

Congressional Bill Would Expand The Ability To Issue Bank Qualified Tax-Exempt Bonds

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House Bill 3967, titled the “Municipal Bond Market Support Act of 2019”, was introduced by Alabama Representative Terri Sewell and New York Representative Tom Reed with the purpose of increasing the amount of tax-exempt bonds that may be issued as bank qualified obligations. According to their announcement, the bill is intended to “help local governments and nonprofits afford critical construction projects and stimulate their economies.”

Under current law, carrying costs allocable to tax-exempt bonds are generally not allowed to be deducted by financial institutions that purchase and carry these bonds. However, an exception exists for qualified tax-exempt obligations, commonly referred to as bank qualified or “BQ” debt. To qualify for the exemption to allow deductions for a portion (limited by the Code to 80%) of the carrying costs, the tax-exempt bonds must be issued by a “qualified small issuer”. Under current law, a qualified small issuer is one that reasonably anticipates issuing no more than \$10,000,000 of tax-exempt obligations during the applicable calendar year.

If the Municipal Bond Market Support Act of 2019 is passed in its current form, the bill would expand the opportunity to issue bank qualified bonds by modifying the definition of a qualified small issuer to increase the maximum anticipated amount of bonds issued in a calendar year from \$10,000,000 to \$30,000,000. Additionally, this figure would be subject to an annual adjustment for inflation (rounded to the nearest \$100,000). These changes will increase the number of entities that will be able to issue bank qualified tax-exempt bonds.

The bill has another provision that would expand the ability for conduit issuers to issue bank qualified obligations on behalf of 501(c)(3) organizations. That provision would treat each individual 501(c)(3) borrower—instead of the actual conduit issuer—as the issuer of the bonds. This provision would therefore apply the \$30,000,000 cap to each 501(c)(3) borrower, instead of aggregating all issues of a conduit issuer, and has the potential to significantly increase the number of conduit issues that can be designated as bank qualified.

The proposed changes to the Code contained in the Municipal Bond Market Support Act of 2019 are substantially modeled after temporary changes that were implemented through the American Recovery and Reinvestment Act, which were effective for 2009 and 2010 only. The changes in the current bill, however, would apply permanently with no sunset.

The bill was referred to the House Committee on Ways and Means prior to the August recess and is sure to be monitored by financial institutions and market participants once Congress is back in session.

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