National Association of Bond Lawyers

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March 22, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives

The Honorable Chuck Schumer
Minority Leader
U.S. Senate

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives

Dear Majority Leader McConnell, Speaker Pelosi, and Minority Leaders Schumer and McCarthy:

The National Association of Bond Lawyers (NABL) is a non-profit corporation and specialty bar association of approximately 2,500 lawyers. NABL exists to promote the integrity of the municipal bond market by advancing the understanding of and compliance with the law affecting public finance. NABL members and their firms are involved every year in a significant portion of the municipal financings by U.S. state and local governments.

As a result of the swift action already undertaken by Congress in passing COVID-19 legislation, as well as the National Emergency Declaration, state and local governments are in a better position to manage the health and well-being of the country. However, the economic impact of the pandemic on domestic and global markets is already significant and further action by Congress is needed.

As you consider additional legislation to provide economic stimulus and fiscal relief, we urge Congress to implement the proven tools we identify below. Adopting these proposals will allow state and local governments to access much needed capital now, at a time when support to our communities is of paramount and immediate concern. Additionally, the tools we lay out below will position state and local governments to mitigate damages affecting our nation and your constituents.

In the interest of time, NABL is sending this list now but will follow up with a more robust explanation of how each proposal will assist you in getting our nation through these uncertain times. In the meantime, we stand ready to discuss the application and implementation of any of our suggested ideas.

If NABL can provide further assistance, please do not hesitate to contact Jessica Giroux, Director of Governmental Affairs, in our Washington DC office, at (202) 503-3290 or at jgiroux@nabl.org.

Sincerely,

Richard J. Moore
President, National Association of Bond Lawyers

NABL SUGGESTIONS TO CONGRESS/TREASURY TO ALLEVIATE FINANCIAL CRISIS RELATING TO STATE AND LOCAL GOVERNMENT ABILITY TO BORROW WITH TAX-EXEMPT BONDS AND RELATED MATTERS

1. To stimulate the economy and provide access to the market for state and local government coping with high borrowing costs and uncertain revenue streams, reinstate ARRA and other expired Code provisions that facilitated market access for state and local governments during the last financial crisis, such as Build America Bonds with a direct pay subsidy (Section 54AA and Section 6431), and tax credit bond programs with direct pay subsidy (Section 54A through F and Section 6431), allowing issuers to efficiently enter the taxable market with a federal revenue stream and effective lower borrowing cost. In order to stimulate the economy, the subsidy level for all direct pay bonds should be at a level above the revenue neutral level as compared to tax-exempt bonds. All new or reinstated direct pay bonds should be protected from sequestration.

2. To address severe cash flow difficulties and uncertain revenue streams (and available amounts) of state and local government, either pass legislation to permit or direct Treasury to permit long term cash flow borrowings on a tax-exempt basis with sizing based on potential deficits rather than a clear expected deficit of a certain size and clearly permitting for expenses to handle the pandemic under the extraordinary working capital exception of Treasury Regulation Section 1.148-6(d)(3)(ii)(B). This relief should also provide there is no retesting for deficit financings for at least 10.5 years after issuance to handle unanticipated and difficult-to-predict cash flow issues.

3. To alleviate market conditions that are making it difficult for state and local governments to borrow (e.g., concerns about state and local government credit, uncertainty of revenue streams, and market volatility), provide for federal government purchases of new issues of tax-exempt bonds to allow access to primary market by state and local government, such as by creating new funding programs and broadening and making more flexible existing federal programs.

4. To alleviate credit concerns of state and local government and to provide state and local governments with relief similar to that provided to private corporations, provide for a federal guaranty program for tax-exempt bonds and taxable bonds of state and local government, permitting such a program for tax-exempt bonds under a regulation (or notice) or by amending Section 149(b).

5. To address an inability of state and local government with outstanding qualified tender bonds or commercial paper to remarket existing bonds or otherwise access the market at a reasonable rate, provide for a federal government liquidity facility for such qualified tender bonds and commercial paper to stabilize the market (see note in 4 above regarding regulation, notice or Code amendment to address Section 149(b)).

6. Amend Section 149(d) of the Tax Code to permit advance refunding of outstanding debt to allow issuers more flexibility to restructure borrowings. Given dramatic changes in revenue and fiscal uncertainty to be experienced by state and local government, this will be an important tool to free up cash flow by restructuring debt.

7. To allow state and local government ability to quickly borrow funds in a frozen market, remove Section 265 bank deductibility limitations for tax-exempt bonds to encourage banks to purchase bonds, particularly newly issued debt. At a minimum, increase the cap of small issuer exception substantially, such as to $100,000,000. For conduit transactions (such as those for non-profits), assess the limit at the conduit borrower level.

8. To facilitate the market for tax-exempt bonds, pause the liquidity coverage ratio discount for investment grade municipal bonds allowing institutional investors to count municipal securities towards their liquidity coverage ratio to encourage purchases of tax-exempt bonds.

9. To address unprecedented uncertainty with respect to revenue streams of state and local government and credit concerns, suspend or relax private business tests and private loan restrictions under Section 141 to facilitate "partnerships" with private enterprise to provide essential infrastructure and allow communities to recover. As an alternative to temporarily removing the restrictions under Section 141 for governmental bonds, private business tests or loan restrictions might be "rolled back" to the restrictions under Section 103(b) of the 1954 Code. In particular, restrictions should be loosened for hospitals, educational and research entities, and those that provide housing that have been forced to adapt to rapidly changing operational needs as a result of the crisis.

10. To revitalize a frozen economy with severe economic impacts, such as job losses, reinstate removed types of private activity bonds and loosen existing restrictions on such bonds (such as the 95/5 use of proceeds test, land restriction, existing property restriction, and volume cap) to revitalize businesses and communities. For example a new category of private activity bond, similar to previously permitted small issuer bonds under Section 144, could be allowed to revitalize the economic activity of small business, broadening the category of permitted businesses beyond manufacturing companies.

11. Even before the current financial crisis, there was an extreme shortage of affordable housing in this country. This shortage is now almost certain to be exacerbated. To mitigate this problem, eliminate volume cap restrictions for single-family and multi-family housing projects for calendar years 2020, 2021 and 2022.