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May 9, 2020

Resilient Louisiana Commission
Economic and Community
Development Task Force
617 North Third Street
Baton Rouge, LA 70802-5239

Re: Proposed Covid-19 Recovery Legislation- Stimulus #4

Dear Fellow Task Force Members:

Tax-exempt bond financing programs support public infrastructure needs, 501(c)(3) activities, small business projects, low income housing projects and other eligible projects and are a great example of a longstanding federal-state-local partnership. These programs have been essential to support recovery efforts after the 9/11 Attacks, Hurricane Katrina, Superstorm Sandy and other natural disasters. Tried and proven public finance techniques may be adapted and utilized to greatly accelerate the COVID-19 recovery.

State and local governments continue to be on the front lines in responding to this public health emergency. While the aid provided under the FFCRA Act and the CARES Act provide much needed support in response to the COVID-19 crisis, it should be viewed as a beginning and not an end, as communities will continue to experience unprecedented challenges as a result of COVID-19 with lingering effects for years to come.

As part of the 4th stimulus package, we should certainly urge Congress to provide additional direct funding to local governments to provide for expenditures related to the COVID-19 crisis. Stimulus #4 should also provide support to assist state and local governments in addressing cash flow shortfalls as a result of loss/uncertainty of revenues, allowing flexibility to restructure outstanding borrowings, providing credit support to help alleviate credit concerns, and granting better access to credit markets, all of which have been severely impacted as a result of the COVID-19 crisis.

Below is a summary of recommendations I would submit for your consideration. These recommendations focus on core support to state and local governments. These recommendations are consistent with a number of proposals made by state and local government support groups, including recent proposals made by the National League of Cities, the Government Finance Officers Association, the American Public Gas Association and the National Association of Bond Lawyers. **The programs described below do not require any new direct appropriation of federal dollars and/or are revenue neutral**.

Sincerely,

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COVID-19 RECOVERY LEGISLATION
STIMULUS #4 RECOMMENDATIONS

1. To stimulate the economy and provide access to the market for state and local governments coping with high borrowing costs and uncertain revenue streams, authorize the issuance of American Infrastructure Bonds (AIBS). AIBS would be taxable bonds that could be issued by state and local governments as an alternative to traditional tax-exempt bonds, at the election of the issuer of the bonds. While the interest rates on the AIBS will be higher than the interest rates on tax-exempt bonds because the interest on the AIBS is taxable, a direct payment to the bond Issuer by the Treasury would offset the higher interest rate. Attached as Appendix A is a summary of AIBS legislation. We believe AIBS would establish a public-private partnership for the financing of public infrastructure projects, projects that may otherwise be limited by scope and size, or might not be undertaken at all, for instance in rural areas and economically-stressed urban areas.

2. Amend Section 149(d) of the Tax Code to permit advance refunding of outstanding debt to allow issuers more flexibility to restructure outstanding borrowings. Given dramatic changes in revenue and fiscal uncertainty to be experienced by state and local governments, this will be a most important tool to free up cash flow by restructuring debt. Attached as Appendix B is a summary of this debt refinancing vehicle.

3. To address severe cash flow difficulties and uncertain revenue streams of state and local governments as result of the COVID-19 crisis, either pass legislation to permit or direct Treasury to permit long term cash flow borrowings on a tax-exempt basis with sizing based on potential deficits rather than a clear expected deficit of a certain size, and clearly permitting expense financing to address the pandemic under the extraordinary working capital exception of Treasury Regulation Section 1.148-6(d)(3)(ii)(B). This relief should also provide there is no retesting for deficit financings for at least 10.5 years after issuance to handle unanticipated and difficult-to-predict cash flow issues.

4. Congress should further support smaller cities and parishes/counties having access to the Municipal Liquidity Facility which is being administered by the Federal Reserve under the provisions of the CARES Act. The CARES Act also provides that the Federal Reserve may purchase municipal bonds in the secondary market. Implementing these improvements to the Municipal Liquidity Facility would strengthen the municipal bond market and facilitate access for all governmental issuers.

5. To alleviate credit concerns of state and local governments and to provide state and local governments with relief similar to that already provided to private corporations, provide for a federal guaranty program for tax-exempt bonds and taxable bonds of state and local governments, permitting such a program for tax-exempt bonds under a regulation (or notice) or by amending Section 149(b).

6. To address an inability of state and local governments with outstanding qualified tender bonds or commercial paper to remarket existing bonds or otherwise access the market at reasonable interest rates, provide for a federal government liquidity facility for such qualified tender bonds and commercial paper to stabilize the market.

7. To allow state and local governments ability to quickly borrow funds in a frozen market, remove Section 265 bank deductibility limitations for tax-exempt bonds to encourage banks to purchase bonds, particularly newly issued debt. Increase the cap of small issuer exception substantially, to limits as high as $30,000,000. For conduit transactions, assess the limit at the conduit borrower level.

8. To maximize the benefit of federal funds appropriated to support COVID-19 recovery, enact legislation that would permit grant recipient (either public entity or private entity) to borrow funds utilizing federal funds to source leverage loans and/or repay debt service for COVID-19 eligible projects. This would remove regulatory barriers where such entity may fully benefit from these programs using federal funds as leverage maximizing the upfront support.

9. To address unprecedented uncertainty with respect to revenue streams of state and local government and credit concerns, suspend or relax private business tests and private loan restrictions under Section 141 to facilitate "partnerships" with private enterprise to provide essential infrastructure and allow communities to recover. As an alternative to temporarily removing the restrictions under Section 141 for governmental bonds, private business tests or loan restrictions might be "rolled back" to the restrictions under Section 103(b) of the 1954 Code. In particular, restrictions should be loosened for hospitals, educational and research entities, and those that provide housing that have been forced to adapt to rapidly changing operational needs as a result of the crisis.

10. To revitalize a frozen economy with severe economic impacts, such as job losses, reinstate removed types of private activity bonds and loosen existing restrictions on such bonds (such as the 95/5 use of proceeds test, land restriction, existing property restriction, and volume cap) to revitalize businesses and communities. For example a new category of private activity bond, similar to previously permitted small issuer bonds under Section 144, could be allowed to revitalize the economic activity of small business, broadening the category of permitted businesses beyond manufacturing companies.

Appendix A

American Infrastructure Bonds

1. ***What Does Our Bill Do?*** Our Bill establishes a new kind of State and Local Government bond under the Internal Revenue Code called American Infrastructure Bonds ("AIBs"). It would be a national program, available across the country. This bill will create jobs, boost the economy, and facilitate the deployment of private capital to assist in addressing our nation's infrastructure needs. It will be revenue neutral over the long term but can be structured to provide an economic stimulus in the short term.

2. ***How Would AIBs Differ From Existing State and Local Bonds?*** AIBS would be *taxable* bonds that could be issued by state and local governments as an *alternative* to traditional tax-exempt bonds, at the election of the issuer of the bonds. AIBs would give state and local governments access to the much larger universe of taxable investors seeking to invest in infrastructure, including US pension funds (i.e., the $30 Trillion taxable bond market in addition to the $3 Trillion tax-exempt bond market).

3. ***What Would AIBs Be Used For?*** AIBs would be eligible to be used for *any* public purpose expenditure that is eligible to be financed with tax-exempt bonds, including without limitation bonds issued under sections 148 and 142 of the Internal Revenue Code. AIBs would provide another tool in the toolbox for state and local governments to undertake and finance needed projects. As the COVID-19 crisis is almost certainly going to result in dire cash flow shortfalls for state and local governments, it is important that AIBs be available for any purpose for which tax-exempt governmental bonds could otherwise be issued, including without limitation working capital financings and refundings.

4. ***Could the Bonds Be Issued for All Kinds of Infrastructure Projects?*** Yes. AIBs could be issued by state and local governments for capital projects of all kinds, including roads, bridges, tunnels, canals, ports, water systems, sewage treatment facilities, storm water management systems, pipelines, utility system expansions and environmental and safety upgrades, long-term natural gas supplies for municipal utility gas distribution systems and electric generation facilities, long-term supplies of electricity for municipal electric utility systems including renewable energy projects, broadband and other telecommunications systems, rail facilities, subways, etc.

5. ***Would Interest Earnings on AIBs Be Taxable under the Code?*** Yes. Unlike tax-exempt bonds, the interest earnings on AIBs would be taxable income to the holders of the bonds on their federal income tax returns.

6. ***Why Would State and Local Governments Issue AIBs Instead of Traditional Tax-Exempt Bonds?*** The Treasury Department will make direct payments to the issuer of the bonds on each interest payment date (ordinarily semi-annually) equal to a percentage of the interest due. While the interest rate paid to holders of AIBs will be higher than interest rates for tax-exempt bonds because the interest income is taxable, the direct payment to the Issuer by the Treasury will offset the higher interest rate. State and local governments can choose which option will result in lower costs for the people they serve. Under current market conditions, AIBs will be lower cost for many projects, thus saving state and local governments millions of dollars across the country and thereby stimulating economic growth and job creation, and attracting private investment to rural areas and economically-stressed urban areas.

7. ***Will There Be a Cost to the Program That Would Increase the Federal Deficit?*** No. After any initial stimulus period, no. We propose a direct payment credit at a percentage that will be a revenue-neutral.

8. ***Will Direct Payments from the Treasury Department Be Subject to Sequestration Risk?*** No. The Bill places direct payments for AIBs on the list of Federal payments that are statutorily exempt from sequestration.

9. ***Will AIBs Be Like Build America Bonds?*** **Yes and No**. While the structure of the Bill builds on the pre-existing statutory language, AIBs will be available to all state and local governments to use as they determine is best for them. There will be no state allocations or applications to a centralized bureaucracy. State and local governments will determine which projects they wish to pursue using this tool, and all projects will be subject to the discipline of the market.

Appendix B

Advance Refunding Summary

- What are advance refundings:
  - When interest rates drop, state and local governments and nonprofits can refinance their outstanding debt to lower their costs, much as individuals refinance mortgages.
  - In some cases, however, the previously issued bonds cannot be paid off immediately because of provisions in those bond documents referred to as call protection.
  - When the previously issued bonds cannot be immediately paid off, the proceeds of the new bonds are put in an escrow until the old bonds can be paid off. This is referred to as an advance refunding and has saved state and local governments billions of dollars, allowing them to provide better services at a lower cost to their citizens.
- Advanced refundings were eliminated in 2017. We propose to reinstate advance refundings under COVID-19 Recovery Legislation.
- Elimination of advance refundings has limited state and local government's flexibility to refinance their debts at the lowest possible cost.
- Given dramatic changes in revenue and fiscal uncertainty to be experienced by state and local governments, this will be a most important tool to free up cash flow by restructuring debt.
- As state and local governments pay more interest, that extra interest is paid by state and local residents, but also increases the amount of tax-exempt interest claimed on federal tax returns – reducing federal revenues.