

Accordingly, to the extent the amounts charged for a guarantee of a pool of mortgages do not exceed amounts charged in the area in cases when owner-financing is not provided through the use of mortgage revenue bonds, the proposed regulations provide that such amounts are not treated as borne by the mortgagors and are not taken into account in determining the effective rate of interest on the mortgages for purposes of section 143(g).

B. Proposed Regulations

The proposed regulations create a new § 1.143(g)–1. The proposed regulations provide that an issue satisfies the requirements of section 143(g) only if the issue meets the requirements of § 1.143(g)–1(b) and, in the case of an issue 95 percent or more of the net proceeds of which are to be used to provide residences for veterans, the issue also meets the requirements of § 1.143(g)–1(c). The requirements of section 143(g) and the proposed regulations are applicable in addition to the requirements of section 148 and §§ 1.148–0 through 1.148–11.

The proposed regulations provide that an issue shall be treated as meeting the requirements of § 1.143(g)–1(b) only if the excess of (1) the effective rate of interest on the mortgages financed by the issue, over (2) the yield on the issue, is not greater over the term of the issue than 1.125 percentage points.

In determining the effective rate of interest on any mortgage, the proposed regulations provide that all fees, charges, and other amounts borne by the mortgagor that are attributable to the mortgage or to the bond issue are taken into account. Such amounts include points, commitment fees, origination fees, servicing fees, and prepayment penalties paid by the mortgagor.

The proposed regulations provide that items that are treated as borne by the mortgagor and are taken into account in calculating the effective rate of interest also include: (1) All points, commitment fees, origination fees, or similar charges borne by the seller of the property; and (2) the excess of any amounts received from any person other than the mortgagor by any person in connection with the acquisition of the mortgagor's interest in the property over the usual and reasonable acquisition costs of a person acquiring like property where owner-financing is not provided through the use of mortgage revenue bonds.

The proposed regulations further provide that the following items are not treated as borne by the mortgagor and are not taken into account in calculating

the effective rate of interest: (1) Any expected rebate of arbitrage profit; and (2) any application fee, survey fee, credit report fee, insurance charge or similar settlement or financing cost to the extent such amount does not exceed amounts charged in the area in cases where owner-financing is not provided through the use of mortgage revenue bonds.

With respect to insurance charges, the proposed regulations provide that amounts paid for Federal Housing Administration, Veterans' Administration, or similar private mortgage insurance on an individual's mortgage, or amounts paid for pool mortgage insurance on a pool of mortgages, are not taken into account so long as such amounts do not exceed the amounts charged in the area with respect to a similar mortgage, or pool of mortgages, that is not financed with mortgage revenue bonds. Moreover, for this purpose, amounts paid for pool mortgage insurance include amounts paid to an entity (for example, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other mortgage insurer) to directly guarantee the pool of mortgages financed with the bonds, or to guarantee a pass-through security backed by the pool of mortgages financed with the bonds.

The proposed regulations do not provide guidance regarding all aspects of the application of section 143(g)(2). The proposed regulations provide that to the extent not inconsistent with the 1986 Act or subsequent law, the provisions of § 6a.103A–2(i)(2) (other than paragraphs (i)(2)(i) and (i)(2)(ii)(A) through (C)) apply to provide additional rules relating to compliance with the requirement that the effective rate of mortgage interest not exceed the bond yield by more than 1.125 percentage points.

The proposed regulations also do not provide guidance regarding the application of section 143(g)(3). The proposed regulations provide that to the extent not inconsistent with the 1986 Act or subsequent law, the provisions of § 6a.103A–2(i)(4) apply to provide guidance regarding the application of section 143(g)(3).

Proposed Effective Dates

The proposed regulations will apply to bonds sold on or after the date of publication of final regulations in the **Federal Register**, that are subject to section 143. Issuers may also apply the proposed regulations in whole, but not in part, to bonds sold on or after November 5, 2003 and before the date

of publication of final regulations in the **Federal Register**, that are subject to section 143. In addition, issuers may apply the proposed regulations in whole, but not in part, to any bonds that are sold before November 5, 2003, and subject to section 143. Finally, subject to the applicable effective dates for the corresponding statutory provisions, issuers may apply the proposed regulations in whole, but not in part, to any bonds that are subject to section 103A(i) of the 1954 Code.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. The IRS and Treasury Department request comments on all aspects of the proposed regulations. Comments are also requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 28, 2004, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the lobby more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by January 7, 2004, and submit an outline of the topics to