THE BOND BUYER

Treasury official explains benefits of PAB infrastructure proposal

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PHOENIX – A Treasury official urged members of the National Association of Bond Lawyers attending a conference here on Thursday to actively support the Trump administration's infrastructure proposal to expand the use of private activity bonds.

The 55-page infrastructure plan released on Feb. 12 proposes creating a new category of tax-exempt PABs without volume caps that could be used to finance a broad range of public purpose infrastructure projects.

Speaking on a panel at NABL's annual Tax and Securities Law Institute here, John Cross, Treasury's associate tax legislative counsel, described the proposed expansion of tax-exempt PABs as "kind of a hybrid between governmental bonds and private activity bonds."

Cross said the plan "expands flexibility and broaden the eligibility" of projects for PABs.

"Tax exempt private activity bonds are one of the tools that can play a role this area, in public infrastructure," he said. "It is targeted to public infrastructure projects."

The Trump administration wants to expand PAB usage to new rural broadband service facilities, environmental remediation at brownfields and Superfund sites, hydroelectric power generating sites and flood control and storm water facilities. And PABs would have greater flexibility in being used for roads, bridges, tunnels, passenger railroads, surface freight transfer facilities, and other facilities.

The new PABs would be required to have public attributes "with either state or local governmental ownership or private ownership under arrangements in which rates charged for services or use of projects are subject to state or local governmental regulatory or contractual control or approval," according to the plan.

Private partners would not be allowed to take depreciation or use investment tax credits for the project and any option to purchase the project would have to be for the fair market value.

The proposal requires that legislative changes be made by Congress in order to be implemented, Cross said, with Treasury only able to implement regulatory changes such as change-of-use provisions that would preserve the tax-exempt status of these PABs when bond-financed projects are purchased by private service providers or leased by private parties.

The Internal Revenue Service, meanwhile, has formed a Tax Reform Implementation Office dubbed TRIO that is updating bond tax forms and making other changes to comply with the new tax law enacted in December, according to Vicky Tsilas, who heads branch 5 in the IRS chief counsel's office.

TRIO is headed by Sunita Lough, IRS commissioner for Tax Exempt and Government Entities. Lough is on leave from TEGE with her deputy, David Horton, filling in as acting commissioner.

Tsilas, Cross and Bob Griffo of the IRS provided a federal regulatory and tax enforcement update to NABL members. Griffo is technical advisor for bonds to Christie Jacobs, director of the IRS office for Indian and Tribal Governments/Tax-Exempt Bonds.

In the enforcement area, Griffo said the new data-driven system the IRS is using to select audits informs agents about the issue that is driving the audit. Auditors are being asked to follow a uniform procedure for giving taxpayers additional time to respond so they all get equal treatment. "They are only allowed to give two 15 day extensions," he said.

In the regulatory area, IRS and Treasury are continuing to receive comments on the proposed rules released Sept. 28 to update public notice and approval requirements for private activity bonds under the Tax Equity and Fiscal Responsibility Act.

Tsilas said IRS officials are hoping to finalize the so-called TEFRA rules "as quick as we can," but that the agency has not received a public comment from NABL.
NABL expects to submit its comments by end of next week, said the group's President Sandy MacLennan.

The TEFRA suggestions received so far include: shortening the public notice requirement from 14 days to seven; eliminating an alternate notice beyond the basic requirement for publicizing the public hearing on the internet; allowing public hearings to be held by webinar or teleconference; and allowing the new rules to be retroactive.

In addition to the TEFRA rules, the IRS and Treasury have issued guidance on arbitrage rebate overpayments.

Tsilas said that, among the three priority projects remaining in the current work plan, guidance on remedial action of tax advantaged bonds is likely to be issued first.

The guidance will include direct-pay bonds such as Build America Bonds and tax credit bonds. Although the issuance of new tax credit bonds was terminated by the new tax law, the guidance is needed for the many direct-pay and tax credit bonds.

The other two pending actions are on reissuance guidance that would be a consolidation of past guidance and PAB guidance under section 141.