 13789.

The recommended guidance is in accordance with Executive Order 13771, as outlined in the June 14, 2017 Federal Register, because it is applicable to issuers of tax-exempt bonds generally and because only minor modifications would be necessary to provide the additional guidance needed to enable broad national implementation of education refinancing loan programs on a tax-exempt financed basis.

The recommended guidance is in accordance with Executive Order 13789, as outlined April 21, 2017 Federal Register, because it addresses undue complexities in the Federal tax law and because it would materially simplify regulation of tax-exempt financed education refinancing loan programs and increase the universe of borrowers who may benefit from them.

5. **The recommended guidance promotes sound tax administration**.

    The recommended guidance would clarify the intention of Notice 2015-78, promoting sound tax administration and resulting in direct additional savings to borrowers. It would also enable nonprofit and state-based organizations to make these loans available to a broader range of borrowers and would reduce the regulatory burden for these organizations. Finally, this would also avoid the need for Treasury and the Service to expend resources in attempting to ensure compliance with existing regulations that are not clear.

6. **The Service can administer the recommended guidance on a uniform basis.**

    The recommended guidance would apply uniformly to all issuers of tax-exempt bonds for the purpose of funding education refinancing programs.

7. **The recommended guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.**

    The recommended guidance would further clarify something that is at present unclear for nonprofit and state-based lenders, the taxpayers in this case. Doing so would allow for a broader implementation of student loan refinancing programs.

I thank you for the opportunity to provide these comments and welcome the opportunity to discuss any of these items in greater detail and to provide additional background information if needed to assist the Treasury and the Service in addressing these items.

Sincerely,

Debra J. Chromy, Ed.D.
President