



National Association  
of Bond Lawyers

PHONE 202-503-3300 601 Thirteenth Street, NW  
FAX 202-637-0217 Suite 800 South  
www.nabl.org Washington, D.C. 20005

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David J. Kautter  
Assistant Secretary  
Office of Tax Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Krishna Vallabhaneni  
Tax Legislative Counsel  
United States Department of the Treasury  
1500 Pennsylvania Avenue, NW, Room 3044  
Washington, DC 20220

Michael J. Desmond  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

*Re: IRS Review of Regulatory and Other Relief to Support Economic Recovery*

Messrs. Kautter, Desmond and Vallabhaneni:

On July 1, 2020, in response to the ongoing outbreak of the novel coronavirus disease (the "COVID-19 Outbreak"), the Internal Revenue Service released Notice 2020-53 to provide relief to bond issuers, operators, owners and tenants of qualified residential rental projects and qualified low-income housing projects financed with exempt facility bonds, and state agencies that have jurisdiction over these projects, from otherwise-applicable federal tax law compliance requirements. On behalf of the National Association of Bond Lawyers ("NABL"), I am writing to request that the time-limited relief set forth in IRS Notice 2020-53 be extended through December 31, 2022, as more specifically set forth below.<sup>1</sup>

This letter was prepared by an ad hoc task force comprising the individuals listed in [Appendix A](#) and was approved by the NABL Board of Directors. NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 2,500 members and is headquartered in Washington, DC.

If NABL can provide further assistance, please do not hesitate to contact Jessica Giroux, Director of Governmental Affairs in our Washington DC office, at (518) 469-1565 or at [jgiroux@nabl.org](mailto:jgiroux@nabl.org).

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<sup>1</sup> This request is being submitted in part in response to the November 5, 2020 solicitation of Sunita Lough, Deputy Commission of Internal Revenue, Services and Enforcement, inviting comments from the public regarding regulations and other requirements that can be rescinded, modified or waived to assist business and individual taxpayers with the ongoing economic recovery from the COVID-19 Outbreak. [See](#) 85 Fed. Reg. 73252 (November 17, 2020).

Sincerely,

A handwritten signature in black ink, appearing to read "Teri M. Guarnaccia". The signature is fluid and cursive, with a large, sweeping initial "T" that loops back over the rest of the name.

Teri M. Guarnaccia  
President, National Association of Bond Lawyers

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

cc: **Helen M. Hubbard**, Associate Chief Counsel, Financial Institutions & Products, Internal Revenue Service  
**Melissa Moye**, Director, Office of State and Local Finance, U.S. Department of the Treasury  
**Johanna Som de Cerff**, Acting Branch Chief, Internal Revenue Service  
**Zoran Stojanovic**, Assistant to the Branch Chief, Internal Revenue Service  
**Timothy Jones**, Office of the Associate Chief Counsel, Financial Institutions & Products, Internal Revenue Service  
**David White**, Office of the Associate Chief Counsel, Financial Institutions & Products, Internal Revenue Service  
**Brett York**, Acting Deputy Tax Legislative Counsel, U.S. Department of the Treasury

## Background Relating to Tax-Exempt Bond Provisions of IRS Notice 2020-53

Section 142(d) of the Internal Revenue Code of 1986 (the “Code”) generally requires as a condition for tax-exempt bond financing that a qualified residential rental project provide for the set-aside of either (i) 20% of its units for tenants with income that does not exceed 50% of area median income or (ii) 40% of its units for tenants with income that does not exceed 60% of area median income (the “Set-Aside Requirement”).

Section 147(d) of the Code generally requires that the proceeds of certain types of tax-exempt qualified private activity bonds, including bonds that finance qualified residential rental projects, may only be spent to acquire an existing building if a minimum amount of money is spent on rehabilitation of the building within two years of the later of (i) the date of bond issuance or (ii) the date the building was acquired (the “Rehabilitation Requirement”).

As NABL noted in its April 9, 2020 submission to federal policymakers recommending guidance with respect to the tax-exempt bond provisions of the Code in response to the COVID-19 Outbreak,<sup>2</sup> if proceeds of bonds issued pursuant to Section 142(d) of the Code are used to acquire an existing, rented-up residential rental project, the tenant mix at the time of bond issuance and/or acquisition may not satisfy the Set-Aside Requirement. Unless all or a significant portion of existing tenants are evicted immediately, it may take some time until the Set-Aside Requirement is satisfied. Since 2004, with the release of Revenue Procedure 2004-39, the Department of Treasury and the Internal Revenue Service have recognized and addressed this problem by providing a “transition period” of up to one year to comply with the Set-Aside Requirement for bond-financed acquisitions of residential rental projects. NABL’s April 2020 submission went on to report that, at that time, residential leasing activities had stopped around much of the country as a result of the COVID-19 Outbreak, and that, in addition, supply chains had been disrupted, which in turn suggested that satisfaction of the Rehabilitation Requirement on a timely basis would be more difficult.

Accordingly, in its April 2020 submission, NABL requested an extension of the “transition period” set forth in Revenue Procedure 2004-39, as well as an extension of time to satisfy the Rehabilitation Requirement.

IRS Notice 2020-53 responded to these concerns, providing relief with respect to acquired qualified residential rental projects that, pursuant to Section 5.02 of Revenue Procedure 2004-39, would have a “transition period” ending on or after April 1, 2020 and before December 31, 2020, postponing the last date of the “transition period” for all such projects to December 31, 2020. The same relief is provided in IRS Notice 2020-53 for purposes of satisfying the Rehabilitation Requirement.<sup>3</sup>

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<sup>2</sup> A copy of NABL’s April 9, 2020 submission is enclosed for reference; see page 16 of that submission for a discussion of these issues.

<sup>3</sup> Although the focus of this submission is concentrated on the tax-exempt bond aspects of IRS Notice 2020-53, affecting compliance under Sections 142(d) and 147(d) of the Code, we observe that IRS Notice 2020-53 also provides relief with respect to a number of compliance matters under Section 42(d) of the Code. For example, IRS Notice 2020-53 states that, between April 1, 2020 and December 31, 2020, owners of “qualified low-income housing projects” (as such term is defined in Section 42(d) of the Code) are not required to perform certain income recertifications or reduce the eligible basis in a building because of the temporary closure of an amenity or common area due to the COVID-19 Outbreak and that state agencies that have jurisdiction over such projects are not required to conduct compliance-monitoring. Additionally, pursuant to IRS Notice 2020-53, between April 1, 2020 and December 31, 2020, owners and operators of qualified low-income housing projects, bond issuers and state agencies are permitted to treat medical personnel and other essential workers providing services during the COVID-19 Outbreak as if they

## Recommendation

NABL applauds the Internal Revenue Service and the Department of Treasury for promulgating IRS Notice 2020-53, which has provided much-needed timing relief to bond issuers, to residential rental project owners and operators and to other affected parties. As of the date of submission of this request, however, it is apparent that the timing relief in IRS Notice 2020-53 should be extended beyond the end of 2020.

As you know, there is consistent, broad-based reporting today that the public health challenges presented by the COVID-19 Outbreak are continuing at the end of 2020, at levels that are even higher than they were in April, and that in many jurisdictions around the country, shut-down orders of varying degrees are being imposed or reimposed. In recent weeks, NABL members have reported that owners and operators of residential rental projects described in IRS Notice 2020-53 continue to face severe challenges with respect to achieving compliance with the Set-Aside Requirement and the Rehabilitation Requirement. For example, owners and operators have reported that State or local shut-down conditions have made it extremely difficult or even impossible in some cases to show vacant apartment units and to conduct in-person diligence with respect to the income eligibility of prospective tenants. Moreover, there have been many reports in the press about the scarcity of construction materials and building trades labor to complete construction projects of all kinds.

In light of COVID-19 Outbreak conditions that continue to prevail around the country, we request that the Internal Revenue Service publish guidance supplementing, amplifying or superseding IRS Notice 2020-53, providing that:

1. For purposes of Section 5.02 of Revenue Procedure 2004-39, the last day of a 12-month transition period for a qualified residential rental project that ends on or after April 1, 2020 and before December 31, 2021 is postponed to December 31, 2022; and
2. If a bond is used to provide a qualified residential rental project and if the two-year rehabilitation expenditure period for the bond under Section 147(d) of the Code ends on or after April 1, 2020, and before December 31, 2021, the last day of that period is postponed to December 31, 2022.

We respectfully submit that time is of the essence with regard to the compliance matters set forth in this submission, and we therefore additionally request that the Internal Revenue Service publish the guidance requested herein on or before December 31, 2020.

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were “displaced individuals” within the meaning of Revenue Procedures 2014-49 and 2014-50, which in turn facilitates the use of qualified low-income housing projects to provide emergency housing for such essential personnel.

## APPENDIX A

### NABL AD HOC TASKFORCE MEMBERS

**Antonio D. Martini, Chair**

Hinckley, Allen & Snyder LLP  
28 State Street  
Boston, MA 02109-1775  
Telephone: 617-378-4136  
Email: [amartini@hinckleyallen.com](mailto:amartini@hinckleyallen.com)

**Christie L. Martin**

Mintz Levin Cohn Ferris Glovsky and  
Popeo P.C.  
1 Financial Center  
Boston, MA 02111-2621  
Telephone: 617-348-1769  
Email: [clmartin@mintz.com](mailto:clmartin@mintz.com)

**Brian P. Teaff**

Bracewell LLP  
711 Louisiana Street  
Suite 2300  
Houston, TX 77002-2770  
Telephone: 713-221-1367  
Email: [brian.teaff@bracewell.com](mailto:brian.teaff@bracewell.com)

**Matthias M. Edrich**

Kutak Rock LLP  
1801 California Street  
Suite 3000  
Denver, CO 80202-2626  
Telephone: 303-292-7887  
Email: [matthias.edrich@kutakrock.com](mailto:matthias.edrich@kutakrock.com)