

(ii) For any issue, the issuer does not treat as qualified administrative costs more than \$85,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

(2) *Computational base.* For purposes of paragraph (e)(2)(iii)(B)(1) of this section, computational base shall mean—

(i) For a guaranteed investment contract, the amount of gross proceeds the issuer reasonably expects, as of the date the contract is acquired, to be deposited in the guaranteed investment contract over the term of the contract, and

(ii) For investments (other than guaranteed investment contracts) to be deposited in a yield restricted defeasance escrow, the amount of gross proceeds initially invested in those investments.

(3) *Cost-of-living adjustment.* In the case of a calendar year after 2004, each of the dollar amounts in paragraph (e)(2)(iii)(B)(1) of this section shall be increased by an amount equal to—

(i) Such dollar amount; multiplied by

(ii) The cost-of-living adjustment determined under section 1(f)(3) for such calendar year by using the language "calendar year 2003" instead of "calendar year 1992" in section 1(f)(3)(B).

(4) *Rounding.* If any increase determined under paragraph (e)(2)(iii)(B)(3) of this section is not a multiple of \$1,000, such increase shall be rounded to the nearest multiple thereof.

(5) *Applicable year for cost-of-living adjustment.* The cost-of-living adjustments under paragraph (e)(2)(iii)(B)(3) of this section shall apply to the safe harbor amounts under paragraph (e)(2)(iii)(B)(1) of this section based on the year the guaranteed investment contract or the investments for the yield restricted defeasance escrow, as applicable, are acquired.

(6) *Cost-of-living adjustment to determine remaining amount of per-issue safe harbor—(i) In general.* This paragraph (e)(2)(iii)(B)(6) applies to determine the portion of the safe harbor amount under paragraph (e)(2)(iii)(B)(1)(ii) of this section, as modified by paragraph (e)(2)(iii)(B)(3) of this section (the per-issue safe harbor), that is available (the remaining amount) for any year (the determination year) if the per-issue safe harbor was partially used in one or more prior years.

(ii) *Remaining amount of per-issue safe harbor.* The remaining amount of the per-issue safe harbor for any

determination year is equal to the per-issue safe harbor for that year, reduced by the portion of the per-issue safe harbor used in one or more prior years.

(iii) *Portion of per-issue safe harbor used in prior years.* The portion of the per-issue safe harbor used in any prior year (the prior year) is equal to the total amount of broker's commissions or similar fees paid in connection with guaranteed investment contracts or investments for a yield restricted defeasance escrow acquired in the prior year that the issuer treated as qualified administrative costs for the issue, multiplied by a fraction the numerator of which is the per-issue safe harbor for the determination year and the denominator of which is the per-issue safe harbor for the prior year. See paragraph (e)(2)(iii)(C) *Example 2* of this section.

(C) *Examples.* The following examples illustrate the application of the safe harbor in paragraph (e)(2)(iii)(B) of this section:

Example 1. Multipurpose issue. In 2003, the issuer of a multipurpose issue uses brokers to acquire the following investments with gross proceeds of the issue: a guaranteed investment contract for amounts to be deposited in a construction fund (construction GIC), Treasury securities to be deposited in a yield restricted defeasance escrow (Treasury investments) and a guaranteed investment contract that will be used to earn a return on what otherwise would be idle cash balances from maturing investments in the yield restricted defeasance escrow (the float GIC). The issuer deposits \$22,000,000 into the construction GIC and reasonably expects that no further deposits will be made over its term. The issuer uses \$8,040,000 of the proceeds to purchase the Treasury investments. The issuer reasonably expects that it will make aggregate deposits of \$600,000 to the float GIC over its term. The brokers' fees are \$30,000 for the construction GIC, \$16,080 for the Treasury investments and \$3,000 for the float GIC. The issuer has not previously treated any brokers' commissions or similar fees as qualified administrative costs. The issuer may claim all \$49,080 in brokers' fees for these investments as qualified administrative costs because the fees do not exceed the safe harbors in paragraph (e)(2)(iii)(B) of this section. Specifically, each of the brokers' fees equals the lesser of \$30,000 and 0.2% of the computational base (or, if more, \$3,000) (i.e., lesser of \$30,000 and $0.2\% \times \$22,000,000$ for the construction GIC; lesser of \$30,000 and $0.2\% \times \$8,040,000$ for the Treasury investments; and lesser of \$30,000 and \$3,000 for the float GIC). In addition, the total amount of brokers' fees claimed by the issuer as qualified administrative costs (\$49,080) does not exceed the per-issue safe harbor of \$85,000.

Example 2. Cost-of-living adjustment. In 2003, an issuer issues bonds and uses gross proceeds of the issue to acquire two guaranteed investment contracts. The issuer

pays a total of \$50,000 in brokers' fees for the two guaranteed investment contracts and treats these fees as qualified administrative costs. In a year subsequent to 2003 (Year Y), the issuer uses gross proceeds of the issue to acquire two additional guaranteed investment contracts, paying a total of \$20,000 in broker's fees for the two guaranteed investment contracts, and treats those fees as qualified administrative costs. For Year Y, applying the cost-of-living adjustment under paragraph (e)(2)(iii)(B)(3) of this section, the safe harbor dollar limits under paragraph (e)(2)(iii)(B)(1) of this section are \$3,000, \$32,000 and \$90,000. The remaining amount of the per-issue safe harbor for Year Y is \$37,059 (\$90,000—[\$50,000 \times \$90,000/\$85,000]). The broker's fees in Year Y do not exceed the per-issue safe harbor under paragraph (e)(2)(iii)(B)(1)(ii) (as modified by paragraph (e)(2)(iii)(B)(3)) of this section because the broker's fees do not exceed the remaining amount of the per-issue safe harbor determined under paragraph (e)(2)(iii)(B)(6) of this section for Year Y. In a year subsequent to Year Y (Year Z), the issuer uses gross proceeds of the issue to acquire an additional guaranteed investment contract, pays a broker's fee of \$15,000 for the guaranteed investment contract, and treats the broker's fee as a qualified administrative cost. For Year Z, applying the cost-of-living adjustment under paragraph (e)(2)(iii)(B)(3) of this section, the safe harbor dollar limits under paragraph (e)(2)(iii)(B)(1) of this section are \$3,000, \$33,000 and \$93,000. The remaining amount of the per-issue safe harbor for Year Z is \$17,627 (\$93,000—[((\$50,000 \times \$93,000/\$85,000) + (\$20,000 \times \$93,000/\$90,000))]). The broker's fee incurred in Year Z does not exceed the per-issue safe harbor under paragraph (e)(2)(iii)(B)(1)(ii) (as modified by paragraph (e)(2)(iii)(B)(3)) of this section because the broker's fee does not exceed the remaining amount of the per-issue safe harbor determined under paragraph (e)(2)(iii)(B)(6) of this section for Year Z. See paragraph (e)(2)(iii)(B)(6) of this section.

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■ 4. Section 1.148–11 is amended by revising paragraph (i) to read as follows:

§ 1.148–11 Effective dates.

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(i) *Special rule for certain broker's commissions and similar fees.* Section 1.148–5(e)(2)(iii) applies to bonds sold on or after February 9, 2004. In the case of bonds sold before February 9, 2004, that are subject to § 1.148–5 (pre-effective date bonds), issuers may apply § 1.148–5(e)(2)(iii), in whole but not in part, with respect to transactions entered into on or after December 11, 2003. If an issuer applies § 1.148–5(e)(2)(iii) to pre-effective date bonds, the per-issue safe harbor in § 1.148–5(e)(2)(iii)(B)(1)(ii) is applied by taking into account all brokers' commissions or similar fees with respect to guaranteed investment contracts and investments for yield restricted defeasance escrows