



National Association  
of Bond Lawyers

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June 2, 2022

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Submitted via [www.regulations.gov](http://www.regulations.gov) (IRS Notice-2022-21)

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2022-21) Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

To Whom It May Concern:

The National Association of Bond Lawyers (NABL) respectfully submits the following suggestions for inclusion in the U.S. Treasury Department's Office of Tax Policy and Internal Revenue Service (IRS) 2022-2023 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.

**1. Provide guidance regarding implementation of Section 142(n) and 142(o) of the Code.**

The Infrastructure Investment and Jobs Act (Pub. L. 117-58) expands Internal Revenue Code Section 142(a) to provide two new categories of exempt facility bonds for the financing of "qualified broadband projects" and "qualified carbon dioxide capture facilities." The statutory language raises questions regarding the ability to issue bonds to meet the stated requirements for each category. The tax-exempt bond community would benefit from guidance with respect to implementation of these new exempt facility categories. For example, among other items, guidance is needed on the qualified carbon dioxide capture facility provisions to clarify how the capture and storage percentage set forth under Section 142(o)(3) is applied to a bond financing for "eligible components" described under Section 142(o)(2)(A), which encompasses activities beyond the capture and storage of carbon dioxide. NABL will be providing specific comments to the IRS regarding these two new categories and would be pleased to discuss any questions in the meantime.

**2. 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).**

Currently, issuers look to a patchwork of guidance to determine whether a tax-advantaged bond (in particular, a "qualified tender 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> for REG-141739-08), and we would be pleased to discuss them.

**3. 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.

**4. Provide clarifying guidance concerning the application of the final allocation and accounting regulations in section 1.141-6 of the Treasury Regulations.**

On October 27, 2015, the Department of the Treasury published final regulations (T.D. 9741) relating to the definition of “private activity bonds” (the “Final Regulations”). The Final Regulations address four areas: (i) allocating and accounting for projects financed with tax-advantaged bonds, especially focused on projects financed both with proceeds of bonds and with moneys not derived from tax-advantaged borrowings; (ii) the treatment of certain partnerships; (iii) remedial actions, including “anticipatory remedial actions,” and (iv) qualification for multipurpose issue allocations under Treas. Reg. § 1.141-13(d). These regulations provide a workable framework, but there are still some areas that merit clarification. NABL has provided specific comments to the IRS and Treasury regarding these matters in a letter dated September 26, 2018, and we would be pleased to discuss them.

This list of suggested items for inclusion was compiled by members of NABL's Tax Law Committee. If you have any questions concerning this submission, please contact our Director of Governmental Affairs, Brian Egan, at 202-503-3290 or [began@nabl.org](mailto:began@nabl.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Ann D. Fillingham". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Ann D. Fillingham**  
President  
National Association of Bond Lawyers (NABL)

CC:

- Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of Treasury
- Brett York, Deputy Tax Legislative Counsel, U.S. Department of the Treasury
- Jian H. Grant, Branch V Chief, Internal Revenue Service
- Johanna Som de Cerff, Senior Technician Reviewer, Office of Chief Counsel  
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