National Association of Bond Lawyers

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Sent Via Electronic Mail

Lily L. Batchelder
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Office of Tax Policy`
U.S. Department of the Treasury
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William M. Paul
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Internal Revenue Service
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Krishna Vallabhaneni
Tax Legislative Counsel
United States Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3044
Washington, DC 20220

Dear Ms. Batchelder, Mr. Vallabhaneni, and Mr. Paul:

On January 15, 2021, in response to the ongoing outbreak of the novel coronavirus disease (the "COVID-19 Outbreak"), the Internal Revenue Service released Notice 2021-12 to extend and amplify 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 2021-12 be extended through September 30, 2022, as more specifically set forth below.

This letter was prepared by an ad hoc task force comprising the individuals listed in Appendix B 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 Brian Egan, Director of Governmental Affairs in our Washington DC office, at (202) 503-3290 or began@nabl.org.

Sincerely,

Teri M. Guarnaccia
President, National Association of Bond Lawyers

cc: **Charles Rettig**, Commissioner, Internal Revenue Service

Mark J. Mazur, Deputy Assistant Secretary, Office of Tax Policy, U.S. Department of Treasury

Sunita Lough, Commissioner, Tax Exempt & Government Entities Division, Internal Revenue Service

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

Jian H. Grant, Branch Chief, 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 2021-12

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, 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 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.

IRS Notice 2021-12 extended and amplified the relief granted in IRS Notice 2020-53, largely due to the continued effects of the COVID-19 Outbreak. In particular, the notice extended the relief granted in IRS Notice 2020-53 with respect to both the Rehabilitation Requirement of Section 147(d) and the "transition period" under Revenue Procedure 2004-39 from December 31, 2020 to September 30, 2021.

Recommendation

NABL thanks the Internal Revenue Service and the Department of Treasury for promulgating IRS Notices 2020-53 and 2021-12, which have 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 2021-12 should be extended beyond its current end date of September 30, 2021.

As you know, there is consistent, broad-based reporting today that the public health challenges presented by the COVID-19 Outbreak are continuing and in some areas even increasing. The same factors that led to the temporary relief provided in IRS Notice 2020-53 and extended in IRS Notice 2021-12 continue to exist in many jurisdictions. After declining infection rates earlier in the year, new variants of the virus have caused portions of the country to return to stricter public health measures. In recent weeks, NABL members have reported that owners and operators of residential rental projects described in IRS Notice 2021-12 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 renewed and extended 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 2021-12, 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 September 30, 2022 is postponed to September 30, 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 September 30, 2022, the last day of that period is postponed to September 30, 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 that the Internal Revenue Service publish the guidance requested herein on or before September 30, 2021.

APPENDIX B

NABL AD HOC TASKFORCE MEMBERS

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