Comments of the National Association of Health and Educational Facilities Finance Authorities
Public Approval of Tax-Exempt Private Activity Bonds (REG-128841-07; RIN 1545-B691)
December 27, 2017

The National Association of Health and Educational Facilities Finance Authorities represents issuers of tax exempt financing for providers of non-profit health and educational services.

We generally applaud the September 28, 2017 proposed regulations (the "Proposed Regulations") since they update and streamline implementation of the public approval requirement for tax exempt private activity bonds provided in section 147(f) of the Internal Revenue Code.

The following are revisions which would enhance the benefits of the proposed regulations:

1. Expand Optional Application

Issuers may apply the Proposed Regulations in whole but not in part to bonds that are issued pursuant to a public approval that occurs on or after September 28, 2017. The Proposed Regulations cannot be applied to bonds already issued or to be issued pursuant to an approval that occurred prior to September 28, 2017. We recommend that the final regulations should allow issuers to optionally apply the regulations, including the ability to get new public approval in the event of a substantial deviation from the original public approval, to bonds issued pursuant to an approval that occurred prior to September 28, 2017.

2. Content of Reasonable Notice – Definition of Project; Refunding Requirement

The Proposed Regulations generally retain the notice requirements set out in the existing regulations but require less specific project detail in the description. The Proposed Regulations helpfully allow the issuer to describe the category of bonds being issued and the type and use of the project rather than providing specific project information. We agree with the statement in the preamble that the reduced specificity is still adequate to permit the public to evaluate the merits of the bonds and the nature of the financed facility.

While reducing the required project detail is helpful, the Proposed Regulations add the explicit requirement that the notice and approval specify separately the maximum stated principal amount of bonds to be issued to finance each separate project for issuances that finance multiple projects. This new requirement is unnecessarily burdensome and inconsistent with the new allocation and accounting regulations relating to "mixed-use" eligible projects. This is particularly relevant for large hospital systems, which often finance and/or refinance several projects across multiple sites in a single issuance.

The existing regulations use the term "facility" and state that each facility needs to be described with a general functional description of the facility and the maximum amount to be issued for the facility. A facility may be on separate tracts of land if part of an integrated operation. Currently, if one borrower is financing projects at different locations that are financed as an integrated

operation, the notice and approval need only state a maximum amount given for the borrowing as a whole rather than for each different site. We believe this makes sense particularly for large borrowers with projects that are at different sites.

The Proposed Regulations state that it has proven *difficult to determine* whether facilities are part of an integrated operation and therefore, they drop the use of the word "facility" and instead use the word "project". A project is defined as "one or more capital projects or facilities, including land, buildings, equipment and other property to be financed with an issue that are located on the same site, or adjacent or proximate sites used for similar purposes." This essentially means that a separate maximum amount of bonds will need to be stated for each different project location, which is more burdensome and restrictive than the existing regulations.

The Proposed Regulation's definition of "project" is inconsistent with the definition of "project" under the new allocation and accounting regulations. Under Treasury Regulations Section 1.141-6, "Project" is defined as "one or more facilities or capital projects, including land, buildings, equipment, or other property, financed in whole or in part with proceeds of the issue." If there are equity and bond proceeds financing a project, the equity may be allocated first to private use even if the private use moves around. The definition of "project" for purposes of the public approval requirement should mirror the definition of "project" for purposes of the allocation and accounting regulations. Otherwise, the issuer is burdened with tracking expenditures in two different ways. Moreover, the requirement that an issuer specify in the notice and approval the principal amount of bond proceeds to be allocated to a particular project within a multi-project financing is inconsistent with the ability to have equity "float" to any private business use within the financed project. Depending on the private business use of a particular facility in a given bond year, the allocation of bond proceeds to that project may change based on the private business use in that particular part of the project.

In addition, in the case of refundings that are subject to the public approval requirement, it can be difficult to determine what portion of the prior bond proceeds was used at each project location, particularly with partial refundings or refundings of refundings or issues with more than one prior bond issue being refunded. In a refunding, the projects have already been financed and the public has already had an opportunity to comment on the projects and locations. The administrative burden of meeting this requirement in a refunding would outweigh whatever potential additional public notice benefit is obtained. Therefore, refundings should be allowed to provide a maximum stated principal amount for the refunding as a whole, rather than on a location by location basis.

3. Timing and Dissemination of Reasonable Notice

The Proposed Regulations maintain the existing regulations' required timing in that the notice is presumed reasonable if given no fewer than 14 calendar days before the hearing. The 2008 proposed TEFRA regulations reduced that time to seven calendar days. We believe that the seven day notice period should have been maintained. The Proposed Regulations referenced the legislative history of the original public hearing legislation that references a 14-day notice period. However that reference was in the Senate committee language only and was not in the House or Conference report. It would presumably have been codified if essential. In many states, state law provides that 48 hours is deemed to be adequate public notice of public hearings for state law purposes. There is no reason that 14 days' notice should be the standard for reasonable public notice, particularly in areas where state law hearings for meetings of the issuer would only require two days.

We applaud the expansion of the permitted methods of providing reasonable public notice allowed in the Proposed Regulations. The Proposed Regulations allow for two additional ways to provide adequate notice: (1) postings on a governmental unit's public website, together with a publicly known alternative, and (2) alternative methods permitted under general State law for public notices for public hearings of a governmental unit. It is likely today that as many or more residents access the internet than regularly access a printed newspaper. Therefore, the requirement that there must be a publicly known alternative method for obtaining the information for those who do not have access to the internet is unnecessary and burdensome.

In addition, the requirement to post the notice on the approving governmental unit's website should be expanded to allow posting on either the approving governmental unit's website or the issuer's website. The issuer's website would be the logical place for the public to look for notice of a hearing held by or on behalf of the issuer for projects to be financed or refinanced by the issuer. Most issuers do not have access to or control of the approving governmental unit's website. Without this expansion, the website posting provisions would be useless to most, if not all, NAHEFFA members.

The Proposed Regulations do not go far enough in allowing for useful technological advances, which advance public access. Technology enables the use of teleconferences and webinar hearings. Allowing for electronic hearings would ease the administrative burden on issuers and provide people with a more convenient opportunity to be heard.

4. Insubstantial Deviations and Curing Substantial Deviations

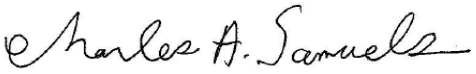
We applaud the expanded description of what is an insubstantial deviation and the new ability to cure a potential substantial deviation with a subsequent approval. A deviation in actual principal amount allocated for a project is insubstantial under the Proposed Regulations if it is no more than 10% greater than the maximum amount in the notice or is any amount less. Given the new requirement to provide maximum amounts by location, this 10% would necessarily be measured

on a location by location basis. We suggest clarifying that the 10% deviation would apply to the maximum amount of bonds as a whole rather than location by location.

As previously noted, the ability to cure a substantial deviation with a new public approval should be extended to bonds issued prior to September 28, 2017.

Thank you for this opportunity to comment and let us know if we can provide any further information.

Respectfully submitted,



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