National Association of Bond Lawyers

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Sent Electronically VIA www.regulations.gov

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2020-47) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: 2020-2021 Priority Guidance Plan

Ladies and Gentlemen:

The National Association of Bond Lawyers (NABL) respectfully suggests the following items for inclusion in the Department of the Treasury (the "Treasury") and the Internal Revenue Service (the "IRS") 2020-2021 Priority Guidance Plan. Unless otherwise indicated, section references are to the Internal Revenue Code of 1986 (the "Code"). These items are listed in order of priority, with highest priority given to guidance to provide cash flow relief to issuers and borrowers due to the COVID-19 pandemic.

We previously sent to Secretary Mnuchin on April 9, 2020, a request for several items of guidance to provide relief from the economic effects of the COVID-19 pandemic. We include certain of those requests below in a condensed and consolidated format; please see our April 9 letter (which is enclosed with this letter) for further discussion of these requests.

This list of suggested priority items was compiled by members of NABL's Tax Law Committee. If you have any questions concerning this submission, please contact Jessica Giroux, NABL's Director of Governmental Affairs, at 518-469-1565 or jgiroux@nabl.org.

Sincerely,

Richard J. Moore
President, National Association of Bond Lawyers

cc: Johanna Som de Cerff, Acting Chief, Branch 5, Office of the Associate Chief Counsel (Financial Institutions & Products), Internal Revenue Service

Enclosure: NABL's April 9, 2020 Letter to Congress and the Treasury

Recommendations to Provide Cash Flow Relief to Issuers and Borrowers from Economic Difficulties Caused by COVID-19.

1. Facilitate Long-Term Working Capital Financings, Allow Issuers and Borrowers to Spend Unspent Proceeds of Existing Bonds on Working Capital Expenditures, and Relax Rules for Financing Short-lived Assets Used for COVID-19 Relief.

Under current law, issuers are greatly constrained in issuing tax-exempt bonds to finance working capital expenditures. Issuers must meet stringent requirements to ensure that bond proceeds are treated as allocated to working capital expenditures, and significant complications arise if the bonds are to remain outstanding for longer than 13 months.

To assist state and local governments and 501(c)(3) organizations in responding to the massive fiscal crisis presented by COVID-19, we recommend that Treasury provide a safe harbor beginning immediately and ending December 31, 2025, to allow state and local governments and 501(c)(3) organizations to issue (or have issued for their benefit) long-term working capital borrowings on a tax-exempt basis with a weighted average maturity of up to ten years, with no requirement to retest for "available amounts" after the bonds are issued, and without being subject to the special arbitrage and rebate rules otherwise applicable to long-term working capital borrowings. We recommend that the ten-year weighted average maturity limitation be applied to an entire issue of tax-exempt bonds or to a portion of those bonds based on an allocation of bonds to the purposes of a multipurpose issue. We also recommend that the IRS and Treasury provide guidance that issuers, during the aftermath of COVID-19, may use unexpended proceeds of outstanding tax-exempt obligations to finance such working capital.

For further discussion and sample language to implement this recommendation, please see pp. 11-12 and Appendix G of our April 9 letter.

The tax-advantaged bond rules also generally limit the weighted average maturity of a bond issue to no more than 120% of the weighted average useful life of the bond-financed assets. For governmental bonds, violating this limit can impose severe consequences that are likely to prevent the bonds from being issued as tax-advantaged bonds, and for private activity bonds, violating this limit flatly prevents the bonds from being issued as tax-advantaged bonds.

Apart from the cash flow considerations that will require issuers and borrowers to borrow to provide for basic governmental functions, state and local governments and 501(c)(3) organizations will require significant amounts of additional supplies and equipment, some of it short-lived, to deal with the fallout from COVID-19. For example, reserves of hospital supplies and equipment that are maintained for emergencies are rapidly being depleted by the pandemic, and the supplies and equipment may have short useful lives and are difficult to finance on a long-term basis given the 120% limitation referenced above. Similarly, schools will continue to need to purchase equipment to provide expanded remote learning or supplies to facilitate COVID-19 testing for teachers and students to ensure their safe return to class.

We therefore urge that guidance be issued to relax this 120% requirement to expressly permit long-term financings (up to at least ten years) for a period beginning immediately and ending December 31, 2025, to facilitate the acquisition of supplies and equipment related to the response to COVID-19 (including to provide equipment and supplies needed to respond to the

COVID-19 pandemic and to replenish essential reserves of such equipment and supplies), regardless of the useful life thereof.

2. Facilitate Alterations to Tax-Advantaged Obligations as a Result of the Financial Crisis.

Under Treasury Regulation § 1.1001-3, significant modifications of a tax-advantaged obligation result in a deemed sale or exchange of the obligation for a newly issued obligation; such newly issued obligation might not comply with Code restrictions due to timing restrictions, and changes in the law, among other matters. While failure of an issuer to perform its obligations under a debt instrument will not, in and of itself, result in a reissuance, the ability of a holder to stay collection or temporarily waive an acceleration clause or similar default right may be limited if such action would result in a reissuance. In addition, material changes to other terms of a bond, such as alterations in interest rates or payments schedules, might result in a reissuance. In response to debt market disruptions caused by COVID-19, many issuers continue to negotiate with bondholders regarding payment deferrals and other changes to the terms of their debt to provide relief. Some of these changes have the potential to cause the debt to be reissued for tax purposes. Even if the reissued tax-advantaged bond complies with the tax rules, the diligence process necessary to confirm such matters will cost issuers time and money they cannot afford to spend in the economic climate of the pandemic.

Accordingly, we recommend that, beginning immediately and ending December 31, 2025, issuers should be permitted to make alterations to the terms of their tax-advantaged bond issues to respond to the issues presented by COVID-19, such as extending payment dates, changing the interest rate, altering security, and other changes, without such actions resulting in a "reissuance" of the tax-advantaged bonds, solely for purposes of the tax-advantaged bond provisions.

For further discussion and a proposed IRS Notice to implement this recommendation, please see pp. 13-14 and Appendix I of our April 9 letter.

3. Permit Temporary Extension of Reimbursement Period for Projects Otherwise Eligible to be Financed on a Tax-Advantaged Basis.

Generally, the rules governing when an issuer can reimburse itself from tax-advantaged bond proceeds for expenditures paid prior to the issuance date of those bonds require the issuer to issue the bonds and make the reimbursement allocation not later than 18 months after the later of (1) the date the original expenditure is paid or (2) the date the project is placed in service or abandoned; however, in no event may the reimbursement allocation be made more than three years after the original expenditure is paid. In the case of "small issuers," as defined in Code Section 148(f)(4)(D)(i), the 18-month limit is expanded to a 3-year limit, and the overall 3-year limit is disregarded.

As a result of the COVID-19 pandemic, many state and local governmental issuers and conduit borrowers of tax-advantaged bonds are experiencing difficulty accessing capital markets to borrow needed funds. Furthermore, bond elections in many jurisdictions were cancelled due to restrictions on public gatherings. These circumstances may prevent issuers and conduit borrowers from issuing bonds and effecting the allocation of the proceeds of such bonds to project costs in compliance with the current timing requirements of the Treasury Regulations, resulting in additional stress on already financially challenged entities that are addressing significant difficulties.

We recommend that for the period beginning immediately and ending December 31, 2025, all state and local governmental issuers and conduit borrowers be allowed to use the more generous timing requirements for reimbursement allocations made by small issuers.

For further discussion and a proposed amendment to the Treasury Regulations to implement this recommendation, please see pp. 15-16 and Appendix K of our April 9 letter.

Along these lines, we also recommend that the IRS and Treasury consider providing similar timing relief for other rules pertaining to tax allocations of proceeds of tax-advantaged bonds.

Recommendations to Provide Better Access to Capital Markets for Issuers and Borrowers to Deal with the Economic Difficulties Caused by COVID-19.

4. Election to Treat Pledged Funds As Not Constituting Replacement Proceeds.

The Treasury Regulations (but not the Code) provide that "pledged funds" are treated as replacement proceeds of the bond issue(s) to which they are pledged to pay debt service. The consequence of this is that the amounts in these pledged funds are subject to the arbitrage restrictions under the Code. In a time of financial distress, the pledged fund rules restrict the ability of many issuers and borrowers to borrow in a manner that permits them to retain the reserve and endowment funds reasonably necessary to assure long-term financial and operational viability. The pledged fund rules create particular difficulties for many smaller issuers and borrowers, such as 501(c)(3) organizations. The intent of the replacement proceeds rules is to limit the issuance of tax-exempt bonds to obtain an arbitrage benefit indirectly. In a time of extreme financial distress, the pledge of investments to a borrowing does not generally tend to raise such concerns.

We therefore urge that, beginning immediately and ending December 31, 2025, Treasury and the IRS should allow states and local governments and other borrowers of tax-advantaged bond proceeds to issue tax-advantaged bonds that are secured by pledges of investment property, in a manner that would otherwise cause those proceeds to be treated as replacement proceeds, and elect to treat those investments as not being replacement proceeds. This relief would not apply to any pledged funds that are reasonably expected, as of the date of the pledge, to be used to pay principal or interest on the issue.

For further discussion and sample language to implement this recommendation, please see pp. 12-13 and Appendix H of our April 9 letter.

Additional Requests for Further Guidance

5. Provide guidance regarding when tax-exempt and other tax advantaged debt obligations are treated as "reissued" for certain tax purposes, by finalizing proposed regulations (with appropriate modifications) and by issuing guidance regarding the phase-out of LIBOR.

Currently, issuers look to a patchwork of guidance to determine whether a tax-advantaged bond is treated as "reissued." On December 31, 2018, Treasury released proposed regulations (REG-141739-08) that would synthesize much of the existing guidance. The proposed regulations omit several helpful aspects of the existing guidance, which should be maintained and incorporated into the final regulations because issuers have come to rely on these helpful rules and the tax-exempt bond community can still benefit from them. NABL has provided specific comments to the IRS and Treasury regarding these matters in a letter dated March 1, 2019 (which we also submitted officially on http://regulations.gov) and we would be pleased to discuss them.

Similarly, on October 9, 2019, Treasury released proposed regulations (REG-118784-18) providing the circumstances under which altering the terms of tax-advantaged obligations, and any interest rate swaps hedging such obligations, to replace an index utilizing LIBOR with one based on a "qualified rate" (such as the Secured Overnight Financing Rate), to address the phase-out of LIBOR, will not result in a reissuance or termination, as applicable, of the obligations or swaps. NABL provided specific comments on these proposed regulations to the IRS and Treasury regarding these matters in a letter dated November 25, 2019 (which we also submitted officially on http://regulations.gov), and we would be pleased to discuss them also. When finalizing this project, which spans numerous areas of the tax law, we encourage the IRS and Treasury to ensure that the final regulations take into account the unique considerations that apply to tax-advantaged bonds, which we highlighted in our November 25, 2019 letter.

6. Revise and supplement Revenue Procedure 2018-26 to clarify, simplify, and expand the application of the remedial action rules.

On April 11, 2018, the Internal Revenue Service released Rev. Proc. 2018-26, 2018-18 IRB 546, which expanded the availability of certain remedial actions under Treas. Reg. §1.141-12. Rev. Proc. 2018-26 was a step in the right direction and provides much needed relief in this area. However, there are several ways that the IRS could improve this guidance through additional guidance promulgated under Treasury's authority in Treas. Reg. §1.141-12(h) (i.e., guidance that need not take the form of additional regulations issued after notice and comment). NABL has provided specific comments to the IRS and Treasury regarding these matters in a letter dated February 1, 2019, and we would be pleased to discuss them.