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November 29, 2022

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Mr. Goodwin and Mr. Waters:

The National Association of Bond Lawyers (“NABL”) respectfully submits the enclosed comments with respect to the proposed regulations pertaining to the State and Local Government Series (“SLGS”) securities program (Docket ID No. FISCAL-2022-0002).

NABL appreciates the significant work by the Bureau of the Fiscal Service (“BFS”) and the U.S. Department of Treasury in preparing the Notice of Proposed Rulemaking addressing certain perceived abuses of the SLGS program. While NABL is not presently aware of any significant abuses of the program, any such abuses have the effect of reducing the effectiveness of the program by issuers seeking to comply with applicable federal tax laws. As such, NABL whole-heartedly supports BFS’s desire to prevent abuse of the SLGS program.

NABL is a nonprofit organization and specialty bar association of approximately 2,500 lawyers whose purposes include, among other things, providing advice and comment at the federal, state, and local levels with respect to legislation affecting state and municipal obligations. NABL believes that participating in the guidance process supports clarification of, and facilitates compliance with, tax laws and regulations. Accordingly, NABL members would welcome the opportunity to discuss these recommendations to achieve the goal of reducing abuses of the program while permitting additional uses of the program by well-intentioned issuers of tax-advantaged debt.

Thank you in advance for your time and attention here. I have asked our Director of Governmental Affairs, Brian Egan, to answer any questions you may have. You can reach Brian via email at [began@nabl.org](mailto:began@nabl.org) or via phone at (202) 503-3290. We look forward to hearing from you.

Best,

**Joseph (Jodie) E. Smith**

President

National Association of Bond Lawyers (NABL)

**RECOMMENDATIONS BY THE NATIONAL ASSOCIATION OF BOND LAWYERS TO THE BUREAU OF THE FISCAL SERVICE REGARDING NOTICE OF PROPOSED RULEMAKING (DOCKET ID NO. FISCAL-2022-0002)**

**NOVEMBER 29, 2022**

The following comments are submitted on behalf of the National Association of Bond Lawyers (“NABL”). The comments were prepared by an ad hoc task force of the Tax Law Committee (whose members are listed in [Appendix 2](#) hereto) and were approved by the Board of Directors. These comments relate to Notice of Proposed Rulemaking Docket ID No. FISCAL-2022-0002 (the “NPRM”), which provides proposed revisions to the regulations governing the State and Local Series (“SLGS”) securities program. Specifically, the comments provide suggested clarifications and revisions to the provisions in the NPRM, as well as certain related provisions.

1. Lead Time for Subscriptions: The current rule provides that the issue date for Time Deposit and Demand Deposit securities cannot be more than 60 calendar days after the date the U.S. Department of Treasury (“Treasury”) receives the subscription. The NPRM proposes to shorten this time period to 45 calendar days. Although Treasury has noted that only a small percentage of subscriptions are placed more than 45 days prior to issuance, issuers of tax-advantaged debt have bona fide reasons (unrelated to creating an impermissible cost-free option) for placing subscriptions more than 45 days prior to issuance. With the prohibition on issuing tax-exempt advance refunding bonds enacted by the Tax Cuts and Jobs Act of 2017 (the “2017 Act”), more issuers have increased the period of time between the date on which current refunding bonds are priced, sold and sized (*i.e.*, the date on which SLGS are typically subscribed for) and the date on which the tax-advantaged bonds are delivered, and funds become available for purchase of the SLGS. If the interest rates on the SLGS is not known on the date that the bonds are sold, the bond issuer must increase the principal amount of the bonds to assure that there will be sufficient funds even if SLGS rates are 0% (referred to as a “gross-funded escrow”). The ability of issuers to subscribe for SLGS on the pricing date provides certainty to the issuers and to the Treasury Department and can also avoid the need for gross-funded escrows. A gross-funded escrow typically requires a larger issuance of refunding bonds (which, to the extent those refunding bonds are tax-advantaged bond, would place a larger burden on the federal government) than an escrow sized to take into account interest earnings on SLGS securities. NABL requests that the issue date be changed to not more than 90 calendar days after the date Treasury receives the subscription, to accommodate the bona fide purposes of issuers undertaking permitted tax-exempt current refundings with forward settlement dates.

To provide the Bureau of Fiscal Service (“BFS”) further assistance in preventing SLGS from being used for prohibited purposes, the final rules could require that subscriptions not be submitted prior to the sale date of the associated tax-advantaged bonds. Furthermore, while NABL does not recommend this course of action, the final regulations could limit the subscription period to 45 days for SLGS Notes and Bonds. In most cases, the SLGS securities that issuers desire to subscribe for more than 45 days in advance of delivery are Certificates of Indebtedness.

Additionally, NABL requests that BFS consider permitting a longer window of time for SLGS bearing 0% interest and for Demand Deposit securities. NABL believes that potential abuses of 0% SLGS are minimal, if any. NABL also believes that permitting additional lead time to subscribe for Demand Deposit securities would assist issuers in avoiding problems associated with debt limit contingency because issuers typically know well in advance of the relevant dates the amounts they must invest in Demand Deposit securities.

2. Identification of Bond Issues: NABL believes that the current system of providing identifying information of the underlying bond issue when subscribing for SLGS securities is sufficient.

NABL is also aware that some issuers choose to invest their commingled debt service reserve funds (*i.e.*, reasonably required reserve funds that are funded with proceeds of multiple bond issues, or which secure multiple bond issues) in SLGS securities. To require that issuers identify only a single bond issue to which the SLGS securities relate would effectively prevent these issuers from using SLGS securities as a permitted investment for their otherwise qualifying debt service reserve funds. Additionally, in many instances, an escrow trustee will file for the subscription for SLGS securities. Given the escrow trustee's limited role in most bond issues, the additional identification requirement is likely to cause confusion and potentially result in faulty subscriptions for SLGS securities.

In the event BFS and Treasury believe that further issue identifying information is necessary, NABL suggests having issuers provide the CUSIP numbers of the bonds, in cases where CUSIP numbers are available. This approach would align with the practice used by Internal Revenue Service 8038-series forms to identify bond issues. For those bond issues that appear on EMMA, oftentimes the underwriter or bond purchaser will provide the relevant information to EMMA, including the name of the bond issue and the name of the issuer (whose name may be abbreviated when provided), without input from the issuer. Consequently, the naming convention used on EMMA may not match the issuer's documentation, or may be changed by a third-party after submission of the subscription, without the issuer's knowledge. To the extent EMMA information is updated, the proposed regulations would require issuers to provide similar updates to BFS and Treasury, even though the issuer may not have been involved in providing the information to EMMA and may not have participated in any changes to the same. Such a requirement would be an unnecessary burden to those issuers (including most, if not all, smaller issuers) who are not themselves subscribers to EMMA. In contrast, CUSIP numbers will not typically change, once provided to BFS.

Additionally, the same bond issue may have more than one listing on EMMA with different names used across listings. See [Appendix 1](#) to these comments for illustrative examples pertaining to three different issuers of municipal securities. Multiple listings for a single bond issue tend to occur in instances when the bond issue is comprised partially of term bonds with mandatory sinking fund redemptions or when the bonds benefit from secondary market credit support, such as bond insurance. In the event of multiple listings, an issuer would not know which EMMA listing to follow.

NABL is also concerned with those instances in which an escrow invested in SLGS securities may later become transferred proceeds of another bond issue, at a date that is much later than the date on which the SLGS securities are issued. For the foregoing reasons, NABL recommends BFS and Treasury require that the information provided be accurate as of the date on which the SLGS subscription is completed (and as of the date of the issuance of the SLGS securities), but that the information need not be updated for any changes that occur after the date of issuance of the SLGS securities.

3. Definition of Cost-Free Option: NABL believes that the definition of "cost-free option" may be overly broad. NABL proposes that the definition be refined as follows to clarify that the definition of a cost-free option is specific to SLGS and other Treasury obligations, as opposed to yields on tax-advantaged bonds:

Cost-free option means the use of any provision(s) in the SLGS program to exploit movements in interest rates applicable to SLGS or other U.S. Treasury obligations.

4. Duration Certification: NABL is concerned that the duration certification requirement is vague and may cause confusion. NABL requests clarity that the length of SLGS maturities that match the dates of required payments on refunding escrows is reasonably necessary for the underlying governmental purpose of the investment.

5. Eligibility Certification: NABL believes the proposed eligibility certification is vague and overly punitive in nature. An issuer may not be immediately aware at the point in time at which its tax-advantaged bonds lose their characterization as such. It is also unclear at which point the issuer would be required to notify Treasury of the ineligibility (*e.g.*, upon learning of a violation, upon a final adverse determination by the Internal Revenue Service, upon final resolution by the Internal Revenue Service Office of Appeals, upon final determination by the U.S. Tax Court, etc.). In many instances, upon learning of a violation, issuers will apply to the Internal Revenue Service through its voluntary closing agreement program (“VCAP”). Issuers are often able to resolve violations successfully through the VCAP process by paying a penalty amount, and the affected bonds are permitted to remain outstanding in their original tax-advantaged status.

Additionally, a premature redemption of SLGS securities invested in a refunding escrow would likely cause the issuer to violate covenants in its bond documents and would result in uncertainty for holders of the refunded bonds who were relying on the escrow that was invested in SLGS securities. The premature redemption of the SLGS securities could cause a deficiency of funds available to pay debt service or redemption amount on the refunded bonds on applicable dates.

Separately, an issuer’s ineligibility for future SLGS subscriptions should not negatively impact prior SLGS subscriptions made by such issuer. NABL suggests that any eligibility certification be limited to eligibility as of the date of the SLGS subscription.

6. Limits to Par Adjustment: NABL is aware of some issuers, including small issuers, who currently subscribe for SLGS in time to account for the minimum settlement requirement (*i.e.*, 5 days or 7 days, as applicable), but who do not know the full details of their subscription at that time. Requiring these issuers to provide full subscription details at the time of initial subscription may be overly burdensome and result in additional potential errors in subscription details. Additionally, if an issuer inadvertently enters subscription information incorrectly, with only limited adjustments permitted without BFS consent, the portfolio may not be able to be purchased with fully correct information.

7. Debt Contingency Suspension of SLGS Subscriptions:<sup>1</sup> Suspending acceptance of new subscriptions imposes costs on issuers of tax-advantaged debt, particularly smaller issuers. Although not addressed in the NPRM, NABL believes that it may be possible to modify the current procedures to mitigate or eliminate the costs to issuers while at the same time meeting the needs of the Treasury as it manages the public debt. The following proposals could be alternatives to the current practice of suspending SLGS subscriptions entirely when national debt approaches the statutory limit:

- A. Only suspend subscriptions for larger SLGS purchases. Because purchasers of smaller quantities of SLGS have the most difficulty with alternate investments, suspensions of SLGS subscriptions over some limit would solve the problems for many local government units. NABL proposes using a \$10,000,000 limit.
- B. If necessary, consider an increase in the advance subscription period when extraordinary measures are in effect. While the current five-day subscription period is useful, small issuers could in extraordinary times adjust to a longer subscription period of, perhaps, 10 days. Such issuers would prefer to have SLGS available with a longer waiting period than not to have them at all.
- C. If necessary, limit SLGS terms to a relatively short period. Short-term Treasuries are the most difficult to bid as an alternative to SLGS. If, during such periods subscriptions, were only

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<sup>1</sup> The comments included in this Item 7 were included in a prior comment submission, dated May 29, 2014, by NABL to BFS and Treasury.

- allowed for SLGS with maturities of seven years or shorter, BFS might find it feasible to adjust Treasury auctions to account for SLGS.
- D. Allow subscriptions for 0% SLGS during periods of extraordinary measures. Because of the difficulties related to alternative investments, many local governments would buy SLGS with a 0% yield if they were available (and higher yielding SLGS were not available). This measure would also solve most 0% SLGS roll problems.

NABL does not see the above list as disjointed alternatives. While allowing subscriptions of \$10,000,000 or less in times of extraordinary measures would, perhaps, be the most useful and effective measure, we could envision a system where even \$10,000,000 or smaller subscriptions required a 10-day subscription period during such times. Perhaps subscriptions of over \$10,000,000 could be allowed during such times if the SLGS terms were relatively short (five years or less), the subscription periods were long enough or the interest rates were 0%.

Appendix 1

Illustrative Examples from EMMA re: Different Names Used for a Single Bond Issue

[See Attached]



### CHICAGO WATER (IL)

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#### Issuer's Contact Information

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Chicago, IL 60602  
(312) 744-8674  
Investor.Relations@cityofchicago.org

#### Issuer Website(s)

■ [Chicago Water Bonds](#)

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<a href="#">SECOND LIEN WATER REVENUE REFUNDING BONDS, SERIES 2017</a>	06/22/2017	2017 to 2036
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<a href="#">REV BDS 2016 A-1</a>	05/23/2016	2025 to 2028
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<a href="#">SECOND LIEN WATER REVENUE BONDS SERIES 2016A-2 (TAXABLE)</a>	05/23/2016	2016 to 2017
<a href="#">SECOND LEIN BDS 2014</a>	09/17/2014	2025 to 2044
<a href="#">SECOND LIEN WATER REVENUE BONDS, PROJECT SERIES 2014</a>	09/17/2014	2015 to 2044
<a href="#">REF-SECOND LIEN PROJ-AGM-CR</a>	05/17/2012	11/01/2037
<a href="#">WTR REV REF BDS 2012</a>	05/17/2012	11/01/2020
<a href="#">SECOND LIEN PROJ BDS 2012</a>	05/17/2012	2025 to 2042
<a href="#">SECOND LIEN WATER REVENUE BONDS PROJECT SERIES 2012</a>	05/17/2012	2016 to 2042
<a href="#">TAXABLE SECOND LIEN PROJ REF BDS 2010-C</a>	11/10/2010	11/01/2029
<a href="#">TAXABLE SECOND LIEN PROJ REF BDS 2010-B</a>	11/10/2010	11/01/2040
<a href="#">SECOND LIEN WATER REVENUE BONDS, PROJECT AND REFUNDING SERIES 2010A (TAX EXEMPT)</a>	11/10/2010	2011 to 2023
<a href="#">SECOND LIEN WATER REVENUE BONDS, TAXABLE PROJECT SERIES 2010B (BUILD AMERICA BONDS - DIRECT PAYMENT)</a>	11/10/2010	11/01/2040
<a href="#">SECOND LIEN WATER REVENUE BONDS, TAXABLE PROJECT SERIES 2010C (QUALIFIED ENERGY CONSERVATION BONDS - DIRECT PAYMENT)</a>	11/10/2010	11/01/2029
<a href="#">SECOND LIEN WATER REVENUE BONDS, SERIES 2000-1</a>	02/19/2009	11/01/2030
<a href="#">CTFS SER R-9289-1</a>	10/09/2008	05/01/2028
<a href="#">CTFS SER R-9290</a>	10/09/2008	05/01/2028
<a href="#">CTFS SER R-9289</a>	10/09/2008	05/01/2028
<a href="#">CTFS SER R-9290-1</a>	10/09/2008	05/01/2028
<a href="#">CTFS SER 2926Z</a>	05/29/2008	11/01/2033
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<a href="#">LIMITED TAX BONDS, SERIES 2021 (AUDUBON COMMISSION PROJECTS)</a>	12/15/2021	2022 to 2040
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<a href="#">PUB IMPT BDS 2021 A</a>	09/16/2021	2042 to 2049
<a href="#">TAXABLE PUBLIC IMPROVEMENT BONDS, ISSUE OF 2021B</a>	09/16/2021	12/01/2021
<a href="#">PUBLIC IMPROVEMENT BONDS, ISSUE OF 2021A</a>	09/16/2021	2022 to 2050
<a href="#">LIMITED TAX BONDS, (AUDUBON COMMISSION PROJECTS) SERIES 2020</a>	11/10/2020	2022 to 2040
<a href="#">TAXABLE PUBLIC IMPROVEMENT BONDS, ISSUE OF 2019</a>	10/22/2019	2020 to 2029
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### VIRGINIA PUBLIC SCHOOL AUTHORITY (VA)

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#### Issuer's Contact Information

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#### Issuer Website(s)

- [Virginia Public School Authority](#)
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<a href="#">SCHOOL TECHNOLOGY AND SECURITY NOTES, SERIES X</a>	05/24/2022	2023 to 2027
<a href="#">SCHOOL FINANCING BONDS (1997 RESOLUTION) SERIES 2022A</a>	05/17/2022	2023 to 2051
<a href="#">SCHOOL FINANCING BONDS (1997 RESOLUTION) SERIES 2021C</a>	11/09/2021	2022 to 2041
<a href="#">SCHOOL TECHNOLOGY AND SECURITY NOTES SERIES IX</a>	05/13/2021	2022 to 2026
<a href="#">BDS 2021 A</a>	05/11/2021	08/01/2046
<a href="#">SCHOOL FINANCING BONDS, SERIES 2021A (1997 RESOLUTION)</a>	05/11/2021	2022 to 2050
<a href="#">SCHOOL FINANCING BONDS (1997 RESOLUTION) SERIES 2021B (TAXABLE)</a>	05/11/2021	2021 to 2039
<a href="#">REF-TAXABLE-1997 RESOLUTION</a>	11/10/2020	2025 to 2040
<a href="#">REF-1997 RESOLUTION-SER B</a>	11/10/2020	2041 to 2049
<a href="#">SCHOOL FINANCING AND REFUNDING BONDS (1997 RESOLUTION) SERIES 2020B (TAX-EXEMPT)</a>	11/10/2020	2021 to 2050
<a href="#">SCHOOL FINANCING REFUNDING BONDS (1997 RESOLUTION) SERIES 2020C (TAXABLE)</a>	11/10/2020	2021 to 2041
<a href="#">SCHOOL TECHNOLOGY AND SECURITY NOTES, SERIES VIII</a>	06/09/2020	2021 to 2025
<a href="#">SCHOOL FINANCING REFUNDING BONDS (1997 RESOLUTION) SERIES 2019D (TAXABLE)</a>	11/12/2019	2020 to 2040
<a href="#">VIRGINIA SCHOOL FINANCING BONDS (1997 RESOLUTION), SERIES C</a>	11/12/2019	2020 to 2039
<a href="#">SCHOOL TECHNOLOGY AND SECURITY NOTES, SERIES VII</a>	05/23/2019	2020 to 2024
<a href="#">SCHOOL FINANCING BONDS (1997 RESOLUTION) SERIES 2019A</a>	05/21/2019	2020 to 2049
<a href="#">SCHOOL FINANCING REFUNDING BONDS (1997 RESOLUTION) SERIES 2019B</a>	05/21/2019	2020 to 2028
<a href="#">SCHOOL FINANCING BONDS (1997 RESOLUTION ) SERIES 2018B</a>	11/06/2018	2019 to 2038
<a href="#">SCHOOL TECHNOLOGY AND SECURITY NOTES, SERIES VI</a>	05/22/2018	2019 to 2023
<a href="#">SCHOOL FINANCING BONDS (1997 RESOLUTION) SERIES 2018A</a>	05/15/2018	2019 to 2038
<a href="#">SCHOOL FINANCING BONDS (1997 RESOLUTION) SERIES 2017C</a>	11/07/2017	2018 to 2047
<a href="#">SCHOOL FINANCING REFUNDING BONDS (1997 RESOLUTION) SERIES 2017B</a>	08/22/2017	2018 to 2036
<a href="#">SCHOOL TECHNOLOGY AND SECURITY NOTES, SERIES V</a>	05/23/2017	2018 to 2022
<a href="#">VIRGINIA SCHOOL FINANCING BONDS (1997 RESOLUTION) SERIES 2017A</a>	05/16/2017	2018 to 2037



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Appendix 2

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