§ 1.143(g)-1 Requirements related to arbitrage.

(a) In general. Under section 143, for an issue to be an issue of qualified mortgage bonds or qualified veterans’ mortgage bonds (together, mortgage revenue bonds), the requirements of section 143(g) must be satisfied. An issue satisfies the requirements of section 143(g) only if such issue meets the requirements of paragraph (b) of this section 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, such issue also meets the requirements of paragraph (c) of this section. The requirements of section 143(g) and this section are applicable in addition to the requirements of section 148 and §§ 1.148–0 through 1.148–11.

(b) Effective rate of mortgage interest not to exceed bond yield by more than 1.125 percentage points
to exceed bond yield by more than 1.125 percentage points—

(1) Maximum yield. An issue shall be treated as meeting the requirements of this paragraph (b) only if the excess of the effective rate of interest on the mortgages financed by the issue, over the yield on the issue, is not greater over the term of the issue than 1.125 percentage points.

(2) Effective rate of interest. (i) In determining the effective rate of interest on any mortgage for purposes of this paragraph (b), there shall be taken into account all fees, charges, and other amounts borne by the mortgagor that are attributable to the mortgage or to the bond issue. Such amounts include points, commitment fees, origination fees, servicing fees, and prepayment penalties paid by the mortgagor.

(ii) Items that shall be treated as borne by the mortgagor and shall be taken into account in calculating the effective rate of interest also include—

(A) All points, commitment fees, origination fees, or similar charges borne by the seller of the property; and

(B) 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 when owner-financing is not provided through the use of mortgage revenue bonds.

(iii) The following items shall not be treated as borne by the mortgagor and shall not be taken into account in calculating the effective rate of interest—

(A) Any expected rebate of arbitrage profit under paragraph (c) of this section; and

(B) 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 when owner-financing is not provided through the use of mortgage revenue bonds. For example, 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. 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 (FNMA), 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.

(C) The following example illustrates the provisions of this paragraph (b)(2)(iii):

Example. Housing Authority X issues bonds intended to be qualified mortgage bonds under section 143(a). At the time the bonds are issued, X enters into an agreement with a group of mortgage lending institutions (lenders) under which the lenders agree to originate and service mortgages that meet certain specified requirements. After originating a specified amount of mortgages, each lender issues a “pass-through security” (each, a PTS) backed by the mortgages and sells the PTS to X. Under the terms of the PTS, the lender pays X an amount equal to
the regular monthly payments on the mort-
gages (less certain fees), whether or not re-
ceived by the lender (plus any prepayments
and liquidation proceeds in the event of a
foreclosure or other disposition of any mort-
gages). FNMA guarantees the timely pay-
ment of principal and interest on each PTS.
From the payments received from each
mortgagor, the lender pays a fee to FNMA
for its guarantee of the PTS. The amounts
paid to FNMA do not exceed the amounts
charged in the area with respect to a similar
pool of mortgages that is not financed with
mortgage revenue bonds. Under this para-
graph (b)(2)(iii), the fees for the guarantee
provided by FNMA are an insurance charge
because the guarantee is pool mortgage in-
surance. Because the amounts charged for
the guarantee do not exceed the amounts
charged in the area with respect to a similar
pool of mortgages that is not financed with
mortgage revenue bonds, the amounts
charged for the guarantee are not taken into
account in computing the effective rate of
interest on the mortgages financed with X’s
bonds.

(3) Additional rules. To the extent not
inconsistent with the Tax Reform Act
of 1986, Public Law 99-514 (the 1986
Act), or subsequent law, §6a.103A–2(1)(2)
(other than paragraphs (1)(2)(1) and
(1)(2)(1)(A) through (C)) of this chapter
applies to provide additional rules re-
lating to compliance with the require-
ment that the effective rate of mort-
gage interest not exceed the bond yield
by more than 1.125 percentage points.
(c) Arbitrage and investment gains to be
used to reduce costs of owner-financing.
As provided in section 143(g)(3), certain
earnings on nonpurpose investments
must either be paid or credited to
mortgagors, or paid to the United
States, in certain circumstances. To
the extent not inconsistent with the
1986 Act or subsequent law, §6a.103A–
2(1)(4) of this chapter applies to provide
guidance relating to compliance with this
requirement.
(d) Effective dates—(1) In general. Ex-
cept as otherwise provided in this sec-
tion, §1.143(g)-1 applies to bonds sold
on or after May 23, 2005, that are sub-
ject to section 143.
(2) Permissive retroactive application in
whole. Except as provided in paragraph
(d)(4) of this section, issuers may apply
§1.143(g)-1, in whole, but not in part, to
bonds sold before May 23, 2005, that are
subject to section 143.
(3) Bonds subject to the Internal Re-
venue Code of 1954. Except as provided in
paragraph (d)(4) of this section and sub-
ject to the applicable effective dates
for the corresponding statutory provi-
sions, an issuer may apply §1.143(g)-1,
in whole, but not in part, to bonds that
are subject to section 103A(i) of the In-
ternal Revenue Code of 1954.
(4) Special rule for pre-July 1, 1993
bonds. To the extent that an issuer ap-
plies this section to bonds issued before
July 1, 1993, §6a.103A–2(1)(3) of this
chapter also applies to the bonds.

[T.D. 9204, 70 FR 29449, May 23, 2005]

§ 1.144–0 Table of contents.
This section lists the captioned para-
graphs contained in §§1.144–1 and 1.144–
2.

§ 1.144–1 Qualified small issue bonds, qualified
student loan bonds, and qualified redevelop-
ment bonds.
(a) Overview.
(b) Scope.
(c) Effective dates.

§ 1.144–2 Remedial actions.


§ 1.144–1 Qualified small issue bonds,
qualified student loan bonds, and
qualified redevelopment bonds.
(a) Overview. Interest on a private ac-
tivity bond is not excludable from
gross income under section 103(a) un-
less the bond is a qualified bond. Under
section 141(e)(1)(D), a qualified small
issue bond issued under section 144(a)
may be a qualified bond. Under section
144(a), any qualified small issue bond is
any bond issued as a part of an issue 95
percent or more of the proceeds of
which are to be used to provide certain
manufacturing facilities or certain de-
preciable farm property and which
meets other requirements. Under sec-
tion 141(e)(1)(F) a qualified redevelop-
ment bond issued under section 144(c)
is a qualified bond. Under section
144(c), a qualified redevelopment bond
is any bond issued as a part of an issue 95
percent or more of the net proceeds
of which are to be used for one or more
redevelopment purposes and which
meets certain other requirements.
(b) Scope. Sections 1.144–0 through
1.144–2 apply for purposes of the rules
for small issue bonds under section
144(a) and qualified redevelopment
bonds under section 144(c), except that

705