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May 28, 2021

Submitted electronically via: www.regulations.gov

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2021-28) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: *2021-2022 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") 2021-2022 Priority Guidance Plan. The first four recommendations contained herein focus on immediate and short-term solutions to assist issuers including those state and local governments at the center of the current economic recovery. NABL also anticipates future Congressional activity in the way of an infrastructure package will focus on ways in which the municipal bond market can continue to be a strong source of stability for the various infrastructure needs of municipalities across the nation.

This list of suggested priority items was compiled by members of NABL's Tax Law Committee, and we stand ready to serve as a technical resource to Treasury and the IRS as they plan for the year ahead. Unless otherwise indicated, section references are to the Internal Revenue Code of 1986 (the "Code").

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,

Teri M. Guarnaccia
President, National Association of Bond Lawyers

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

1. Facilitate Long-Term Working Capital Financings and Allow Issuers and Borrowers to Spend Unspent Proceeds of Existing Bonds on Working Capital Expenditures.

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 broadly assist state and local governments and 501(c)(3) organizations in responding to the continued financial stresses caused by COVID-19, we recommend that Treasury provide a safe harbor beginning immediately and ending not earlier than 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 a proposed IRS Notice to implement this broad recommendation, please see Appendix A attached hereto.

In the event broad working capital financing relief is unavailable, more limited relief is requested. Many states have experienced unprecedented demand for unemployment benefits caused by job reductions due to COVID-19. These states have amassed large liabilities to the federal government in their accounts within the Federal Unemployment Trust Fund (the "FUTF"). In order to avoid onerous increases in employer contribution requirements in the short term to repay these large federal liabilities, many states are considering issuing long-term working capital bonds to spread out the liabilities over time. The safe harbor for longer-term working capital financings to avoid treatment as "other replacement proceeds" requires an annual retesting of available amounts and use of such available amounts to pay down bonds or invest in SLGS or other tax-exempt bonds. To the extent that federal or state law limits the use of amounts held in the FUTF to purposes other than payment of debt service, guidance is requested to confirm that any such amounts held in the FUTF are not available amounts for purposes of Treasury Regulation §1.148-1(c)(4)(ii). In addition, guidance is requested to provide that if an issuer opts to utilize American Rescue Plan Act funds for other eligible uses through internal designation, such amounts will not be taken into account as available amounts.

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 Internal Revenue Code of 1986, as amended (the "Code") 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 payment 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 not earlier than 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 a proposed IRS Notice to implement this recommendation, please Appendix B attached hereto.

3. Permanently Allow TEFRA Hearings Without an In-Person Requirement.

In response to the COVID-19 pandemic, Revenue Procedure 2020-21 provided temporary guidance regarding the public approval requirement under Code §147(f) for tax-exempt private activity bonds. It provided that for the period ending on December 31, 2020, hearings held by teleconference that are accessible to the residents of the approving governmental unit by calling a toll-free telephone number will be treated as held in a location that, based on the facts and circumstances is convenient for residents of the approving governmental unit for the purpose of Treasury Regulations §1.147-1(d)(2). This temporary guidance was extended by Revenue Procedure 2021-49 to allow for telephonic hearings until September 30, 2021.

The ability to conduct telephonic hearings was crucial during the pandemic and continues to be an important factor as issuers begin to resume normal operations. Experience has shown that issuers are able to effectively conduct TEFRA hearings open to the general public without an in-person component. We recommend that issuers be permitted to continue indefinitely to conduct TEFRA hearings without an in-person component so long as such hearing is permitted under local law. In the event permanent extension is unavailable, we recommend that the temporary guidance be extended to allow for telephonic hearings until at least March 31, 2022.

4. Extension of Deadlines.

In response to the COVID-19 pandemic, Notice 2021-12 further extended the temporary relief from certain requirements under Code §42 for qualified low-income housing projects and under Code §§142(d) and 147(d) for qualified residential rental projects that was provided in Notice 2020-53. Notice 2021-12 provides that (a) for purposes of section 5.02 of Rev. Proc. 2004-39 (the so-called "set-aside requirement"), 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 September 30, 2021, is postponed to September 30, 2021, and (b) if a bond is used to provide a qualified residential rental project and if the Code §147(d) 2-year rehabilitation expenditure period (the so-called "rehabilitation requirement") for the bond ends on or after April 1, 2020, and before September 30, 2021, then the last day of that period is postponed to the earlier of one year from the original due date or September 30, 2021.

Leasing activities have slowed, or in many cases, completely stopped in much of the country, such that it may take longer than one-year for there to be sufficient tenant turnover to comply with the set-aside requirement. Moreover, supply chains have been disrupted across the country and construction projects are taking longer than they were before the COVID-19 pandemic, such that two years many not be sufficient time to satisfy the rehabilitation requirement. Accordingly, to address these ongoing issues, we recommend that the September 30, 2021 dates in Notice 2021-12 be extended through December 31, 2022 and applied to all bonds subject to the rehabilitation requirement, and including bonds subject to Code §145(d).

Additional Requests for Further Guidance

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

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 NABL also submitted officially on http://regulations.gov for REG-141739-08) 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 for REG-118784-18), 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 Treasury Regulation §1.141-12. Revenue Procedure 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 Treasury Regulation §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.

APPENDIX A

Proposed Treasury Notice:

Notice 2021-xx

1. Purpose.

This Notice provides a temporary streamlining of the application of the arbitrage regulations to working capital borrowings to be made during the period ending December 31, 20[25], and certain related matters. The rules contained in this Notice recognize the extraordinary non-recurring event affecting the entire country as a result of the COVID-19 pandemic.

2. Background.

Regulation §1.148-6(d)(3)(i) provides limitations on the allocation of proceeds of an issue to working capital expenditures. Regulation §1.148-6(d)(3)(ii)(B) provides an exception for expenditures for extraordinary non-recurring items. Regulation §1.148-1(c)(4) provides that under certain circumstances, if tax-exempt bonds are permitted to remain outstanding longer than necessary, other amounts will be treated as replacement proceeds of the issue. Regulation §1.148-1(c)(4)(ii) provides a safe harbor under which longer term bonds for working capital will not be deemed to give rise to other replacement proceeds. Regulation §1.148-10 provides an anti-abuse rule under which bonds can lose tax-exemption or be subject to harsh restrictions if the bonds are deemed to be outstanding longer than necessary. One factor that is relevant to this determination is whether the bonds give rise to other replacement proceeds under Regulation §1.148-1(c)(4).

3. Applicable Rules.

For any bonds issued during the period beginning the present and ending December 31, 20[25], the following safe harbors apply.

(a) Any working capital expenditure of proceeds of the issue of which such bond is a part may be treated by the issuer as an expenditure for an extraordinary non-recurring item meeting the requirements of the first sentence of Regulation §1.148-6(d)(3)(ii)(B).

(b) If the issue of which such bond is a part has a weighted average maturity of not more than 10 years (as determined under Code §147(b)), such bond

(i) will not give rise to other replacement proceeds under Regulation §1.148-1(c)(4) and

(ii) will not be outstanding longer than necessary for purposes of Regulation §1.148-10(a)(4).

(c) If the issuer of such bond reasonably expects that the amount of proceeds of the issue of which such bond is a part will not exceed anticipated expenditures for which revenues are not expected to be available in a timely manner, such bonds will not be issued in an amount greater

than the amount reasonably necessary to accomplish the governmental purpose of the bond issue for purposes of Regulation §1.148-10(a)(4).

(d) An issuer may apply the multipurpose issue rules of Regulation §1.148-9(h) in determining compliance with (b) and (c) above.

4. Interim Guidance and Reliance.

The effective date of this Notice is __________, 2021. This Notice provides interim guidance. Issuers of tax-exempt bonds may apply and rely on this Notice for any actions taken with respect to tax-exempt bonds issued on or after the effective date of the Notice and before January 1, 20[26]. An issuer may also apply Section 3 to bonds of an issue outstanding on the effective date with unexpended proceeds with respect to expenditures made during the period from the effective date through December 31, 20[25].

APPENDIX B

Proposed Notice to address alterations to obligations as a result of the pandemic:

Notice 2021-

Section 1. Purpose

This Notice is intended to provide greater certainty and flexibility to address potential federal tax issues that have arisen in the tax-exempt bond market as a result of the financial impacts of the COVID-19 pandemic. This Notice permits issuers of tax-advantaged bonds to elect to treat modifications to the terms of these obligations that would otherwise be treated as significant modifications as not being significant modifications for certain limited tax-advantaged bond purposes.

Section 2. Temporary Rule Allowing Issuers to Elect Out of Reissuance Treatment Under Section 1001 for Limited Purposes

Solely for purposes of §103 and §§141 through 150 and former §§54 through 54AA, 1397E, 1400U-2 and 6431 of the Internal Revenue Code of 1986, as amended (the "Code"), during the period beginning on the date of publication of this Notice and ending December 31, 20[25] (the "Applicable Period"), any alteration of the terms of a tax-advantaged bond that would be treated as a modification under Section 1001 of the Code at the election of the issuer of such bond may be disregarded resulting in the bond not being treated as being reissued and as remaining the same debt instrument for purposes of the enumerated Code sections and former sections. After December 31, 20[25] any such modification made during the Applicable Period will be treated as if it were part of the original instrument and not a modification for purposes of Treasury Regulation §1.1001-3(f)(3). This election is made on the books and records of the issuer and must be made within 180 days of the modification. Any such alteration must be related to or the result of economic conditions caused by the financial or economic disruptions of the COVID-19 pandemic. For example, a delay in construction of a project financed with tax-advantaged bonds caused directly or indirectly by the economic disruptions caused by the COVID-19 pandemic

that resulted in a change in yield on the bonds, a deferral of payments on the bonds or an extension of the maturity of the bonds would qualify under this special rule.

Section 3. Applicability Date

The changes made by this Notice shall apply to events and actions taken with respect to tax-advantaged bonds that occur on or after effective date, through December 31, 20[25].