Bond Case Briefs

Municipal Finance Law Since 1971

Issue 269

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- And finally, Death With Indignity is brought to us this week by *Bailey v. City of Leeds*, in which the court listed the items removed from a graveyard by city employees thusly, "concrete or ceramic angels, statutes, or planters placed on a headstone or near a headstone or footstone; glass or transparent angels or crosses that illuminated and were hung from "sticks"; "shepherd's hooks" on which were hung items such as birdhouses, baskets containing silk flowers, or wind chimes; and small vases, either freestanding or that had been placed on a headstone." Not exactly Arlington National, eh? Cedar Grove Cemetery, where good taste goes to die.

TRESPASS - ALABAMA

Bailey v. City of Leeds

Court of Civil Appeals of Alabama - March 13, 2020 - So.3d - 2020 WL 1223460

Decedents' relatives brought action against city based on claims that city employees trespassed on decedents' graves and that employees negligently removed adornments and damaged or destroyed them.

The Circuit Court entered summary judgment for city. Relatives appealed.

The Court of Civil Appeals, held that:

- Decedents' relatives' lack of ownership of the real estate on which the cemetery plots were located was not a basis for precluding relatives from maintaining trespass claim;
- City employees' alleged disturbance, while conducting maintenance work, of the land on which cemetery plots were located could not be a basis for a trespass claim; and
- Genuine issue of material fact as to information that the city provided regarding its intention to remove adornments and regarding what items could be placed on the cemetery plots and where they could be placed precluded summary judgment on the negligence claim.

HOUSING FINANCE CORPORATIONS - ALASKA

Anderson v. Housing Finance Corporation

Supreme Court of Alaska - April 17, 2020 - P.3d - 2020 WL 1898227

Mortgagor brought action against Alaska Housing Finance Corporation (AHFC), which held deed of trust and promissory note, alleging due process violations arising out of non-judicial foreclosure.

The Superior Court granted summary judgment of AHFC. Mortgagor appealed.

The Supreme Court held that:

- AHFC was government actor that was required to satisfy restrictions imposed on state action by due process clause;
- Mortgagor's interest in home was sufficient property interest to invoke due process;
- Mortgagor did not waive due process rights by signing promissory note and deed of trust;
- AHFC's failure to expressly provide opportunity to be heard prior to non-judicial foreclosure violated due process; and
- Mortgagor was not required to demonstrate prejudice.

EMINENT DOMAIN - GEORGIA

Torres v. City of Jonesboro

Court of Appeals of Georgia - April 16, 2020 - S.E.2d - 2020 WL 1887109

After the trial court dismissed two condemnation petitions, condemnees moved for attorney fees and costs.

The trial court denied the motion for attorney fees. Condemnees appealed.

The Court of Appeals held that city, the condemnor, waived its objection to the admission of expert's testimony that the condemnees incurred $51,206.15 in fees and costs during condemnation proceeding.

City, the condemnor, waived its hearsay objection to the admission of expert's testimony that condemnees incurred $51,206.15 in fees and costs, during condemnees' proceeding to recover attorney fees and costs after condemnation petitions were dismissed, where city failed to contemporaneously object to the testimony.

PUBLIC CONTRACTS - ILLINOIS

Restore Construction Company, Inc. v. Board of Education of Proviso Township High Schools District 209

Supreme Court of Illinois - April 16, 2020 - N.E.3d - 2020 IL 125133 - 2020 WL 1880809

Contractors brought action against school district's board of education, seeking recovery under quantum meruit, among other claims, for repair and restoration work performed for fire-damaged high school.

The Circuit Court granted board's motion to dismiss. Contractors appealed. The Appellate Court reversed. Board's petition for leave to appeal was allowed.

The Supreme Court held that lack of competitive bidding and absence of formal vote by board did not preclude quantum meruit claims.

Lack of competitive bidding and absence of formal, recorded vote by board of education did not preclude contractors' quantum meruit claims against school district to recover for emergency repair and restoration work performed, despite contention that contracts were ultra vires; district was operating under fiscal management of a financial oversight panel that was fully apprised of the work performed, school code specifically provided that enumerated powers were not exclusive, and hiring an entity to do repair and restoration work was among types of action boards were authorized to undertake.

EMINENT DOMAIN - MINNESOTA

State by Commissioner of Transportation v. Elbert

Supreme Court of Minnesota - April 22, 2020 - N.W.2d - 2020 WL 1933237

Landowners and Department of Transportation each sought review of court-appointed commissioners' award of damages, including severance damages attributable to presumed loss of access to property abutting highway during highway construction project, following grant of permanent and temporary easements to Department via condemnation petition.

The District Court granted Department's motion for partial summary judgment. Landowners appealed. The Court of Appeals affirmed. Landowners sought review, which was granted.

The Supreme Court held that:

- A court will not presume that access to property abutting highway is destroyed when Department obtains a temporary easement;
- Department did not take the right of access when it took a temporary construction easement; and
- Landowners were not entitled to severance damages based on construction-related interferences premised on assumed loss of access from project as a whole.

A court will not presume that access to a landowner's property abutting highway is destroyed, entitling the landowner to loss-of-access damages, when Department of Transportation is granted a temporary easement via a condemnation petition for a highway construction project.

Department of Transportation did not take the right of access to property abutting highway when it used condemnation petition to acquire temporary construction easement for highway construction project, and therefore landowners were not entitled to compensation for a taking an a loss-of-access theory, where landowners retained reasonably convenient and suitable access to their abutting property at all times during construction.

Landowners were not entitled to severance damages for construction-related interferences during highway construction project for which Department of Transportation acquired temporary construction easement via condemnation petition, where focus of appraisal pertaining to severance damages used calculations for construction-related interference coming from project as a whole based on a presumed loss of access stemming from general construction on highway, and landowners never lost access to their property.

ZONING & PLANNING - OHIO

Litchfield Township Board of Trustees v. Forever Blueberry Barn, L.L.C.

Supreme Court of Ohio - April 21, 2020 - N.E.3d - 2020 WL 1918145 - 2020 -Ohio- 1508

Township board of trustees filed complaint seeking to enjoin owner of property that was designated as residential from using barn for weddings and other social gatherings.

After initially entering injunction, the Court of Common Pleas rescinded injunction based on viticulture zoning exemption. Township appealed. The Ninth District Court of Appeals reversed and remanded. On remand, following a hearing, the Court of Common Pleas again found that owner's barn met requirements for zoning exemption. Township appealed. The Court of Appeals affirmed. Township sought review, and the Supreme Court accepted for review one proposition of law.

The Supreme Court held that trial court properly applied primary-use test in determining that primary use of barn was vinting and selling wine, such that zoning exemption applied.

Trial court properly applied primary-use test when it determined that primary use of property owner's barn, and the events held therein, was to facilitate sale of wine by conditioning the rental of the barn on the purchase of its wine, such that barn, which was located in residential district, was exempt from township's zoning restrictions, under statute providing that township could not regulate zoning of building located on land on which grapes were cultivated that was "used primarily for vinting and selling wine," though only a small percentage of barn's overall space was used for vinting and selling wine; given that winery was in initial stages of production, it was not unreasonable to use barn space for other purposes, and use of space for other purposes did not mean that vinting and selling wine was not barn's primary purpose.

EMINENT DOMAIN - VERMONT

Carpenter v. United States

United States Court of Federal Claims - April 3, 2020 - Fed.Cl. - 2020 WL 1650878

Owners of property abutting railway corridor filed rails-to-trails case, seeking just compensation for Fifth Amendment taking allegedly effected by Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU) authorizing conversion of railway corridor into recreational trail under National Trails System Act.

Parties cross-moved for partial summary judgment.

The Court of Federal Claims held that:

- Successors-in-interest had property interest required for takings claim, and
- STB's issuance of NITU constituted compensable taking of that property.

Under Vermont law, railroad acquired by quitclaim deed only easement over land used as railroad corridor, not fee simple title, and thus, successor-in-interest to land had property interest necessary to support takings claim based on Surface Transportation Board's (STB) conversion of corridor into recreational trail under National Trails System Act; deed followed recording of survey and location selection in exercise of railroad's eminent domain power, deed contained language conveying only what railroad required for its "own proper use, benefit and behoof" which was easement for its railway, and railroad's corporate charter prohibited it from exercising eminent domain power to acquire fee simple interest.

Surface Transportation Board's issuance of notice of interim trail use (NITU), authorizing conversion of railroad corridor to recreational trail under National Trails System Act, effected compensable taking of property interest of successor-in-interest to railroad's easement; NITU severed railroad's claim to land because recreational use fell outside scope of easement, and burdens of easement ran with land, so all reversionary rights vested with successor-in-interest upon severance.

SPECIAL ASSESSMENTS - WASHINGTON

Kittitas County v. Washington State Department of Transportation

Court of Appeals of Washington, Division 2 - April 21, 2020 - P.3d - 2020 WL 1921926

County brought declaratory judgment action against Department of Transportation, seeking to require Department to pay assessment for noxious weed control efforts in county.

The Superior Court granted summary judgment to Department. County appealed.

The Court of Appeals held that:

- Statutory funding mechanism for county's noxious weed control was a special assessment rather than a rate, and thus it required clear and express authority to be assessed against state-owned land, and
- No such authority existed.

Statutory funding mechanism for county's noxious weed control was a special assessment rather than a rate, and thus it required clear and express authority to be assessed against state-owned land; purpose of charge was to compensate a noxious weed control board for the services provided to specific lands benefiting from that board's noxious weed control efforts, and charge was designed to be proportional to the benefit received by the assessed land.

Statutes setting out special assessments for funding of county noxious weed control districts do not expressly authorize levy of charges against state-owned lands and thus may not be levied against such lands.

MUNICIPAL GIFTS OF PUBLIC FUNDS - WASHINGTON

Peterson v. State

Supreme Court of Washington - April 17, 2020 - P.3d - 2020 WL 1888727

Taxpayer, who was also the principal owner of a railroad services company, brought action against port district, among others, arising out of its failure to charge two railroads for using a portion of track that such railroads or their predecessors had assisted the United States in building in exchange for the right to use the track for free, which track was located on land that the United States had subsequently sold to the port district, and port district had leased to taxpayer's company.

Railroads intervened as defendants, and additional taxpayers intervened as plaintiffs. The Superior Court awarded summary judgment to port district. Taxpayers appealed, and the Court of Appeals affirmed. Taxpayers petitioned for review.

The Supreme Court held that port district did not act with donative intent when it failed to charge

railroads for their use of track, and thus its actions did not violate state constitutional provision barring municipal gifts of public funds.

Port district did not act with donative intent when it failed to charge two railroads for their use of track that they or their predecessors helped build when the land was owned by the United States in exchange for the right to use the track for free, and thus its actions did not violate state constitutional provision barring municipal gifts of public funds; there was no evidence port district attempted to hide the arrangement, which was also reflected in a recorded indenture, from the state auditor, obligation to honor the railroads' agreement with the United States was a condition of the sale of the land to the port district, and there was no showing of grossly inadequate consideration to the port district or significant cost to taxpayers.

GASB Issues Guidance on Accounting for P3s.

Norwalk, CT, April 20, 2020 — The Governmental Accounting Standards Board (GASB) has issued new guidance to improve accounting and financial reporting for public-private and public-public partnership arrangements (commonly referred to as P3s) and availability payment arrangements (APAs).

Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, provides guidance for P3 arrangements, including those that are outside of the scope of the GASB's existing literature for those transactions—namely Statement No. 60, Accounting and Financial Reporting for Service Concession Arrangements, and Statement No. 87, Leases. The Statement also makes certain improvements to the guidance previously included in Statement 60 and provides accounting and financial reporting guidance for APAs.

P3s

Statement 94 defines a P3 as an arrangement in which a government transferor contracts with a governmental or nongovernmental operator to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset—the underlying P3 asset—for a period of time in an exchange or exchange-like transaction.

Some P3s meet the definition of a service concession arrangement (SCA). The Statement carries forward the financial reporting requirements for SCAs that were included in Statement 60, with modifications to apply the more extensive requirements related to recognition and measurement of leases to SCAs.

P3s that meet the definition of a lease should apply the guidance in Statement 87, if existing assets of the transferor that are not required to be improved by the operator as part of the P3 arrangement are the only underlying P3 assets and the P3s do not meet the definition of an SCA.

This Statement provides specific guidance for all other P3s from the perspective of both a government that transfers rights to another party and governmental operators that receive those rights.

APAs

Statement 94 defines an APA as an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an

underlying infrastructure or other nonfinancial asset for a period of time in an exchange or exchange-like transaction.

The Statement requires governments to account for APAs related to those activities and in which ownership of the asset transfers by the end of the contract as a financed purchase of the underlying infrastructure or other nonfinancial asset. It also requires a government to report an APA that is related to operating or maintaining a nonfinancial asset as an outflow of resources (for example, expense) in the period to which payments relate.

The Statement is effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter. Earlier application is encouraged. In light of the ongoing COVID-19 pandemic and the Board's newly added project to consider postponing the effective dates of certain pronouncements, the Board extended the effective date for Statement 94 by one year from the date proposed in the Exposure Draft.

GASB Provides Guidance to Assist Stakeholders with Implementing Its Pronouncements.

Norwalk, CT, April 23, 2020 — The Governmental Accounting Standards Board (GASB) today issued implementation guidance containing questions and answers intended to clarify, explain, or elaborate on the implementation and application of certain GASB pronouncements.

Implementation Guide 2020-1, *Implementation Guidance Update—2020*, addresses new questions about application of the Board's standards on multiple topics, including but not limited to:

- The financial reporting entity
- Fiduciary activities
- Leases
- Conduit debt obligations
- Asset retirement obligations, and
- External investment pools.

Implementation Guide 2020-1 also includes amendments to previously issued implementation guidance. In addition, it delays the effective date of certain questions and answers that were originally published in Implementation Guide No. 2019-2, *Fiduciary Activities*, pending the completion of the GASB's project on Certain Component Unit Criteria and Accounting and Financial Reporting for Section 457 Plans.

The requirements of Implementation Guide 2020-1 are primarily effective for reporting periods beginning after either June 15, 2021 or December 15, 2021. Those effective dates are one year later than is typical for an Implementation Guidance Update, consistent with the GASB's proposed Statement, *Postponement of the Effective Dates of Certain Authoritative Guidance*. Early application is encouraged for guidance related to standards that already have been implemented. Please see the guide's Effective Date and Transition section for additional details.

Oil Price Drop Brings Risk to Energy-Dependent Munis (Radio)

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses Senator McConnell advocating state bankruptcy and risks to energy-dependent states. Hosted by Lisa Abramowicz and Paul Sweeney.

Play Episode

Bloomberg Radio

April 24, 2020

How U.S. Public Transit Can Survive Coronavirus.

Subway and bus systems in the U.S. face financial peril as ridership collapses due to lockdowns. To keep transit alive, here's a playbook for immediate and long-term fixes.

Public transportation has been in a state of crisis since the coronavirus pandemic began. Ridership in major cities in the U.S., Europe and China is down by 50-90% from pre-crisis levels. Local taxes used to subsidize systems in America, such as sales taxes, have taken a big hit as well. Transit operators are running out of money quickly. While the federal government has allocated $25 billion in emergency aid to help cover operational losses, the next six months will still present an enormous financial challenge to local agencies as they struggle to attract riders back onto buses and subways and continue capital projects.

As urban research scholars specializing in public transit costs, we worry that this dynamic could result in damaging decision-making. Historically, it has been during times of crisis that agencies have deferred maintenance, cut service and canceled expansion projects. It's these choices, made under extreme duress, that have crippled American transit agencies before.

But there is a way forward. We offer these pathways for saving transit, immediately and into the future.

Continue reading.

CITY LAB

by ALON LEVY & ERIC GOLDWYN

APRIL 24, 2020

School Facilities Implications for COVID-19 Response: Orrick

When the current wave of cases has subsided, social distancing measures will relax and, eventually schools will reopen. There is no guarantee or even strong likelihood that an effective treatment, prophylaxis, or vaccine will be available or widely deployed at that point. Schools will reopen with the strong possibility of subsequent waves of infection as strong or stronger than the wave we are currently experiencing. Schools will continue to play an active role in the public health fight against such subsequent waves by developing and implementing social distancing protocols and effective protocols for responding to infections in the school community. These ongoing public health

requirements have implications for the school district's facilities. This article tries to anticipate some of those implications and to note where available bond dollars could be put to use.

Read more.

Orrick Public Finance Alert | April.23.2020

Getting Familiar with Education Sector Municipal Debt.

Believe it or not, schools are the second-largest public infrastructure investment in America behind transportation. For investors, getting familiar with education-sector municipal debt is crucial for understanding this massive segment of the market.

Colleges and universities rely on municipal debt for capital improvement programs, such as expanding campus facilities, at a time when post-secondary enrollment is beginning to decline. Demographic trends suggest this pattern will continue due to lower birth rates and the skyrocketing costs of post-secondary education.

Let's take a look at the current status of the education sector of the municipal debt market and explore the opportunities and challenges the sector presents for investors.

Continue reading.

municipalbonds.com

by Sam Bourgi

Apr 22, 2020

Fitch Updates Coronavirus Scenarios for U.S. Airports Portfolio.

Fitch Ratings-New York-21 April 2020: Fitch Ratings has developed revised coronavirus rating and sensitivity scenarios for U.S. airports to reflect airline decisions and the greater reductions being experienced in passenger traffic, in the order of 90% or higher across most U.S. airports. These scenarios incorporate the increased concern that impact on air travel from this health crisis will be deeper and more prolonged, and combined with the resulting effects on the underlying economy will cause a less robust recovery that may extend beyond 2022, according to Fitch Ratings.

The coronavirus has already resulted in sharp economic contractions both in the U.S. and globally, affecting demand for air travel at a rate never seen in past shock events such as pandemic outbreaks or terrorist attacks. Airlines ranging from global network carriers to those concentrated on domestic-focused routes have taken most flights out of service. This action will last at least through the full 2Q20 and likely for most of the 2H20 as well. Even with early discussions underway to have limited reopenings of the national or local-level economies, return of a more normalized air travel environment remains unclear.

Both the airports and air carriers have received varying levels of financial assistance from the federal government in the magnitude of tens of billions of dollars. These funds provide near-term

protections to address massive revenue losses for both sectors. However this liquidity infusion is not going to support longer term needs should the pandemic result in a persistent severe global recession.

Key Assumptions
As a result of the negative environment facing airports, Fitch has revised its key enplaned passenger assumptions into three new cases as compared to two initial coronavirus scenarios published in the Non-Rating Action Commentary released on March 23, 2020 (http://www.fitchratings.com/site/pr/10115357). The three cases are labelled as the Coronavirus Rating Case, Coronavirus Sensitivity Case and the Coronavirus Severe Sensitivity Case. The differences for each case focus on the severity of the 2020 traffic reduction when compared to base year 2019 as well as the level of initial recovery in 2021 through the next several years. Recognizing there are different fiscal year periods for each airport, the assumed traffic levels will be accordingly adjusted.

Rating Case
–For calendar year 2020 Fitch assumes an overall enplanement decline of approximately 50% relative to 2019 actual levels based on the following assumptions of quarterly traffic activity starting in the 2Q period: 2Q20 (-90%); 3Q20 (-60%) and 4Q20 (-30%);
–For calendar years 2021 and 2022, Fitch assumes recoveries to -15% and -5%, respectively, relative to 2019 levels;
–Following 2022, Fitch assumes 100% traffic recovery followed by a moderate level of continued traffic growth of 2% per annum

Sensitivity Case
–For calendar year 2020 Fitch assumes an overall enplanement decline of approximately 60% relative to
2019 actual levels based on a one-quarter delay in the initial recovery process as reflected in the following assumptions: 2Q20 (-90%); 3Q20 (-75%) and 4Q20 (-60%);
–For calendar years 2021 and 2022, Fitch assumes recoveries to -20% and -5%, respectively, relative to
2019 levels;
–Following 2022, Fitch assumes 100% traffic recovery followed by a moderate level of continued traffic
growth of 2% per annum.

Severe Sensitivity Case
–For calendar years 2020 and 2021, Fitch assumes the same degree of enplanement declines and initial
recovery as the Sensitivity Case above; however, the timeline to a full recovery to 2019 levels is only reached by 2024;
–For calendar years 2022 and 2023, Fitch assumes a 4% annual growth in enplanements relative to the
prior year;
–For calendar year 2024, Fitch assumes 100% traffic recovery to 2019 levels followed by a moderate level of continued traffic growth of 2% per annum.

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Additional information is available on www.fitchratings.com

S&P Credit FAQ: A Review Of Transportation Criteria: Liquidity And Debt Service Coverage In Light Of COVID-19

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- Frequently Asked Questions
- Related Research

Frequently Asked Questions

The virtual collapse of demand levels for many transportation infrastructure providers as a result of the COVID-19 pandemic is focusing attention on their liquidity, reserves, financial flexibility, and projected financial performance. As we evaluate the magnitude and impact of these severe volume declines on issuers in the context of a global recession, key metrics outlined in our criteria and other financial flexibility measures provide a critical, forward-looking view of how long the enterprise can operate while meeting near- and longer-term financial obligations. Importantly, understanding these measures of liquidity, including how we view unrestricted versus restricted assets, days' cash on hand, cash burn rates, and debt service coverage (DSC), as well other adjustments, provides the market with uniform benchmarks to allow comparative analysis at a time when management teams are proactively using all available tools to meet their obligations.

In this commentary, we review these key metrics and their significance to our assessment of overall credit quality, addressing how external support or liquidity injections, such as federal grants from the CARES Act made available to airport and transit operators, will be incorporated into our analysis, and examining how other cash flow analysis can be useful in the coming months.

Continue reading.

S&P: 18 Utility Rating Outlooks Revised To Stable From Positive Due To Pandemic, Recession Uncertainty

NEW YORK (S&P Global Ratings) April 23, 2020–S&P Global Ratings revised its outlook to stable from positive and affirmed its various long-term ratings on 18 public utility credits (see table below).

"The outlook revisions have been predicated on a combination of factors, including uncertainty surrounding the local service area economy in light of the recession," said S&P Global Ratings credit analyst Edward McGlade. While these outlook revisions apply to credits that previously carried positive outlooks, they correspond with the negative outlook revision we took on the entire Public Utilities Sector on April 1, 2020, which highlighted the sector's vulnerability to the potential negative economic effects presented by the COVID-19 pandemic.

We consider increased pressures on the service area economies and each utility's financial profile due to social distancing measures and persistent fears of the spread of the COVID-19 virus, as a social factor under our environmental, social and governance (ESG) factor assessment.

Continue reading.

S&P: Tourism-Dependent U.S. States Could Face Credit Pressure From COVID-19's Outsized Effects On The Industry

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- Nevada And Hawaii Are Expected To Be Most Affected Based On Their Significant Tourism Concentration
- Other States With Tourism Sectors Are Also Facing Pressure
- The Already Projected Significant Economic Contraction In The U.S. Is Magnified In The Tourism Sector
- The Effects On State Ratings Will Depend On Concentration And Financial Management In Tough Times
- Sector Size Matters, But Proportion Relative To The State Matters More

Key Takeaways

- With most of the U.S. under COVID-19 containment guidelines, tourism–both domestic and international–is one of the hardest-hit economic sectors.
- States most dependent on tourism are likely see credit pressures due to loss of revenue, spikes in unemployment, and reduced economic activity and may face a significant lag during the recovery.
- We consider Nevada and Hawaii to be the most severely affected states based on tourism's share of their economies.

Continue reading.

Fed to Name Participants in Cares Act-Backed Loan Programs.

- **Details will be published every 30 days on the Fed's website**
- **Congress had been pressing central bank to share more details**

The Federal Reserve will disclose the names of borrowers from several of its emergency lending facilities backed by U.S. taxpayer money from the $2.2 trillion coronavirus rescue bill, following congressional pressure for transparency.

The Fed said on Thursday that it will publish the names and details of participants in its facilities set

up in the CARES Act, as well as the amounts that were borrowed and the interest rate charged on its website at least every 30 days. It will also report the overall costs, revenues and fees of each of the facilities.

“The Federal Reserve is committed to transparency and accountability by providing the public and Congress detailed information about our actions to support the economy during this difficult time,” Chairman Jerome Powell said in a statement.

The central bank won’t immediately disclose borrowers in three programs linked to short-term funding programs instituted before the Cares Act to help stem the economic crisis from the outbreak.

Lawmakers from both parties had been pressing the Fed to spell out which companies were getting assistance, in an effort to make sure that taxpayer money was going where it was intended. There has also been growing public frustration that small businesses had been beaten to funds by bigger companies with better access to banks and lawyers. Congress is debating another multi-billion dollar spending package to re-start that program, which is not being run by the Fed.

‘Significant Victory’

“This is a significant victory for the public,” tweeted Bharat Ramamurti, a member of the Congressional watchdog appointed to scrutinize implementation of the Fed and Treasury’s virus-relief work. “We will need to look carefully at the first report to see if other information is needed but this is a very good step.”

As part of the Cares Act signed into law late last month, the Fed established programs aimed at lending to small and mid-size businesses, states and municipalities. Several of those six facilities are not yet up and running.

It will not apply the same disclosure terms to the three Fed facilities launched prior to the passage of the Cares Act — the Primary Dealer Credit Facility, the Money Market Mutual Fund Liquidity Facility and the Commercial Paper Funding Facility — which collectively have lent out more than $80 billion as of April 22, the latest date for which data is available.

Congress appropriated $454 billion in the Cares Act to support lending efforts by the central bank that can be leveraged into trillions of dollars of credit. The Fed is setting up its emergency programs under Section 13-3 of the Federal Reserve Act, which outlines rules for disclosure of loan details to Congress.

Stigma Risk

The Fed did not disclose individual borrower details in its facilities following the 2008 financial crisis until it was forced to do so by the courts after a lawsuit brought by Bloomberg LP, the owner of Bloomberg News. Its reluctance to make such information public stems from the concern that it may incite market panic or disincentivize borrowers from taking advantage of the programs for fear of resulting stigma.

“If the threshold for them is that they won’t take the money if people know they took the money, then it seems like they don’t need the money,” Marcus Stanley, policy director of Americans for Financial Reform, said before the Fed’s announcement.

The PDCF loans to U.S. government bond dealers. The MMMLF is working with banks to help money funds meet redemption demands. The CPFF is directly financing the short-term IOUs of U.S.

corporations. The Fed regards the markets around these programs as systemically critical to financial stability.

Powell will request confidentiality for those three when he submits information to Congress and the Fed will eventually disclose borrowers when the programs close, according to the Fed.

The Fed is still working on disclosure policies for the Term Asset-Backed Securities Loan Facility, designed to assist the flow of credit to consumers and the Paycheck Protection Program Lending Facility, which supports loans to small businesses to encourage them to keep workers on the payroll.

On the Main Street lending facilities, aimed at firms with 10,000 employers or less, the Fed will disclose both borrowers and bank intermediaries. The same approach will hold for the TALF if the Fed chooses immediate disclosure.

Bloomberg Markets

By Catarina Saraiva and Craig Torres

April 23, 2020, 11:30 AM PDT Updated on April 23, 2020, 2:35 PM PDT

— With assistance by Saleha Mohsin

Developing Public Finance Concerns in the COVID-19 Era.

INTRODUCTION

The COVID-19 global pandemic presents unprecedented financial, operational and other challenges for participants in the public finance industry. The situation is extremely fluid and new developments occur almost daily. The response by local governments, lenders, borrowers, trustees and underwriters to the unique issues that they will face will have to be tailored to specific circumstances and incorporate "best practices" as they arise. This alert will touch upon three primary areas of impact identified in this early phase of the pandemic. This alert does not address certain Federal relief programs that are available to 501(c)(3) entities.

- Selected Federal tax issues
- Selected covenant compliance issues
- Selected disclosure issues, including continuing disclosure obligations

SELECTED FEDERAL TAX ISSUES

Financing Vehicles to Address Cash Flow Deficits and Working Capital Needs

A loss of expected revenue, such as sales taxes and other taxes or assessments in the case of municipalities and other local governments, or operational revenues, in the case of 501(c)(3) conduit borrowers, can result in shortfalls in budgets. Certain financing vehicles provide tools to address these shortfalls on a tax-exempt basis.

Cash Flow Deficit Financings. Federal tax law has long permitted the issuance of tax-exempt tax or revenue anticipation notes, generally on a short-term basis, to finance a cumulative cash flow deficit. These obligations are sized taking into account, on a monthly basis, the available amounts of revenues, the anticipated expenses and a permitted working capital reserve that results in a

cumulative cash flow deficit. The term is typically limited to 13 months and certain rebate accounting can be avoided by sizing the obligations to cover a deficit that occurs within six months of the date of issuance of the obligations.

Extraordinary Working Capital Financings. Federal tax law also permits the financing of certain extraordinary working capital expenditures without regard to a cash flow deficit. These are expenditures for extraordinary, nonrecurring items that are not customarily payable from current revenues, such as casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage. The scope of "extraordinary" in the context of the COVID-19 pandemic is not clear. In particular, because the definition focuses on expenditures, it is not certain whether an unexpected loss of revenue will meet this provision. Guidance from the Internal Revenue Service (IRS) on the scope of the extraordinary working capital definition is being sought by the National Association of Bond Lawyers (NABL).

Prior to 2016 there was no stated term limit for extraordinary working capital obligations; the term is now also limited to 13 months. These extraordinary expenditures can also be the subject of a reimbursement borrowing, where proceeds of the obligations are used to reimburse the issuer for expenditures made before the date of issuance of the obligations. Generally, the issuer must adopt a reimbursement resolution within 60 days of the expenditure being made to have a valid reimbursement.

Beginning in 2016, IRS permitted by regulations the issuance of long-term working capital obligations, including extraordinary working capital borrowings. The 2016 rules require the issuer (i) on the issue date to determine the first fiscal year following the 13 month period after date of issue in which it reasonably expects to have available amounts (the "first testing year"), which must be within 5 years of the date of issuance; (ii)beginning in the first testing year and each fiscal year thereafter, to determine the available amount as of the first day of each fiscal year; and(iii) within 90 days of the start of each fiscal year, to apply that amount (or if less, the available amount on the date of the required redemption or investment) to redeem and/or invest in "eligible tax-exempt bonds," up to the amount of the outstanding working capital bonds. These rules effectively require the bond documents to include a provision requiring a call or mandatory partial prepayment from surplus revenues, unless the issuer can acquire certain outstanding bonds.

Forbearance and Reissuance Matters

Issuers and conduit borrowers of outstanding tax-exempt obligations who face financial pressures as a result of the COVID-19 pandemic may consider seeking assistance from their lenders in the form of forbearance or restructuring of their outstanding obligations. While lenders may be amenable to making certain changes, the parties to these obligations should keep in mind that modifications may cause the obligations to be treated as reissued for federal tax purposes. Unless appropriate steps are taken, the reissuance can result in an outstanding obligation being deemed a new taxable obligation under Section 1001 of the Internal Revenue Code. Reissuance can also have gain or loss implications for the lenders.

When Does a Forbearance or Other Loan Modification Trigger Reissuance for Tax Purposes? The tax regulations under Section 1001 look to whether there has been a modification of one or more terms of a debt instrument and whether that modification is significant. The general rule for significant modification under the regulations is not particularly helpful; it provides that a modification is a significant modification only if, based on all facts and circumstances, the legal rights or obligations that are altered and the degree to which they are altered is economically significant. Fortunately, the regulations provide safe harbors for certain types of modifications.

Absent a change in another term of the debt instrument, a temporary forbearance by the lender, i.e., an agreement to stay collection or temporarily waive an acceleration clause or similar default right, is not a modification that triggers reissuance unless and until the forbearance remains in effect for a period that exceeds (i) two years after the issuer's initial failure to perform and (ii) any additional period during which the parties conduct good faith negotiations or during which the issuer is in a title 11 bankruptcy or similar case. If the negotiations result in a change in terms of the instrument, a reissuance analysis of that change is required.

If a change in interest rate results in a change in the annual yield of a tax-exempt bond by more than the greater of ¼ of one percent or 5% of the annual yield of the unmodified instrument, there will be a reissuance.

A change in the timing of payments under a debt instrument is significant if it results in a material deferral, taking into account the length of the deferral, the original term, and the amount of the payments. The regulations provide a safe harbor deferral period, beginning on the original due date of the first scheduled payment that is deferred and extending for a period equal to the lesser of 5 years or 50% of the original term of the debt instrument. A deferral that fits within this safe harbor does not trigger a reissuance.

In addition, a modification that adds, deletes or alters customary accounting or financial covenants is not treated as a significant modification that triggers a reissuance. The substitution of new collateral for existing collateral of a tax-exempt bond may cause a reissuance, if it changes payment expectations. A change in payment expectations may occur if there is a substantial enhancement or substantial impairment of an issuer's capacity to meet its payment obligations.

Other Considerations. The regulations under Section 1001 should be consulted when addressing any proposed modification of the term of tax-exempt obligations. Because a reissuance is treated as an exchange of one debt instrument for another, it may be possible to maintain the tax-exemption of reissued debt as a current refunding of the original debt, by meeting all the requirements imposed by the Internal Revenue Code for refunding bonds. At a minimum, the issuer will need to file a new Form 8038 for the reissued bonds. In the case of conduit bonds, this will require that the actual issuer be involved in the transaction. An agreement to modify a debt instrument between just the conduit borrower and the lender/bondholder may result in the new debt instrument being taxable because it is not treated as issued by a state or local government.

SELECTED COVENANT COMPLIANCE ISSUES

If an issuer or conduit borrower experiences cash flow or other operational issues as a result of the COVID-19 pandemic, the impact can be expected to ripple through to its debt obligations. The effect on each party will be specific to the terms of any particular transaction, including the type of security granted, the financial covenants and other tests that must be met, and how an event of default is triggered. The following highlights certain issues that may arise.

Covenant Compliance. Issuers and conduit borrowers should be familiar with all the financial and other covenants in their loan and bond documents, including debt service coverage and liquidity ratios, minimum performance benchmarks and whether a debt service reserve tap triggers an event of default. While some covenant provisions provide opportunities to cure, others trigger immediate defaults. Due to current circumstances, it may be difficult for obligors to respond quickly to cash flow or minimum covenant issues that may cause a technical default under the related documents, although the obligor continues to meet its debt service payments. In certain instances, modifications to covenants may be the best route, but could have federal tax implications, some of which are noted above.

Events of Default and Remedies. Although events of default and remedies are deal-specific, there are some general considerations to be taken into account. Any forbearance arrangement can have federal tax implications, as noted above. The applicable documents may contain cross-default and acceleration provisions. The remedy of specific performance may be impracticable in light of current circumstances, particularly in the context of subject to annual appropriation financings. "Material adverse effect" clauses that trigger defaults are often drafted ambiguously and may be the subject of dispute.

Other Considerations. Obtaining requisite consent to modifications to debt documents from bondholders may prove complicated when bonds are widely owned and held in book-entry-only format, particularly in transactions involving a trustee who may act only at the direction of bondholders.

SELECTED DISCLOSURE ISSUES

Issuers and conduit borrowers face unique considerations in addressing the impact of the COVID-19 pandemic on their financial position, operations and expectations when preparing a disclosure document related to their debt obligations and in evaluating their obligations under Rule 15(c)2-12 ("Rule") of the Securities Exchange Commission (SEC) and their written continuing disclosure undertakings. The following highlights selected concerns.

Primary Disclosure Document Considerations. There is currently no specific guidance from the SEC or the National Association of Bond Lawyers on how to address the impact of COVID-19 in primary disclosure documents and "best practices" in this regard will likely develop over time. Each transaction gives rise to its own unique circumstances in the context of disclosure and issuers and conduit borrowers must evaluate the disclosures to be made in the context of their obligations under the anti-fraud provisions of applicable securities laws. This is made more difficult because of the uncertainty surrounding the COVID-19 crisis, including its duration. Although market participants are aware of this uncertainty, issuers and conduit borrowers should not rely on this "general" knowledge when evaluating the disclosures to be made. In addition, under the Rule, an obligated person must disclose in its offering documents a failure to comply with its continuing disclosure obligations during the prior five years. Offering documents may now have to include an explanation of why a late filing was made due to the effects of the COVID-19 pandemic.

Continuing Disclosure Considerations. During a webinar presented on March 19, 2020 by the Municipal Securities Rulemaking Board (MSRB), two key questions were addressed by Ahmed Abonamah, deputy director of the SEC's Office of Municipal Securities and David Hodapp, assistant general counsel of the MSRB: (1) can the SEC provide relief for late filings due to extenuating circumstances arising from the COVID-19; and (2) should an obligated person file a voluntary general event notice about COVID-19 on the MSRB's Electronic Municipal Market Access website ("EMMA"), including to report that its offices are closed to the public and that personnel is working remotely. From the reported discussion of these questions on the webinar, the following summarizes the responses:

- The SEC lacks the authority to provide relief for late filings. If an obligated person is unable to timely file its annual financial and operating information, it should file a notice of failure to file, along with any other information required to be provided in its undertakings, on EMMA prior to the required filing date.
- The terms of the written undertaking control. Unless the impact of the COVID-19 pandemic on the obligated person gives rise to one of the reportable events under the Rule or is otherwise required to be reported pursuant to the undertaking, there is no need to file a general event notice. An obligated person may always make a voluntarily report regarding specific facts known to and

affecting the obligated person (as opposed to general information already available to market participants). The election to make a voluntary report gives rise to other considerations, including whether it will open the door to the need to update the filing in the future.

Obligated persons should be familiar with all of the reporting requirements in their written undertakings, which may trigger notice events in specific circumstances in addition to the material events listed in the undertaking. Among matters, obligated persons should take care to closely follow the ratings of their debt obligations. The SEC has previously indicated in adopting statements for amendments to the Rule that a ratings watch or outlook change is not a reportable event. Depending on the particular undertaking, matters relating to a spike in rates for variable rate instruments, failed remarketings and commercial paper roll overs may trigger a reporting event. For undertakings entered into after February 28, 2019, a notice event may be triggered if an existing privately-placed obligation is modified. Finally, COVID-19 impacts may trigger material events for which notice is required.

As noted at the outset, this is a developing and evolving situation and the proper response will, in large part, be fact specific for each market participant. This alert is only intended to highlight selected matters to be considered in the context of the COVID-19 pandemic. Members of the Greenspoon Marder Public Finance Department are available to provide guidance in these and other matters that arise as we all navigate these unusual times together.

Greenspoon Marder LLP

USA April 22 2020

How Municipal Bond Issuers Will Navigate the Crisis.

Summary

- Tough times are ahead for municipal bond issuers.
- The recession, sparked by the coronavirus-led shutdown of the US economy, will temporarily reduce most tax and fee revenues pledged to bondholders.
- Yet we expect municipal credit to be more resilient than other markets, and we don’t anticipate widespread municipal defaults.

Tough times are ahead for municipal bond issuers. The recession—sparked by the coronavirus-led shutdown of the US economy—will temporarily reduce most tax and fee revenues pledged to bondholders. Continuing negative headlines will also drive issuer ratings downgrades over the coming months. From airports and public transit to education and healthcare, the spread of COVID-19 affects all municipal issuers.

Yet we expect municipal credit to be more resilient than other markets, and we don’t anticipate widespread municipal defaults. Here’s why.

Continue reading.

Seeking Alpha

By John Ceffalio

Apr. 21, 2020

Can the Municipal Bond Market Weather the Coronavirus Storm?

The U.S. Federal Reserve is stepping in to toss a life preserve to the bond markets, including corporate debt and high yield, but few may have seen municipal bonds seeking help. Local government debt is perceived as some of the safest debt, but the coronavirus pandemic is raining on that safe haven parade.

“With local economies grinding to a virtual halt, businesses closed and more than 22 million Americans thrown out of work, the fallout is rippling through the $3.9 trillion markets that finances far more than just governments that virtually never default on their debts,” a Bloomberg report said. “Hospitals, airports, stadiums and speculative ventures like the Virgin Trains USA railroad in Florida have also sold debt through government agencies — and it’s backed by the money generated by their businesses.”

The report went on to state that a wave of defaults could follow, but whether it’s low tide or tsunami depends on how quickly local governments can recover in a post-coronavirus environment.

Continue reading.

ETF TRENDS

by BEN HERNANDEZ on APRIL 20, 202

Robots Bought Munis Amid Record Sell-Off’s ‘Baptism of Fire’

- **Muni quants stepped in to buy when Wall Street pulled back**
- **Secondary market offerings soared as investors fled funds**

In March, Jason Diefenthaler, director of tax-exempt portfolio management at Wasmer Schroeder, noticed something.

On a typical morning, the Naples, Florida-based money manager would get 25 bids each for the 50 to 300 municipal bonds he put up for sale to dealers. Now, he was getting two to five and they weren’t coming from Wall Street. Instead, independent firms that use algorithms to respond to thousands of auctions, were providing the best bids and buying bonds.

“Legacy dealers that we were accustomed to seeing step in were pulling back from all the volatility,” Diefenthaler said.

The liquidity crisis peaked in mid-March as fears about the economic impact of the coronavirus pandemic unleashed an unprecedented $40 billion stampede out of municipal-bond mutual funds during a two-week period. With Wall Street dealers’ inventories of unwanted securities swelling and traders focused on executing large trades for their biggest clients, algorithmic trading firms stepped in to make markets in smaller “odd-lot” bonds. These blocks of $100,000 or less make up 80% of secondary market trades.

On March 19, at the height of the sell-off, the number of unique bonds put up for auction in the secondary market rose to 32,000, triple the average. Headlands Tech Global Markets LLC, an affiliate of Headlands Technologies LLC, a Chicago-based quantitative trading firm, responded to 20,000 offerings, executing 4,400 trades, Chief Executive Officer Matt Andresen said in an interview. In March, the firm averaged 4,700 trades a day, compared with 1,600 in February.

"Our activity exploded," Andresen said. "We knew this was a chance to really make our name in a baptism of fire."

Nevada-based Sierra Pacific Securities LLC's trading volume increased two to three times, reaching more than 1,000 trades a day, said Jarrod Dean, the firm's co-president. New York-based Brownstone Investment Group LLC's said its daily portfolio turnover, a measure of trading activity, reached as high as 20% in March.

Quantitative trading firms like Headlands, Sierra Pacific and Brownstone crunch more than a decades worth of data to build pricing models for hundreds of thousands of municipal bonds that rarely trade. Wall Street banks also employ machines to trade the smaller pieces of debt that prevail in the retail-oriented municipal market.

They bid each day on thousands of securities put up for sale on electronic platforms like ICE Bonds, Tradeweb Markets Inc. and MarketAxess Holdings Inc. After purchasing the bonds, the firms turn around and offer them seeking to capture a profit.

The $3.9 trillion municipal market still largely functions through over-the-counter trading where mutual funds, insurance companies and wealth managers place orders over the phone directly with dealers. However, electronic trading is growing, with 12% to 15% done that way, Greenwich Associates estimated last year.

The average daily volume of municipal-bond trades on Tradeweb rose to about $400 million in March, a 44.8% increase from a year earlier, the company reported. MarketAxess reported an average of $61 million traded in March, triple the prior year. ICE Bonds, a unit of Intercontinental Exchange doesn't report trading volume.

Firms using a pricing algorithm picked up a larger share of trades on Tradeweb in March, said John Cahalane, head of Tradeweb Direct, the company's retail trading platform. He declined to share specifics.

"If you didn't have some kind of suggested pricing or algorithmic pricing, you couldn't possibly have been responding to just the sheer number of requests for quotes," Cahalane said. "If there was an advantage the algo firms had during that period, it was the ability to be present."

Yet, some investors said they saw a noticeable decline in bidding by algorithmic traders during the extremely volatile period. With too many sellers at once and buyers scarce, prices went into free-fall and closely-watched trading relationships went haywire. On March 23, yields on five-year municipal bonds skyrocketed to 6.5 times yields those on Treasuries of the same maturity, almost three times the peak during the 2008 financial crisis.

"Their presence in the market at times of volatility has diminished," said Lyle Fitterer, co-head of municipal investments at Baird Advisors, said of algo firms. "They don't take a tremendous amount of capital risk."

The pullback by computer traders was more evident among banks that use them, not independent firms, said Ben Pease, Head of Municipal Trading at Breckinridge Capital Advisors Inc., which

oversees $40 billion assets. The average number of bids Breckinridge received on odd-lot bonds from major bank algos dropped by almost half during the weeks of March 9 and March 16 from the prior two weeks, he said. On average, they bid on about 30% of Breckinridge's thousands of items, down from about 75%, he said.

"My feeling is that banks were selectively allocating their remaining capital, which ultimately reduced bids for the extensive numbers of odd lots and small blocks seeking liquidity," Pease said. "'Pure' algo shops provided more liquidity when it was needed, albeit at a higher cost."

The cost to trade investment-grade state and local government bonds maturing between 5 and 10 years rose to almost 2.6 percentage point on March 25 as all dealers demanded more compensation for the risk of taking debt onto their balance sheets, according to BondWave, a financial technology company.

Headlands was able to balance its buying and selling throughout the month, Andresen said. Computers enabled the firm to react to the market and update prices in real time. The market value of the firm's portfolio was just under $1 billion at its peak in March.

"It was definitely harrowing," said Andresen, a former co-chief executive at Citadel Securities, who founded Headlands in 2010. "Your P&L will swing around and your portfolio will swing around. We're not going to panic, we're not going to drop out of the market."

Bloomberg Markets

By Martin Z Braun

April 20, 2020, 8:22 AM PDT Updated on April 20, 2020, 4:00 PM PDT

Two New Muni-Bond Delinquencies Triggered by Coronavirus Crisis.

Two new municipal-bond delinquencies have emerged, both of which appear to be triggered by the Covid-19 crisis, according to the Municipal Securities Rulemaking Board, the regulator for municipal bonds.

The first is for Massachusetts Development Finance Agency Health Care Facility Revenue Bonds, Series 2007A, Series 2007C, Series 2007D, Series 2007E, and Series 2007F, and Series 2010. The proceeds were used to fund the Lafayette Rehabilitation and Skilled Nursing Facility and the Fairhaven Healthcare Center. The interest payment due on April 15 wasn't paid, the agency said in a filing.

The second delinquency was for the City of Topeka, Kan., Economic Development Refunding Revenue Bonds, Series 2011A, which originally funded the YMCA of Topeka's new recreation center. "Recently, the overall revenue of the Topeka Y has dropped, impairing the ability of the Topeka Y to properly fund the Series 2011A Bonds," the YMCA said in a filing.

On April 14, a bond issued by the City of Terre Haute, Ind., is believed to be the first municipal default disclosure related to disruptions caused by the novel coronavirus.

Barron's

By Leslie P. Norton

April 21, 2020 2:25 pm ET

The Coronavirus Crisis Is Starting to Hit Muni Bonds. Why That Matters.

Delinquencies in the municipal market—already on the rise as counties and cities get squeezed by the coronavirus crisis—are likely to worsen amid soaring unemployment, rising alarm about stressed municipalities, and Federal conflict about aid. This could lead to pernicious consequences for investors, who rely on muni bonds for safety and income, as well as for the people who rely on the multitude of city services—such as schools, hospitals, transportation, and sewers—that these bonds finance.

This week, Sen. Majority Leader Mitch McConnell said he supports the idea of allowing states to use bankruptcy protection to reduce debts instead of supporting them with more federal aid. Trouble is, most cities and states can't operate on deficit spending and the law currently prohibits bankruptcy for states.

Meanwhile, Congress approved a $484 billion coronavirus rescue package , which included no funding for state and local governments.

Continue reading.

Barron's

By Leslie P. Norton

April 24, 2020 6:30 pm ET

Tax-Exempt Bond Tools for Governments Facing Cash Flow Challenges.

With their taxpayers facing financial difficulties from Coronavirus Disease 2019 (COVID-19), state and local governments may in turn face temporary cash flow disruptions. To alleviate these disruptions, governmental entities may want to consider short term tax-exempt working capital financings permitted by the Internal Revenue Code of 1986, as amended (the Code). Revenue Anticipation Notes (RANs) or Tax Anticipation Notes (TANs, collectively, TRANs) are designed to cover short-term mismatches between revenues and expenses. Some governmental entities use these tools on a regular basis, but others may be missing out, particularly now, on the benefits of these tools. This Alert is intended to help governmental entities avail themselves of these short-term borrowing options.

The Concept

Every state and local government assesses and imposes taxes, whether sales taxes, ad valorem property taxes, wage taxes, or personal and business income taxes. Some of these taxes produce cash flow reasonably consistently through the year. Others come in in large, predictable receipts. State and local governments also receive other revenue, some on a predictable schedule, some not. Every state and local government has rather predictable working capital costs, the timing of which

may not vary as much as the timing of its revenue receipts. This mismatch creates a need for short-term borrowing to pay budgeted expenses before the budgeted revenues are received; a need that may be met with TRANs.

When the economy grinds to a sudden halt, state and local governments are forced to reevaluate their budgets and their related cash flow needs and expectations and may determine that they would benefit from a short-term working capital borrowing in anticipation of revenue to be received later. For example, these entities may defer the timely payment of taxes causing a mismatch between revenues and expenses not previously experienced. This is another potential use for TRANs.

Additional incentive for issuing TRANs may be the added liquidity feature offered by the Federal Reserve. As discussed in an April 10 GT Alert, the Board of Governors of the Federal Reserve System launched a Municipal Liquidity Facility, which will purchase up to $500 billion of TRANS and other short-term notes from states and certain local governments.

Applicable Rules

Governmental Purpose

Borrowing to meet cash flow requirements of a governmental operations budget is a governmental purpose that generally may be financed with tax-exempt bonds. The rules that limit the ability of a state or local government to borrow for working capital needs are the rules related to arbitrage and rebate.

The Arbitrage and Rebate Rules

The arbitrage rules restrict how many bonds may be issued, when they may be issued, and how long they may remain outstanding. If too many bonds are issued, or if bonds are outstanding longer or issued earlier than they are needed, the bonds will be treated as an over-issuance and will be taxable arbitrage bonds (the Over-Issuance Rule).

Additionally, two arbitrage rules place investment restrictions on proceeds of the bonds and certain other amounts. The first rule generally restricts the yield on unspent proceeds of the bonds and on amounts available to repay the bonds (collectively, gross proceeds) to a yield that is not materially higher than the yield on the issue (the "Yield-Restriction Rule"). The second rule generally requires that in most circumstances investment earnings above the yield be "rebated" or paid to the U.S. Treasury (the Rebate Rule). Typically, if gross proceeds of a tax-exempt bond are subject to the Yield-Restriction Rule, they will not be invested at a return that generates a rebate obligation under the Rebate Rule. Because in some investment environments it may be difficult to invest gross proceeds below the yield on the issue, the Yield-Restriction Rule permits higher yielding investments during the period when the gross proceeds would be expected to be spent or held (each, a temporary period). During these "temporary periods" there may be excess investment earnings that will be subject to the Rebate Rule, unless an exception to the Rebate Rule applies.

How the Rules Apply to TRANs

The Over-Issuance Rule limits when, how much, and for how long a state or local government may borrow for working capital purposes on a tax-exempt basis. Under this rule, a bond that qualifies for a "temporary period" under the Yield Restriction Rule will not violate the Over-Issuance Rule. However, in applying the Over-Issuance Rule, as well as in applying the Yield Restriction Rule and the Rebate Rule, the Code treats tax-exempt proceeds as spent on working capital only if there are no other amounts available to be spent for such purpose (the Proceeds Spent Last Rule). Each of the

applicable rules is explored below.

Under the Yield Restriction Rule, an issuer that issues a TRAN may benefit from a 13-month "temporary period" during which the issuer may invest the proceeds of the TRAN at an unrestricted yield provided that the proceeds of the TRAN are expected to be used for expenses within 13 months. A longer period of two years is permitted for TANS if (a) the TAN is reasonably expected to be paid from tax revenues from one fiscal year, and (b) the TAN matures by the earlier of two years or 60 days after the last date for timely payment of those taxes. Under the Rebate Rule, there is an exception that permits an issuer to keep arbitrage earned if all gross proceeds are spent within six months of the issue date. There is also statutory safe harbor for determining if the TRAN meets the six-month exception to the Rebate Rule. That safe harbor (the Six Month Safe Harbor) applies if the actual cumulative deficit, as described below, exceeds 90 percent of the proceeds of the TRANs within six months after issuance.

Under the Proceeds Spent Last Rule, proceeds will be treated as spent for working capital expenditures only after other available amounts (in the case of working capital expenditures, revenues and taxes available for that purpose) are spent. To apply this rule, a governmental entity must consider its expected available revenues (including any amounts unspent from the prior year) and expected expenditures to determine the amount of cash flow deficit that may be financed with a TRAN. In making this computation, the issuer generally is permitted to disregard a reasonable working capital reserve, generally equal to 5 percent of the prior fiscal year's actual working capital expenditures. However, in applying the Six Month Safe Harbor to rebate, a governmental entity is not permitted to disregard a reasonable working capital reserve.

The small issuer exception to the Rebate Rule may also apply. Ordinarily, this rule applies if the governmental entity reasonably expects, as of the issue date, that it will not issue during the calendar year more than an aggregate face amount of tax-exempt governmental bonds of $5 million, or the issuer does not in fact issue more than such amount during the calendar year.

Additionally, a TRAN will not be considered outstanding longer than is reasonably necessary, under the anti-abuse rules in the regulations, if the final maturity date is not later than the applicable temporary period, generally 13 months.

Computation Example

Governmental entity has $2 million available cash for working capital expenditures at the start of the fiscal year. Its prior year's actual working capital expenditures were $33 million, which means the governmental entity may set aside a reasonable working capital reserve of $1.65 million (5% x $33 million), which it will finance from the $2 million available cash. The governmental entity receives a small portion of its revenues throughout the year, but generally it receives its tax revenues in Months 2 and 3. In this hypothetical, the governmental entity permits taxpayers an additional 90 days to timely pay taxes to accommodate financial difficulties that its taxpayers are facing from COVID-19 shutdowns. The entity also expects more late payment of taxes than in prior years, resulting in a large portion of taxes expected to be received in Month 7. Thus, most of the tax revenues will be received in Months 5 and 6, leaving the governmental entity with significant cash shortfall in Months 2 and 3. The governmental entity intends to finance that shortfall with TRANs that is issued in Month 1 and that matures in Month 11.

Greenberg Traurig LLP – Rebecca L. Caldwell-Harrigal and Vanessa Albert Lowry

April 17 2020

XBRL US Data Quality Committee Public Exposure of 12th Ruleset.

US GAAP and IFRS filers, investors, XBRL providers encouraged to participate

The XBRL US Data Quality Committee (DQC) has published its 12th Ruleset for a 45-day public review and comment period, which closes on June 1, 2020. DQC rules aid US GAAP and IFRS issuers in preparing consistent, error-free financials, by providing automated checks that test an XBRL-formatted financial statement prior to SEC submission. Issuers that use the rules can find and correct errors, to ensure that regulators and investors are provided with good quality data and the most accurate view of corporate financial health. Access the public review: https://xbrl.us/data-quality/rules-guidance/public-review/

The latest Ruleset contains three new rules for US GAAP filers which alert filers to situations where: 1) an invalid value was reported for a percentage item; 2) values on Maturity Schedules were not tagged correctly; and 3) scale is not correct for values reported for common stock outstanding. The Ruleset also augments the existing US GAAP Negative Value rule with additional concepts to help filers guard against signage problems.

Ruleset 12 also contains two new rules for IFRS filers which identify: 1) values that were reported as positive but should be negative, and 2) values reported for durational elements that do not aggregate correctly.

Separately, the Data Quality Committee is also seeking comment on guidance prepared to help in XBRL formatting for Variable Interest Entities. This guidance is out for public review until May 1, 2020. Access this guidance: https://xbrl.us/data-rule/guid-vie/

The XBRL US Filing Results & Quality Checks application allows SEC Filers or other interested parties to check EDGAR submissions for DQC errors for any company here: https://xbrl.us/data-quality/filing-results/

Graphical depictions of historical DQC error count, categorized by rule type, can be seen here: https://xbrl.us/data-quality/filing-results/dqc-results/

The DQC, which is funded through the XBRL US Center for Data Quality, is responsible for developing guidance and validation rules that can prevent or detect inconsistencies or errors in XBRL data filed with the SEC, and focuses on data quality issues that adversely affect data analysis. All approved rules and guidance are free and publicly available.

Filers have immediate access to all final approved rules as well as the 12th Ruleset in public review so that they can check their filings prior to SEC submission. There are several options available to filers:

Through software that has been certified to run with the ruleset: https://xbrl.us/certification
Through the XBRL US checking tool: https://xbrl.us/check
By downloading the Approved Rules and using them with Arelle – the open source version of the SEC's EDGAR Renderer/Previewer: https://xbrl.us/dqc-releases

To access the approved rules and guidance, go to: https://xbrl.us/rules-guidance

Members of the XBRL US Center for Data Quality include Altova, the American Institute of CPAs (AICPA), Broadridge Financial Solutions, Certent, DataTracks, Donnelley Financial Solutions (DFIN),

P3 Data Systems, RDG Filings, Toppan Merrill, and Workiva.

For more information on the XBRL US Data Quality Committee and the Center for Data Quality, go to: http://xbrl.us/data-quality

About XBRL US

XBRL US is the non-profit consortium for XBRL business reporting standards in the U.S. and represents the business information supply chain. Its mission is to support the implementation of business reporting standards through the development of taxonomies for use by U.S. public and private sectors, with a goal of interoperability between sectors, and by promoting XBRL adoption through marketplace collaboration. XBRL US has developed taxonomies for U.S. GAAP, credit rating and mutual fund reporting under contract with the U.S. Securities and Exchange Commission, taxonomies for public utilities reporting for the U.S. Federal Energy Regulatory Commission, and has developed industry-specific taxonomies for corporate actions, solar financing, state and local government financials, and surety processing. http://xbrl.us

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Find software that has been certified to run the rules: https://xbrl.us/certification

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Senators Want Federal Innovation Centers to Help State and Local Governments.

A group of 16 democratic senators wrote a letter to congressional leadership urging them to relax regulations that prevent two federal innovation hubs from quickly partnering with state and local governments, as the IT systems of lower levels of government struggle to handle coronavirus-related inquires.

The letter, dated April 22, calls for additional emergency funding for the General Services Administration’s Technology Transformation Service and the Office of Management and Budget’s U.S. Digital Service to provide IT assistance to state and local governments.

The senators wrote that TTS and USDS have the technologists and resources to assist state and local governments, whose systems are overwhelmed by the vast amount of citizens applying for government help, like unemployment or small business loans.

However, red tape makes it difficult for the entities to partner below the federal level. TTS’ rules mandate that it must establish an Intergovernmental Cooperation Act agreement that could take up to three to four months to formulate, the letter said. OMB policies also require a waiver for states to use “best-in-class” digital products developed by TTS.

“The COVID-19 pandemic has overwhelmed state and local government benefits systems due to unprecedented numbers of applications and outdated systems,” the senators wrote. “More than 22 million Americans have filed unemployment claims in the past four weeks alone. News reports abound showing hours-long hold times for Americans seeking assistance with unemployment claims, small business loans and grants, and other emergency programs. These federal programs, which are administered by the states, are of the utmost importance to American workers and businesses.”

The senators called for $50 million for the USDS for new technologists to help state and local governments and a reduction on restrictions on working with state and local governments. As for TTS, the senators asked for $25 million in emergency appropriations for the Federal Citizen Services Fund, which provides funding for engagement opportunities for public-facing government programs. The letter also asked that regulations preventing partnership be waived.

"During this national emergency, when speed is vital for millions of Americans, red tape is preventing the federal government's skilled technologists from helping the state and local agencies that need them most," the senators wrote.

The letter notes that many states are using legacy systems to serve its citizens. For example, the letter adds, New Jersey is running a system that uses COBOL code, a legacy program language, prompting its governor to call for COBOL programmers to help the state.

The letter is signed by Sens. Ron Wyden, D-Ore., Sheldon Whitehouse, D-R.I., Kyrsten Sinema, D-Ariz., Kirsten Gillibrand, D-N.Y., Kamala D. Harris, D-Calif., Sherrod Brown, D-Ohio, Edward J. Markey, D-Mass., Doug Jones, D-Ala., Mazie Hirono, D-Hawaii, Bob Menendez, D-N.J., Mark Warner, D-Va., Jacky Rosen, D-Nev., Cory Booker, D-N.J., Dick Durbin, D-Ill., Gary Peters, D-Mich., and Chris Van Hollen, D-Md.

The letter is addressed to Senate Majority Leader Mitch McConnell, R-Ky.; Senate Minority Leader Chuck Schumer, D-N.Y.; Speaker of the House Nancy Pelosi, D-Calif.; House Majority Leader Steny Hoyer, D-Md.; and House Minority Leader Kevin McCarthy, R-Calif.

Federal Times

by Andrew Eversden

The Fed will Include Smaller Cities and Counties in Its Municipal Lending Program.

The Federal Reserve on Monday said it would substantially expand its municipal lending program, an effort to provide relief to strapped states and cities as the coronavirus outbreak drains public coffers.

The Fed had previously announced that it would buy short-term debt from states, cities with populations of more than one million and counties with populations exceeding two million. On Monday, it expanded that to cities with more than 250,000 residents and counties with more than 500,000. It also announced that it would buy slightly longer-term debt: securities that mature in three years will qualify for the program, up from two years previously.

The program, which has yet to start, will operate through the Federal Reserve Bank of New York. It will be backed by $35 billion in Treasury Department funding, and will be capable of buying up to $500 billion in eligible debt.

A total of 261 states, cities and counties will qualify for the program, the Fed said. So will some multistate issuers, which can include entities like the Port Authority of New York and New Jersey.

The New York Times

April 27, 2020

CDFA Bond Provisions Letter Writing Campaign.

Call to Action

CDFA has begun a targeted letter-writing campaign to ensure that MAMBA and Disaster-Area Recovery Bonds are included in the stimulus. We ask that industry stakeholders send letters to the House and Senate members to support CDFA's Modernizing Agricultural and Manufacturing Bonds Act and Disaster-Area Recovery Bonds. To make this process easier, we have created sample letters for your use.

Download the sample letter provided below and modify them to fit your letterhead. Email and fax letters to your representatives ASAP. Please also copy CDFA on any correspondence, and we will follow-up with the appropriate office holder.

Download the Sample Letter

When sending letters please follow these instructions:

- Use this sample text to craft your letter.
- Letters should be tailored to reflect your state/city and placed on your organization's letterhead.
- For full Congressional office contact information use the map below, or go to www.house.gov or www.senate.gov.
- Letters should be faxed to your Congressional first.
- Mail letters AFTER you fax them. They will take several days to reach the Capitol office.
- For assistance with drafting your letters, do not hesitate to contact CDFA.
- Send a copy of your letter to CDFA's Government and External Affairs Team.

Sign CDFA's Letter to Congress

To facilitate a speedy recovery, the Council of Development Finance Agencies (CDFA) and our joint coalition of partners is urging Congress to improve tax-exempt bonds.

By including a bond finance title in the next Stimulus Act, Congress would signal that bonds are a critical economic recovery tool, and allow for several common-sense changes to be passed related to the efficiency and effectiveness of tax-exempt bonds.

Completing this form adds your name to our coalition of partners, including non-profits, development agencies, bond issuers and cities and states throughout the country supporting efforts to improve tax-exempt bonds.

Read the Letter

Fed Gearing Up to Help Smaller Local Governments.

The central bank hinted from the start that it could broaden its municipal debt purchases.

The Federal Reserve could soon expand its plans to buy municipal bonds, as lawmakers from both parties pressure the central bank to do more to support smaller cities and counties suffering amid fallout from the coronavirus.

Fed officials said on April 9 that they would begin purchasing municipal bonds using their emergency lending powers, pledging to buy up to $500 billion in bonds from states and the biggest cities and counties. In doing so, they crossed a line they have long treated as sacred: buying local bonds is potentially charged territory for the politically independent Fed.

Continue reading.

The New York Times

By Jeanna Smialek

April 20, 2020

States See No Immediate Sign of Financial Help.

Governors are pushing Congress for $500 billion in aid; Sen. McConnell says he supports states using bankruptcy protection

States across the country face an increasingly grim financial outlook due to the coronavirus pandemic shutdown—with no near-term sign the federal government will come riding to the rescue.

House lawmakers on Thursday approved another round of aid, but there was no direct help for states. The $484 billion bill, which the Senate approved Tuesday, replenishes two depleted small-business relief programs, offers additional assistance to hospitals and funds an expansion of testing capacity nationwide.

States are hemorrhaging money responding to the public-heath crisis at the same time tax revenues are cratering because of widespread stay-at-home orders and business closures. Some governors have already frozen or cut billions of dollars in spending.

The nation's governors are pushing Congress to give states $500 billion to make up for lost revenues. The bipartisan National Governors Association is also asking Congress to help with health-care costs, unemployment-insurance payments and access to test kits and protective equipment.

Senate Majority Leader Mitch McConnell poured cold water on the pleas this week. The Kentucky Republican said he supports letting states use bankruptcy protection to cut their debts rather than providing more federal aid.

Aid to state and local governments will likely be a hotly debated aspect of the next round of coronavirus legislation on Capitol Hill. House Speaker Nancy Pelosi said Democrats will push to include money for local governments when lawmakers return in early May.

Mr. McConnell said he didn't want to subsidize the high state pension obligations that predate the coronavirus crisis. In many cases, those obligations were negotiated years ago by governors and state-employee unions.

"There's not going to be any desire on the Republican side to bail out state pensions by borrowing

money from future generations," he said.

State officials called the idea of filing for bankruptcy a nonstarter.

"You want to see the market fall through the cellar?" New York Gov. Andrew Cuomo said during his daily briefing on Thursday. "Let New York state declare bankruptcy. Let Michigan declare bankruptcy. Let Illinois declare bankruptcy. Let California declare bankruptcy. You will see a collapse of this national economy."

Congress previously passed a $2 trillion aid package with $150 billion for state and local governments, but the money can be used only for coronavirus-related expenses. States say they need additional funding to plug budget holes, and some want greater flexibility when it comes to spending the $150 billion already approved.

The National Association of State Budget Officers says a cash influx would help the national economy rebound and warns states might have to cut essential services if Congress doesn't approve more aid.

"States are currently facing revenue impacts that could dwarf what was observed in the last recession," Marc Nicole, the association's president, wrote in a letter Wednesday to President Trump and congressional leaders. States project declines of as much as 20%, as the pandemic hammers their biggest revenue sources, income and sales taxes, Mr. Nicole said, whereas total general-fund revenue fell 11.6% over two years during the 2007-2009 recession.

Mr. McConnell also suggested states could raise taxes to bring in more revenue. Unlike the federal government, almost all states are required to balance their budgets. That means that any new spending has to come from tax revenue or federal aid, rather than from borrowing.

Allowing states to file for bankruptcy would require congressional action and would almost certainly face legal challenges, said David Skeel, a University of Pennsylvania law professor. For one thing, it could be seen as violating a constitutional provision barring states from interfering in contracts. It could also run afoul of provisions protecting state sovereignty, he said.

David Adkins, executive director of the Council of State Governments, said he thought Mr. McConnell's comments were a posturing tactic in continuing negotiations with Capitol Hill Democrats. Sooner or later, he said, Congress is going to have to direct significant funds to state and local governments to prevent a wave of public-sector layoffs.

Mr. McConnell "has some vulnerable Republicans in states," Mr. Adkins said. "He does not want those vulnerable Republicans to be blamed for 20% cuts to public schools."

States' fortunes have changed at a dizzying speed. Just a few months ago, many governors rolled out lists of new proposals, buoyed by strong growth and robust revenue projections. States also sat on replenished rainy-day funds.

Though Washington state has roughly $3.5 billion in reserves, budget officials say projected revenue shortfalls over the next three years would wipe that out. Even with federal aid, the state would face major budget cuts, said David Schumacher, director of the state's Office of Financial Management.

"That's going to be a huge driver of whether we have bad budgets and significant cuts, or catastrophe," he said of the federal aid.

Cities are bracing for a budget crunch, too. More than 2,100 cities expect shortfalls, according to a

recent survey by the National League of Cities and U.S. Conference of Mayors.

In response to the crisis, governors in some states have moved to limit spending by paring teacher raises and property-tax relief, and cutting higher-education funding. Virginia, for example, cut $500 million from outlays in the final quarter of the current fiscal year, which ends June 30, and froze $2.3 billion in planned new spending over the next two fiscal years.

Aubrey Layne, the state's finance secretary, said certain limits on new aid would make sense, such as a ban on pumping any of it into state pension systems.

"I understand this money shouldn't just be a blank check to go and bail out bad mismanagement over the years," he said. "A lot of what is happening now is simply because the economy is shut down."

Mr. Layne said bankruptcy wouldn't be an option for Virginia because "constitutionally we have to balance our budget."

State and local government bankruptcies are extremely rare with 0.16% of municipalities rated by Moody's Investors Service defaulting over a five-year period. That rate has increased from 0.09% prior to the last recession, which delivered huge hits to property-tax revenues and pension-fund savings.

U.S. states in particular are generally viewed as extremely creditworthy, and their bonds pay out interest at rates fairly close to U.S. Treasurys. Exceptions are Illinois, New Jersey and Mr. McConnell's home state of Kentucky, which struggle with unfunded obligations to police, teachers and other public workers.

Roughly half of states allow their cities to access bankruptcy protection, and a few have used the process to reduce obligations to pensioners and bondholders. Puerto Rico entered bankruptcy in 2017 after Congress passed a law giving it permission to do so.

Detroit, the largest city to file for bankruptcy, emerged from bankruptcy protection in 2014 after a year and a half, but it continues to struggle with longstanding challenges like high liabilities and reliance on the auto industry.

Prices on Illinois and New Jersey tax-backed debt that doesn't come due for 15 or more years fell Thursday afternoon, with yields on those bonds rising by roughly a 10th of a percentage point relative to triple-A debt, according to Refinitiv data.

Refinitiv analyst Greg Saulnier said investors were probably reacting less to the possibility of bankruptcy for those states than to Mr. McConnell's apparent opposition to a large state aid package in the near future.

"It illustrated that he is in favor of delaying any additional state and local government relief, which could amplify credit problems," Mr. Saulnier said.

The Wall Street Journal

By Scott Calvert and David Harrison

Updated April 23, 2020 6:17 pm ET

—Joseph De Avila and Heather Gillers contributed to this article.

Fed Outlines Disclosure Plan for Lending Programs.

Plan Follows BDA Recommendations for Transparency

The Federal Reserve announced plans to disclose monthly the borrowers, loan amounts and interest rates on funding from new lending programs established this month following passage of the CARES Act.

The BDA in its April 14 letter, "urged the Fed to publish a list of all trades conducted by your portfolio manager" as well as other information.

The Fed, following the BDA recommendations, announced plans to disclose:

- Names and details of participants in each facility;
- Amounts borrowed and interest rate charged; and
- Overall costs, revenues, and fees for each facility.

The press release can be viewed here.

The disclosure requirements cover facilities the Fed is currently working to establish. This includes the:

- Main Street Lending Program
- Municipal Liquidity Facility
- Primary Market Corporate Lending Facility
- Secondary Market Corporate Credit Facility

The BDA will continue to provide updates as they become available.

Bond Dealers of America

April 24, 2020

Fed's $500 Billion Muni-Lending Plan Faces Hurdles in State Laws.

- **Debt limits, tight repayment rules could weaken reach of loans**
- **Underscores case from governors for direct aid from Washington**

There's a key obstacle threatening to limit the reach of the Federal Reserve's plan to lend to states and cities to limit the financial hit from the coronavirus: state laws.

The central bank's program, the first ever targeted at the $3.9 trillion municipal-debt market, will lend money for as long as two years to states and the largest cities and counties to help them avoid massive budget cuts as the deep economic slowdown decimates tax collections.

But some states, like Colorado and Alabama, may find their ability to draw on the Fed limited by constitutional provisions that make it difficult for them to run up debt. Others, like Maine, Michigan and Illinois, have laws that require repayment of loans within a tight time frame, which could dissuade officials from borrowing.

In some states, legislatures or voters may also need to approve debt issued under the Fed's program before it is set to lapse at the end of September, something that's complicated by social-distancing guidelines that have shuttered statehouses.

The issues are likely to limit the scale of the Fed's lending to states, underscoring the case that governors are making for direct aid from Washington to weather what threatens to be the gravest fiscal crisis in decades.

There's not much that the Fed could do with the existing program — other than perhaps expanding it to long-term debt — to get around some of the states' constitutional and statutory limits, said Dee Wisor, a bond lawyer for Butler Snow and former president of the National Association of Bond Lawyers.

"State-by-state, folks are going to have to work that out," he said.

In Colorado, the state faces a potential barrier from its taxpayer bill of rights, a notoriously difficult-to-change law that limits state taxes and spending. Because of it, voters must approve the "creation of any multiple-fiscal year direct or indirect" debt incurred by the state.

Leah Marvin-Riley, a spokeswoman for the Colorado treasurer's office, said the state has to make sure that its borrowings fit under the constitutional restraints. "We don't know yet how much we would sell, but we do know that we're limited by the TABOR cap," she said.

Caught 'Flat-footed'

New Mexico law says it can't borrow more than $200,000 to "meet casual deficits or failure in revenue." Alabama's 1901 constitution prohibits new debt unless lawmakers find a workaround. In neighboring Georgia, the state cannot directly borrow on behalf of smaller governments, as the Fed's program provides for in places where none of the local governments are big enough to qualify on their own, said Lee McElhannon, director of bond finance for the state.

"I just wonder whether a lot of governments, both state and local, are going to be caught a little bit flat-footed with all this," said Jodie Smith, a public finance lawyer at Maynard Cooper.

The Fed's loans don't have to be repaid for two years, which in theory would give governments time to get through virus-related shutdowns until tax revenue starts to revive.

Yet the time horizon creates an issue for states that have to pay back certain types of short-term borrowings by the end of the fiscal year, which could be in June 2020 or 2021, depending on when they borrow the money. Illinois, New Mexico and Maine are among the states that have such limits.

In Washington, the state can issue debt that's used to cover temporary revenue shortfalls so long as it's paid off within a year. Smaller municipalities in the state also face limits under their short-term borrowings, such as having to pay back certain notes six months after the end of the fiscal year in which they were sold, said Stacey Lewis, a public finance lawyer for Pacifica Law Group.

The Fed is still finalizing details and has asked for industry participants to send feedback.

The Government Finance Officers Association, a lobbying group, asked the Fed to extend its lending program until December because of the hurdles some governments face and the fact that the size of their shortfalls may not be known clearly for months.

Lewis, the Pacifica Law attorney, said she would like to see the Fed shift to buying a broader kind of

municipal debt.

“If the Fed wants to really put money out through this program, it will have to listen to what’s allowable under state law,” she said.

Bloomberg Markets

By Amanda Albright

April 21, 2020, 6:54 AM PDT

— With assistance by Danielle Moran

Cohn Says States Deserve Aid in Response to McConnell Reluctance.

- **Former Trump adviser likens state aid to support for business**
- **McConnell has suggested letting states file for bankruptcy**

Gary Cohn, the former top economic adviser to President Donald Trump, said the federal government needs to help cash-strapped states with emergency financing, not leave them to seek more desperate solutions such as bankruptcy.

”States are in a horrible position,” Cohn said in an interview Thursday with Bloomberg Television. “Like we’re providing liquidity to small businesses, medium-sized businesses and large businesses, I think we also need to provide liquidity for states.”

As states grapple with the coronavirus pandemic, many governors are struggling with the dual problem of soaring health-care costs and plummeting tax revenue. The National Governors Association estimated that states and municipalities will need at least $500 billion in aid.

Congress on Thursday is expected to pass a bill that contains a $484 billion aid plan for small businesses and also gives additional funding for coronavirus testing and hospitals.

House Speaker Nancy Pelosi said Wednesday on Bloomberg Television that those “interim” measures would soon be followed by another stimulus bill that includes a “major package” of aid for state and local governments. Yet Senate Majority Leader Mitch McConnell indicated he was reluctant to support that approach, suggesting in a radio interview Wednesday that he favors letting states use bankruptcy protection as a means to cutting fixed expenses such as public-employee pensions.

New York Governor Andrew Cuomo called the suggestion “really dumb” and said it would precipitate an economic collapse.

Cohn, who served as director of the National Economic Council during the first two years of the Trump administration, also disagreed.

“All of a sudden they went from a very good operating environment to a very unusual or extraordinary operating environment,” he said. “I would hope that states never have to file for bankruptcy.”

What’s most important, Cohn added, is finding ways to restore economic activity, and with it state

sales and income tax revenue.

Cohn, 59, favors the “road map” drafted by former Food and Drug Administration Commissioner Scott Gottlieb, which would rely on widespread testing for the virus and surveillance data to revive parts of the economy gradually. It’s possible, he said, for services such as small retailers and hair salons to reopen.

While he favors stimulus for state economies, Cohn also has concerns about the aid programs that pay individuals more in benefits than they would make working. He said he knows of fast-food restaurants and local retailers that can’t find employees for deliveries or preparing curbside pickups.

”We’re going to need people to re-engage and want to go back to work and not rely upon the government handouts,” Cohn said.

Among his other comments, Cohn, a former president of Goldman Sachs Group Inc., said:

- “The financial markets around the world have actually held up quite well. We’ve had relatively good liquidity, we’ve had very good price discovery.”
- The economic recovery will probably be “U-shaped.”
- “I don’t think we’re going to basketball or baseball games anytime soon.”
- Financial regulators should loosen bank capital and liquidity rules in times of crisis so more credit and cash are available.

Bloomberg Politics

By Erik Schatzker

April 23, 2020, 12:41 PM PDT

Pelosi Seeks ‘Major’ State Aid, Setting Up Clash With McConnell.

- **Package set for vote Thursday is ‘interim’ step, speaker says**
- **Now we have to go further,’ she says, with aid to governments**

House Speaker Nancy Pelosi said a “major package” of aid for state and local government will be in the next stimulus legislation considered by Congress, setting up a conflict with Senate Majority Leader Mitch McConnell who is urging a slowdown in doling out federal help.

The $484 billion aid plan set for passage by the House on Thursday is an “interim” step to mitigate some of the economic damage wrought by the coronavirus pandemic, Pelosi said Wednesday on Bloomberg Television.

“Now we have to go further to help state and local” governments, she said, without putting a price tag on the aid.

Although President Donald Trump said Tuesday he favored aid for states, McConnell has said any funds for states and municipalities should be reviewed carefully.

“We’re going to push the pause button here, because I think this whole business of additional assistance for state and local governments needs to be thoroughly evaluated,” McConnell said

Wednesday on Hugh Hewitt's syndicated radio program.

In the Bloomberg Television interview, Pelosi dismissed any concern about McConnell's remarks, and she defended Democrats' decision to back down from their initial call to include state and local funding in the interim bill awaiting a House vote Thursday.

"Let me remind you, this is Mitch McConnell, who said on the floor of the Senate there is no way we will do anything but the $250 billion" to shore up a small business aid program, said Pelosi. "Now, we are up to $480" billion in this week's bill.

"This is an interim bill," she said, adding that "the president himself has said, he as tweeted out, that was last night, that he is ready to do state and local" in the next legislation.

More generally, Pelosi said she isn't concerned that emergency funding might not get to states, localities and other areas where it should.

"We will have a bright light shining on this," Pelosi said, citing the oversight commission that was part of the earlier $2 trillion measure. In addition, the House on Thursday is set to vote on creating a special committee to oversee how coronavirus funds are used.

Bloomberg Business

By Billy House and David Westin

April 22, 2020, 9:26 AM PDT Updated on April 22, 2020, 10:19 AM PDT

— With assistance by Daniel Flatley, and Steven T. Dennis

Fed's Muni Facility Leaves States Charting Tricky Path to Access.

- **U.S.'s second-biggest economy exploring ways to deploy program**
- **Fed urged to increase eligibility so more entities can get aid**

As pandemic-plagued state and local economies start to feel the effects of vanishing tax revenue, officials like Texas Comptroller Glenn Hegar are trying to figure out how to build the mechanisms that can get cash from the U.S. central bank to all the places in need.

The Federal Reserve has launched an array of emergency lending facilities to help the U.S. economy during the virus lock-down, including one for municipalities that could support up to $500 billion of assistance to states and big cities. But the rules are strict: only cities with a population of more than one million, or counties with more than two million inhabitants, are eligible.

That means the vast majority of communities across the country will have to get the funds from their states, and many states don't have mechanisms for this process.

Seeking Answers

"We don't have a current program in Texas, and most states don't," Hager told Bloomberg News Tuesday in a telephone interview. "I don't know at this point exactly how we're going to do it, mechanically, but we're trying to get those answers as quickly as we can despite multiple fronts of uncertainty."

Changes may be on the way, even before the program is up and running.

The Fed said when it launched the Municipal Liquidity Facility on April 9 that it “would evaluate whether additional measures are needed,” and has since signaled it was open to doing more, even as U.S. lawmakers called publicly for further steps. Senate Democratic Leader Chuck Schumer on Monday said in a statement that Fed Chairman Jerome Powell assured him the Fed was “working to make the program directly accessible to more cities and counties.”

The economic hardship is already severe. The stay-home orders that have been issued in most places around the U.S. have led to record claims for unemployment benefits as businesses shut their doors. The subsequent plunge in consumer spending and other activity has likely already wiped out $200 billion in state and local government revenue, an amount equal to about 10%, TD Economics’ Johary Razafindratsita and Sri Thanabalasingam wrote in an April 16 note.

Bipartisan Calls

Republicans and Democrats alike have called for various additional levels of Fed aid to the muni market. Idaho Senator Mike Crapo, whose state does not have any cities or counties that would directly qualify for the Fed’s facility, called on the central bank to allow for more municipal entities to have access to the program.

Beyond the technical issues of having to set up a way to pass the Fed’s facility funds from the state onto the smaller entities, some states may opt out of the facility for political or legal reasons.

“Citing statutory, constitutional, logistical, or just political hurdles, not to mention a reluctance to take (more of) the credit risk of their own local governments, multiple states seem likely to pass on the opportunity for a cheaply-financed local government liquidity facility,” Municipal Market Analytics’ Matt Fabian and Lisa Washburn wrote in an April 20 note.

Texas’s Hegar said that right now it doesn’t look like the state itself will need to tap the Fed’s facility. But it may need to on behalf of smaller towns and counties that don’t qualify. While three cities and three counties in the country’s second-most populous state qualify for the Fed’s facility, the state is home to 1,600 local governments.

Erode Significantly
“For this fiscal year, we know we’re OK, even though we do know that tax receipts are probably going to erode pretty significantly when we start seeing the data from March collections, much less April collections,” Hegar said.

Texas is not getting hit with the drop in personal income tax revenue that many states will see, as it doesn’t collect income tax.

On average, about half of state government revenues come from individual income and sales taxes, according to Amanda Page-Hoongrajok, an assistant professor of economics and finance at Saint Peter’s University in Jersey City, New Jersey. Most states have laws preventing them from running budget deficits, so drops in revenue streams have to be matched with cuts elsewhere.

Following the 2008 financial crisis, state and local government spending was subdued for years, Page-Hoongrajok said.

“If they don’t give state governments more aid, we’re going to see a prolonged recovery,” she said. “They’re not going to be able to recover from a drop in incomes and consumer spending this severe.”

Bloomberg Economics

By Catarina Saraiva

April 22, 2020, 4:00 AM PDT

— With assistance by Danielle Moran, Daniel Flatley, Amanda Albright, and Alexandre Tanzi

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How Will the Coronavirus Affect State and Local Government Budgets?

State and local governments are on the frontlines of this crisis. That means increased spending on public health and Medicaid. As of March 26th, 14 states have enacted supplemental appropriations or transferred general revenue funds in order to help public health agencies deal with the virus, and many others are in the process of doing so. Others will be offering assistance—delays in tax payments or expanded unemployment insurance to affected workers—to cushion the blow on their citizens and residents.

From a public health perspective, ensuring that these agencies have all the funds required to address this crisis is of utmost importance. But economically, the larger source of stress may

be the effects of the coming recession. Large scale “social distancing” will reduce consumer spending and workers’ wages and, in turn, cause sales and income tax revenues to plummet. State tax revenues declined by more than $120 billion—about 9 percent—during the Great Recession (Q2 2008 – Q2 2009), for example.

Continue reading.

The Brookings Institution

by Sage Belz and Louise Sheiner

Monday, March 23, 2020

The Federal Reserve Bank’s Municipal Liquidity Facility.

On April 9, 2020, the Federal Reserve Bank announced the creation of the Municipal Liquidity Facility (MLF) to help local units of government handle working capital issues caused by COVID-19. The MLF is authorized under Section 13(3) of the Federal Reserve Act.

The MLF will purchase up to $500 billion of short term notes issued by eligible issuers. Eligible issuers include:

- States, including the District of Columbia;
- Counties with a population of 2,000,000 or more; and
- Cities with a population of 1,000,000 or more.

The MLF is designed to have the funds flow from states and other large issuers down to local units of government, hence the high population threshold noted above. Due to this design, it will be up to

each state to determine (i) if it will participate as an eligible issuer in the MLF, and (ii) if so, how will it get those funds to local units of government?

- **To be or not to be an eligible issuer?** To help make that decision, states can review the MLF term sheet available here. The Federal Reserve Bank is also soliciting feedback in order to publish additional guidance on the MLF. That guidance is expected as early as next week. Each state may also want to gather input from local units of government on the need to participate.
- **How to get funds to local units of government?** States can take a proactive approach and begin to brainstorm how to get the funds to local units of government. There might be a range of possibilities from creating a uniform loan application process, to purchasing short term notes issued by local governments.

We will continue to monitor any guidance published by the Federal Reserve Bank. As states make decisions about their participation and process, we will post state-specific guidance for local units of government to use.

Taft Stettinius & Hollister LLP

by Daniel Burns, Manny Herceg, Blake J. Burgan, Chou-il Lee, James Shanahan and Steven Cuckler

USA April 20 2020

Column: As Coronavirus Devastates State Budgets, Conservatives Target Public Worker Pensions

Apparently on the principle that one shouldn't let a crisis go to waste, conservatives are using the coronavirus crisis to take aim at a favorite target: public employee pensions.

That was the explicit subtext of Senate Majority Leader Mitch McConnell's broadside against bailing out state and local governments, which he set forth during an interview Wednesday on right-winger Hugh Hewitt's radio program.

But McConnell is not alone. Conservative commentators Andrew G. Biggs and Eileen Norcross wrote on April 13 that "financial support for key services such as health, welfare, and public safety should not be allowed to morph into a more generalized bailout of state and local pension plans… Any future federal aid packages that might be used to meet pension plan obligations should be conditioned on structural pension reforms."

> I don't think any public employee, even a great teacher of 30 years, should make more than a colonel in the Army or the Marine Corps who served 25 years, or a captain in the Navy.

Conservative radio host Hugh Hewitt

These "reforms" included freezing public pension plans for future benefit accruals, and supplanting defined benefit plans, in which employees are insulated from the risk of market downturns, with 401(k)-style defined contribution plans, in which they bear all the risk.

Meanwhile, the libertarian group Illinois Policy called on Congress to reject that state's $44-billion federal aid request, which includes a $10-billion grant or loan to short up the state's public pension plans.

The thread connecting this advocacy is not only ideological. The sources are all associated with the Koch brothers network, among other right-wing funding operations.

McConnell has long been a recipient of Koch campaign contributions. The Mercatus Center at Virginia's George Mason University, which published the piece by Biggs and Norcross, has been heavily supported by the Koch network; Charles Koch is listed as an emeritus member of its board, and its founder and current board member Richard Fink is a longtime Koch aide.

Illinois Policy is part of a network of Koch-linked think tanks that have targeted public union membership, in part by advancing lawsuits to hamper dues collections.

Now let's examine the themes tying all this together.

As we reported earlier, McConnell and Hewitt performed a call-and-response routine for the latter's radio audience in which they suggested that the fiscal pain being felt by states stems largely, if not entirely, from ostensibly overgenerous public employee pensions.

"Some of the benefits they grant are ridiculous," Hewitt said. "I don't think any public employee, even a great teacher of 30 years, should make more than a colonel in the Army or the Marine Corps who served 25 years, or a captain in the Navy."

But it's fair to ask, "Izzatso?" Hewitt didn't explain why a teacher shouldn't retire with as much as a colonel; he just counted on McConnell agreeing supinely.

McConnell obligingly chimed in with the observation, "We'll certainly insist that anything we'd borrow to send down to the states is not spent on solving problems that they created for themselves over the years with their pension programs."

He even suggested that it would be better if states could declare bankruptcy (there's no such provision in the law), even though plainly state bankruptcies would disrupt their operations beyond description.

Biggs and Norcross stated that "the most serious pension funding gaps are largely the result of failures to undertake meaningful pension reforms over the course of the past decade." That's a broad statement that requires "meaningful pension reforms" to carry a lot of weight.

Many states' pension gaps are the result of fiscal strains that prompted them to underfund their annual pension contributions in recent years. Many of those states already have taken steps to correct that trend, but the hangover from previous years persists.

Biggs told me via Twitter that it's unfair to describe his position as applying to all state requests for federal assistance, only to specific requests for pension help. "It's clear that we didn't oppose federal aid to states to Covid-related costs," he wrote, "but that if a state wants aid for pensions, as Illinois apparently does, that should come with conditions."

The Los Angeles Times

by Michael Hiltzik

April 24, 2020

Fed Municipal Rescue Won't Avert Fiscal Nightmare, So States Eye Congress.

The money will barely make a dent in resolving local government needs caused by the pandemic, which is threatening to create thousands of fiscal disasters nationwide.

The Federal Reserve's move this month to bail out the municipal bond market with $500 billion in short-term debt was a historic step by the central bank to directly intervene in local government finances for the first time.

It's just not nearly enough, local officials say.

The money will barely make a dent in resolving local government needs caused by the coronavirus pandemic, which is threatening to create thousands of fiscal disasters nationwide. Officials say Congress must provide hundreds of billions more — but this time in direct federal grants — in the next economic rescue package.

"You can't borrow your way out of debt," said Tim Schaefer, California deputy state treasurer for public finance. "Financial solutions are helpful, and we certainly don't want to turn our nose up at them, but what really is going on here requires a fiscal response."

Inaction by federal lawmakers could mean cutoffs or reductions in local services that the pandemic has made even more crucial, right down to paying for ambulances that take coronavirus patients to the hospital, state finance officials said. The tens of thousands of bonds issued in the $4 trillion market by states, cities, counties and other governmental entities also finance projects such as schools, highways, airports and sewer systems.

Put simply, the Fed assistance merely keeps government bank accounts from overdrafting in the short-term.

To be sure, the Fed action April 9 extended a vital line of credit to states, the District of Columbia, counties with populations over 2 million and cities with populations over 1 million, at a time when market rates for short-term debt had been skyrocketing in reaction to the economic upheaval.

But while cash flow is an important and immediate problem, it underlies an even broader fiscal nightmare facing governments nationwide.

That's because the sweeping shutdowns of businesses to prevent outbreaks from overwhelming local hospital systems has come at a steep cost. Revenue dried up because of business closures, stay-a--home orders, layoffs and, in many cases, delayed local tax deadlines designed to align with an extension announced by the IRS in late March.

The magnitude of the costs that lie ahead partly explains the outcry among local leaders at Senate Majority Leader Mitch McConnell's suggestion on Wednesday that municipalities might "use the bankruptcy route" to dig themselves out of a financial morass.

Until then, localities had been encouraged by pledges of support from Democratic leaders in Congress as well as the White House. President Donald Trump on Tuesday tweeted a promise to provide "fiscal relief to State/Local Governments for lost revenues from COVID 19" in the next

legislative relief package after Congress reached a deal to top off the popular Paycheck Protection Program offering small businesses forgivable loans.

But the dropoff in revenue is much steeper than the $500 billion credit being offered.

Moody's Investors Service in an April 15 report said the $500 billion accessible through the Fed's so-called Municipal Liquidity Facility would amount to more than 10 times the short-term debt issued by governments in all of 2019. But it amounts to only about 20 percent of the approximately $2.4 trillion in revenue that state and local governments collected in 2017, the year the Fed is using to calculate payouts.

The Fed could still take broader action or widen eligibility; right now, the population thresholds leave out impoverished cities such as Detroit and Baltimore.

Senate Minority Leader Chuck Schumer said Monday he told Federal Reserve Chair Jerome Powell that the central bank had set its population threshold "way too high" for the program.

"He assured me that the Fed was similarly working to make the program directly accessible to more cities and counties," the New York Democrat said of Powell.

But the central bank also suggested that larger governments could use bailout money to help lend to smaller governments.

Recognizing the crisis ahead, Sens. Bill Cassidy, a Louisiana Republican, and Bob Menendez, a New Jersey Democrat, have proposed a $500 billion bailout package for state and local governments.

Many states said they either don't have infrastructure in place to set up loans to smaller governments or they're wary of taking on credit risk for towns and counties at increased risk of default.

Michael Decker, senior vice president for federal policy for the Bond Dealers of America, said the Fed should publicly commit to taking on credit risk for downstream loans made to smaller governments.

"We're urging the Fed to be explicit, when they finalize the details of the program, to be explicit that the Fed will absorb this credit risk and if downstream borrowers default, it'll be on the Fed and not on the states," Decker said. "And we think that will go a long way to helping ensure the success of the program."

The Fed declined to comment for this story.

At the same time, state finance officials said they are doing what they can to aid smaller governments, but they need more help.

"The federal government has the power to print more money, and in these difficult times of uncertainty, states need as much help as they can get from the federal government," said California State Treasurer Fiona Ma. "And the more help that we get, the more help we can be to local governments, which are looking to us for assistance."

Sarah Godlewski, the Democratic Wisconsin State Treasurer, said that her office is working to reorient a state trust fund loan program to provide "bridge financing in smaller ineligible communities."

Godlewski said she has been asking smaller governments: “With limited support from the federal government, how can we help you help Wisconsinites?”

POLITICO

By KELLIE MEJDRICH

04/23/2020 07:30 PM EDT

Bring Back Tax-Exempt Advance Refundings.

Over at our Restructuring GlobalView blog, our public finance colleagues Pedro Miranda and Pedro Hernandez make the case for bringing back tax-exempt advance refundings.

The general shutdown of the economy in response to COVID-19 threatens businesses in most sectors of the economy, and the revenues that those businesses will lose cannot be taxed by state and local governments, threatening their budgets as well. Lawmakers at all levels are searching for grand gestures and bold new ideas to relieve the extraordinary burdens that COVID-19 is imposing. However, the old and tried – the low-hanging fruit – may be even more useful than the new and untried. Tax-exempt advance refunding bonds were a well-established tool that state and local governments formerly used to save money. They allowed state and local governments to reap the benefits of comparatively low prevailing interest rates even when their outstanding debt could not be redeemed until more than 90 days in the future. Citing concerns (even if only as fig leaf for the real objective of raising revenue) about having two sets of bonds (the original new money bonds and the advance refunding bonds) outstanding concurrently for more than 90 days with but a single project to support them, Congress eliminated most tax-exempt advance refunding bonds in the Tax Cuts and Jobs Act of 2017. What better time than a once-in-a-hundred-years pandemic to restore tax-exempt advance refunding bonds to their rightful place?

If Congress restores them, before the ink on President Trump’s signature is dry, tax-exempt advance refunding transactions will begin to take shape. The municipal bond market is completely familiar with the regulatory rules and business considerations involved. There are no new rules to learn or unintended consequences to consider. Working groups will convene, tax lawyers will be roused from their parents’ basement, and state and local governments can obtain significant cash flow relief using a well-established financing technique.

By Johnny Hutchinson on April 22, 2020

The Public Finance Tax Blog

Squire Patton Boggs

Bill Would Give Opportunity Zone Treatment to Small Businesses Hit by Virus.

Legislation introduced in the House would temporarily classify some small businesses harmed by the coronavirus pandemic as qualified Opportunity Zone businesses.

The COVID-19-Impacted Small Business Opportunity Zone Act, introduced April 16 by Reps. John R. Curtis, R-Utah, and Henry Cuellar, D-Texas, would extend the Opportunity Zones deferment of taxes on capital gains to investments in small businesses that have been negatively affected by the crisis.

The classification as qualified Opportunity Zone businesses would encourage private investment in those entities "by providing their investors with similar tax incentives to Opportunity Zones," said Curtis in a release.

The bill is aimed at small businesses that have experienced supply chain disruptions, staffing challenges, a decrease in sales or customers, or full or partial suspension of business as a result of the spread of COVID-19 or the public and government response to it.

The Opportunity Zone program, created by the Tax Cuts and Jobs Act, allows investors to defer tax on prior gains invested in a qualified opportunity fund until the earlier of the date on which the investment is sold or exchanged or until December 31, 2026.

Rep. Denver Riggleman, R-Va., introduced a bill (H.R. 6513) April 14 that would extend the Opportunity Zone program through 2030.

Even without federal legislation, states may be delaying some deadlines related to Opportunity Zone investments as a result of declaring emergencies as a response to the pandemic.

TAX ANALYSTS

by FREDERIC LEE

POSTED ON APR. 22, 2020

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8 Opportunity Zone Gain Rules That May Aid Investors.

The qualified opportunity zone program is arguably the most flexible and most impactful tax program passed by Congress in the last 50 years.[1] In this article we explain eight new rules you should know about gain recognition and reinvestment, and how these benefits may be more attractive in light of the COVID-19 crisis.

Taxpayers can elect to invest either short-term or long-term capital gains from virtually any type of asset into a qualified opportunity fund, or QOF, within 180 days of recognizing their qualified gain. But, knowing exactly when the recognition date occurs and when the 180-day reinvestment period starts requires a deep dive into the proposed and final regulations — as well as into each taxpayer's specific facts.

In light of the unprecedented economic challenges presented by the COVID-19 outbreak, taxpayers with short-term or long-term capital gain income generated in 2019, or in early 2020 can use the opportunity zone program to park the qualified gains in a QOF for a period of time, allowing the investors adequate time to perform due diligence on various investments and make qualified opportunity zone business, or QOZB, or QOZB-property investments.

Once the capital gains have been reinvested into a QOF and then dropped into a QOZB, taxpayers have up to 62 months to reinvest the proceeds into various qualified opportunity zone projects. With the tremendous uncertainty in the current market, taxpayers will generally view this extended

reinvestment period as a godsend.

The opportunity zone final regulations issued on Dec. 18, 2019, became effective March 16. The new rules give taxpayers tremendous flexibility and extension of time when it comes to determining when the 180-day capital gain reinvestment countdown begins for purposes of meeting the QOF deadline.

Taxpayers can elect to adopt the much more liberal final regulations earlier than their effective date for filing 2019 tax returns. However, this requires that electing taxpayers adopt all aspects of the final regulations — not just the 180-day rule. In most cases, this strategy should not negatively impact a taxpayer, but we highly recommend doing a full evaluation before making an early adoption election.

Below we discuss eight key aspects of the 180-day deadline rules under the proposed and final opportunity zone regulations. Let's take them one at a time.

1. Direct Capital Gains Generated From the Sale of an Asset Held by an Individual, Grantor Trust or C Corporation

There are no changes here between the final regulations and the proposed regulations. The 180-day period starts on the date of sale. Therefore, a taxpayer effectively has 179 days after the date of a sale to contribute all (or a portion) of their capital gains into a QOF.

For example, if an individual, grantor trust or C Corporation sold stock on June 1, 2019, the 180-day deadline would fall on Nov. 27, 2019 — exactly 179 days after June 1. The deadline is not six calendar months from the date of sale (i.e. Dec. 1), as is often misunderstood. There is also no extension of the 180-day period if the last day falls on a weekend.

2. Capital Gains Flowing Through on a Schedule K-1 With No Entity-Level Election

Under the proposed regulations, taxpayers generally needed to wait until the pass-through entity's year-end to begin their 180-day period. For example, an owner of a calendar year pass-through entity has 180 days starting on Dec. 31, 2019 and ending on June 27 to contribute their 2019 share of Schedule K-1 capital gains into a QOF.

Under the proposed regulations, if the flow-through entity notified the taxpayer of their share of Schedule K-1 capital gain and the date of the actual sale, then the equity owner was able to choose to start the 180-day period earlier than year end, i.e. on the date of the actual sale. Interestingly, neither the proposed nor final regulations provide a specific time requirement or form for notification.

Remember, this option will help taxpayers that had identified qualified opportunity zone business property before year-end and that wanted to purchase replacement property early. However, to do that, the pass-through entity should not have made an election to defer the capital gains or have made a QOF investment at the entity level — as further discussed below.

Note that if the entity-level reinvestment election is made, the qualified opportunity zone business property must be purchased and titled under a QOZB, via a two-tier parent-subsidiary QOF-QOZ--property structure. It should not be purchased by the QOF directly and then dropped into a qualified opportunity zone business property, as this may disqualify the qualified opportunity zone business property and ultimately the QOF.

The rationale for this ruling is that the U.S. Department of the Treasury and the Internal Revenue Service wanted to give taxpayers the maximum amount of flexibility and time to invest in the

opportunity zone program. Regulators also wanted to ensure that taxpayers did not miss a potential deferral election if they ended up receiving their final Schedule K-1s later than the aforementioned deadline laid out in the proposed regulations.

Under the final regulations, taxpayers can elect to start the 180 days on the pass-through entity's year-end, or on the due date of the pass-through's income tax return (not including any extensions — generally March 15 for partnerships and S Corps, and March 31 for trusts).

For example, if a pass-through entity reports on a calendar year-end, the owner can start the 180-day countdown on either Dec. 31, 2019, or on March 16, for their share of 2019 pass-through capital gains.

If owners choose to start their 180 days on March 15, 2020, then they have until Sept. 10, to contribute their share of 2019 Schedule K-1 capital gains into a QOF. If owners choose Dec. 31, 2019 then they have until June 27, to contribute 2019 capital gains into a QOF. NOTE: Taxpayers with a 2019 gain need to elect to apply the final regulations early if they prefer to extend the reinvestment period to Sept. 10.

The same rules apply if the pass-through entity is on a fiscal year-end basis. For example, if a pass-through entity's year-end is Nov. 30, 2019, then the 180 days would start on Nov. 30, 2019 or Feb. 15, at the election of the equity holder.

Note that limited liability company and partnership managers, and S Corp management should adopt clear guidelines about the process required to make an entity-level reinvestment and the procedure needed for notifying equity holders about capital gains and Internal Revenue Code Section 1231 gain details during the year. This is an area that may generate future litigation for entities that do not take proactive steps.

3. Capital Gains Flowing Through on a Schedule K-1 With Entity-Level Election

Alternatively, the pass-through entity can elect to defer the capital gains at the entity level, which means the 180-days would start on the date of the actual sale.

Under the proposed and final regulations, pass-through entities that make a deferral election are required to notify all of their owners of that deferral election in writing, including the amount of the eligible gain deferral (again — no specific reporting timing is mentioned).

4. IRC Section 1231 Gross vs. Net Gains

One of the most controversial provisions in the proposed regulations pertains to the somewhat complex IRC Section 1231 rules. In general, the Section 1231 rules are as follows:

- Gains from the sale of trade or business property that's held for more than one year — excluding inventory, or IRC Section 1245 or 1250 amounts claimed — are treated as capital gains (federal capital gains are taxed at 0%, 15%, 20% or 23.8% tax rates depending on the individual taxpayer's taxable income and filing status),
- Losses from the sale of trade or business property can be used to offset ordinary income (federal ordinary marginal tax rates range from 10% to 37% depending on the individual taxpayer's taxable income and filing status), and
- Section 1231(c) generally requires taxpayers that had Section 1231 losses claimed during the preceding five years to track those losses and treat them as unrecaptured to the extent that those losses have not yet been applied against any current year Section 1231 gains. The amount of recaptured Section 1231 losses applied to current year Section 1231 gains is treated as ordinary

income.

Under the proposed regulations, taxpayers were required to net all of their Section 1231 losses and Section 1231 gains. Further, only the net Section 1231 gains were allowed to be contributed into a QOF under the proposed regulation — after the net amount of gains and losses was determined. Calendar year taxpayers were also required to wait until Dec. 31 to begin the 180-day period under the proposed regulations and were precluded from investing their 1231 gains prior to year-end.

However, as a result of extensive written and public comments to Treasury, the final regulations allow taxpayers to defer their gross 1231 gains via QOF investments. Treasury also changed the beginning of the investment period from the end of the taxpayer's year to the date on which each asset was sold. Or, taxpayers can apply the rules mentioned above for pass-through K-1 capital gains, including Section 1231 gains.

The opportunity zone final regulations do not explicitly suspend Section 1231(c) losses. Therefore, electing opportunity zone treatment for current year Section 1231 gains is even more valuable for taxpayer's with Section 1231(c) losses since the recapture amount is treated as ordinary income.

5. Regulated Investment Company and Real Estate Investment Trust Dividends

Taxpayers who receive dividend distributions from a regulated investment company, or RIC, or from a real estate investment trust, or REIT, can start their 180-day period at the end of their tax year. The final regulations added that taxpayers can elect to start the 180-day period on the date their dividends are actually received. The 180-day period for undistributed dividends starts on the taxpayer's year-end or the RIC/ REIT's year-end, at the election of the taxpayer.

6. Capital Gains From Installment Sales

The proposed regulations required taxpayers that had capital gains from installment sales to start their 180-day countdown period on the date of sale, provided the assets were owned directly, or to apply the pass-through rules (starting at year-end) if the gains were coming from a K-1. However, this method proved unfair to taxpayers that had to start their 180-day countdown before they actually had the cash in hand to invest into a QOF. Under the final regulations, taxpayers can delay starting their 180-day countdown until the date on which they receive their installment money.

Somewhat surprisingly, the final regulations also clarified that capital gains resulting from pre-2018 installment sales that involve post-2018 payouts now qualify for opportunity zone participation. This ruling allows taxpayers to start a new 180-day period each time an installment payment is received. The 180-day period for pass-through capital gains and Section 1231 installment gains is now treated as though it starts either on the date that the installment money is received, or on the date of the pass-through' s year-end, or on the original due date of the pass-through entity's tax.

7. No 180-Day Safe Harbor

Unfortunately, neither Treasury nor the IRS has provided any relief for a missed 180-day deadline, but they may do so in the future.

8. Further Election Issues

A taxpayer can elect to use either the proposed regulations, or the final regulations. However, once a method is chosen, taxpayers must apply the rules consistently throughout. For example, under the proposed regulations, net Section 1231 gains that were recognized in early 2019 by an individual taxpayer could be invested into a qualified opportunity fund on or after Dec. 31, 2019, and by no

later than June 27.

If a taxpayer invested gross Section 1231 gains prior to Dec. 31, they would want to elect early application of the final regulations. Otherwise, they would have an ineligible qualified opportunity fund investment. Making this election means that all final opportunity zone regulation rules apply to them. Individual investors and the qualified opportunity fund and QOZB can make independent elections on the regulatory effective dates. Therefore, careful analysis is required for the initial filings.

Note that each taxpayer's facts and circumstances need to be analyzed carefully in order to identify the 180-day deadline. Missing the deadline could be detrimental. As noted above there is currently no extension or safe-harbor available if you miss the 180-day qualified opportunity fund funding deadline. Therefore, all tax advisers need to be aware of these rules and discuss them with their clients as soon as possible. However, the final regulations are generally much more taxpayer-friendly than the proposed regulations, and they can serve as very helpful tax-savings or tax planning tools.

By Alejandra Lopez · April 21, 2020, 6:24 PM EDT

Alejandra Lopez is a tax manager at Holthouse Carlin & Van Trigt LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] See our comprehensive overview of the opportunity zone program here: https://www.hcvt.com/services-Federal-Qualified-Opportunity-Zone.html.

McConnell Supports Giving States Bankruptcy Access.

Senate Majority Leader favors bankruptcy option over giving states more federal aid as they grapple with coronavirus

Senate Majority Leader Mitch McConnell said Wednesday that he supports the idea of allowing states to use bankruptcy protection to cut their debts instead of supporting them with more federal aid.

Cities and smaller public entities have historically used bankruptcy protection to reduce pension obligations, bond debt and other financial burdens. But bankruptcy is a tool currently off-limits to state leaders. Federal law doesn't give states a bankruptcy option and Congress isn't actively considering any such proposal.

On a syndicated talk radio show, Mr. McConnell, a Republican from Kentucky, floated the idea of opening bankruptcy as a potential option for states that have struggled with pension debt even before the public health crisis caused by the new coronavirus. The pandemic has battered local economies, causing steep declines in sales taxes, transit fees and other sources of municipal revenue.

Bankruptcy protection "saves some cities, and there's no good reason for it not to be available" to states, Mr. McConnell said.

He said he doesn’t favor using federal assistance money borrowed “from future generations” to fill in state budget gaps.

Leaders on Capitol Hill are discussing how to help states and municipal governments cope with financial damage caused by the pandemic, which has led to businesses being closed and millions of employees being laid off. The next round of federal stimulus legislation is expected to focus on municipal assistance.

In a letter to Congressional leaders on Tuesday, the National Governors Association asked for $500 billion in direct federal aid to make up for a decline in revenues that pay for state programs related to health care, education, public safety and transportation. The letter didn’t mention pension struggles that some states faced before the pandemic.

For years, many states and cities have promised pension benefits to employees based on optimistic investment return projections and have sometimes skimped on annual retirement fund contributions. The shortfalls are particularly severe for New Jersey, Kentucky and Illinois.

Illinois alone is $234 billion short of what it needs to pay promised benefits, according to an estimate by Moody’s Investors Service.

Any legislation that enables states to use bankruptcy could give state officials debt-cutting power similar to what some cities have used, though some scholars contend that such tools may not be constitutional. Roughly half of U.S. states enable their cities and other municipal entities to use chapter 9 protection, the type of bankruptcy designed for public bodies.

Many high-income American households invest in the bonds of cities and states because the interest is exempt from federal and state taxes. Those municipal bondholders have taken haircuts in past city bankruptcies.

The municipal bond market largely shrugged off Mr. McConnell’s comments Wednesday. Bonds issued by Illinois and New Jersey continued to trade at the same spread to triple-A rated debt as the day before, according to Refinitiv data. Both states already pay elevated interest rates as a result of their high liabilities.

Detroit’s $18 billion bankruptcy in 2013 marked the largest filing by a city in U.S. history. The 680,000-resident city blamed tax revenue that fell after the real estate crash and the city’s population decline. Its bankruptcy-exit deal cut $7 billion in debt owed to Wall Street firms, city retirees and others.

Puerto Rico filed for bankruptcy in 2017 after Congress passed a law permitting the territory to access bankruptcy protection.

Federal judges in charge of Detroit’s case, along with the bankruptcy filing of Stockton, Calif., ruled that worker pensions could be cut as part of the restructuring process. Before those filings, legal experts disagreed on whether city leaders had that power.

The Wall Street Journal

By Katy Stech Ferek and Heather Gillers

April 22, 2020 8:22 pm ET

Bid to Let States Go Bankrupt Met Rapid Demise a Decade Ago.

- **Senate Leader McConnell voices support for idea in interview**
- **Governors, Wall Street, lawmakers, unions blasted it before**

The last time America's states were in the throes of a crippling fiscal crisis, an idea was floated in Washington to help them swiftly bring it to an end: let them file for bankruptcy and escape from the trillions of dollars owed to bondholders and retired public employees.

It was immediately condemned by Wall Street investors, public employee unions and Republican and Democratic governors, who said it was unnecessary and would saddle them with rising interest rates by spooking the bond market. The discussion was dropped after a single hearing in the U.S. House of Representatives.

But on Wednesday, with the nation's state capitals again facing massive budget shortfalls because of the stalled economy, the idea resurfaced when Senate Majority Leader Mitch McConnell voiced support for it during a radio interview.

"I would certainly be in favor of allowing states to use the bankruptcy route," McConnell, a Republican from Kentucky, said during an interview on the Hugh Hewitt show. "It saves some cities. And there's no good reason for it not to be available."

The comments came as Congress considers extending aid to cities and states that are seeing tax revenue disappear as wide swaths of the economy are shut down. The resulting budget gaps could force deep spending cuts that would exert a drag on any recovery. Governors alone have asked for $500 billion to help soften the blow of what could be the worst fiscal crisis they have faced in decades, with cities also requesting funds.

But allowing states to file for bankruptcy is unlikely to gain much support, given the near universal opposition it faced a decade ago. Then, states were quick to say it was unneeded: With the broad power to raise taxes, no state has defaulted on its debt since the Great Depression. Even only a handful of struggling cities resorted to bankruptcy during the last contraction, since it was seen as a last resort that would hobble their ability to raise money for public works.

Matt Fabian, a partner with Municipal Market Analytics who testified before Congress during the House hearing in 2011 when state bankruptcy was last raised, said it's just an effort to sidestep the discussion about extending aid.

"That's just a red herring," he said of McConnell's comments. "State bankruptcy is probably not possible under the U.S. Constitution, and there's even less chance that Congress would attempt to allow it. The Senator's statement is really about the likelihood of his caucus providing more aid directly to the states than it is about state bankruptcy."

"Once you start talking about state bankruptcy being a better option than more federal assistance, you're really saying you don't want to provide more federal assistance," he said.

There has been little speculation on Wall Street that states will be unable to pay their debts because of the coronavirus pandemic, even though it's expected to increase the financial strains on already struggling states such as New Jersey and Illinois. While municipal bond prices tumbled last month during waves of panicked selling, they rebounded after Congress enacted the $2.2 trillion stimulus bill.

Eric Friedland, director of municipal research at Lord Abbett & Co LLC, said that McConnell's comments, while "unsettling," are unlikely to create panic among municipal bond investors.

On Wednesday, yields on top-rated 10-year bonds rose 6 basis points to 1.21% while yields on the longest-dated debt climbed 6 basis points to 2.04%.

Democrats unsuccessfully pushed for state aid in the interim rescue package that passed the Senate on Tuesday. McConnell took credit for blocking that, saying there should be a "fulsome" discussion among all senators on whether and how to send more aid to state and local governments and what that money should be spent on.

"My guess is their first choice would be for the federal government to borrow money from future generations to send it down to them now so they don't have to do that," he said of states. "That's not something I'm going to be in favor of."

Bloomberg Business

By William Selway and Danielle Moran

April 22, 2020, 9:33 AM PDT

— With assistance by Amanda Albright

U.S. State Bankruptcy Was a Farce Then and Now.

Mitch McConnell tries to revive a long-dead idea that would counteract the government's relief efforts.

No one was asking, but it turns out a global pandemic isn't enough for Senate Majority Leader Mitch McConnell to take a break from fretting about purportedly "borrowing money from future generations."

Never mind that the three-month-old coronavirus crisis has led to more than $2.3 trillion in congressional appropriations, to say nothing of the $484 billion relief package that passed the U.S. Senate on Tuesday. Much of those funds, after all, aided small businesses and hospitals, sent direct payments to families and expanded unemployment insurance. All of this promises to blow an almost $4 trillion hole in the federal government's 2020 budget.

Apparently, helping out U.S. states is a bridge too far for the Kentucky Republican. In a response to a question on the syndicated Hugh Hewitt radio program, McConnell declared, "I would certainly be in favor of allowing states to use the bankruptcy route." He added that "it's saved some cities, and there's no good reason for it not to be available." Hewitt singled out California, Illinois and Connecticut, three states that just so happen to reliably vote Democratic (no mention of New Jersey, repeatedly downgraded during Republican Governor Chris Christie's eight years).

McConnell went on:

> "My guess is their first choice would be for the federal government to borrow money from future generations to send it down to them now so they don't have to do that," he said. "That's not something I'm going to be in favor of."

> "I said yesterday we're going to push the pause button here, because I think this whole business of additional assistance for state and local governments needs to be thoroughly evaluated," McConnell added.
>
> "You raised yourself the important issue of what states have done, many of them have done to themselves with their pension programs," he said. "There's not going to be any desire on the Republican side to bail out state pensions by borrowing money from future generations."

Again, never mind that an article from the latest Bloomberg Businessweek magazine is about how seven years after bankruptcy, Detroit is once again staring down a huge budget shortfall that puts it on the brink of a state takeover. Far from a panacea to get out from under onerous obligations, municipal bankruptcies have proved to be so messy, costly and time-consuming that they're often not enough to solve the underlying issues. Case in point: Puerto Rico.

McConnell's idea isn't a novel one by any means. The idea of state bankruptcy was raised after the last recession, too, including by David Skeel, who now sits on the Financial Oversight & Management Board for Puerto Rico. He wrote an article for The Weekly Standard in November 2010 titled "Give States a Way to Go Bankrupt." When I asked him about it in December 2011, after muni bonds posted a 10.7% return and a meltdown never materialized, he said "the political enthusiasm for the state bankruptcy idea has temporarily dimmed." That's one way of putting it. Here's another from Bloomberg News's William Selway and Danielle Moran: It was dropped after a single hearing in the House of Representatives.

The concept of state bankruptcy as a solution to get through this unprecedented period is little more than a farce. Even President Donald Trump appears to realize that. After meeting with Governor Andrew Cuomo of New York on Tuesday, he said that states will need assistance, adding that "I think most Republicans agree, too, and Democrats." Governors have asked for some $500 billion.

As much as McConnell tries, this is not about profligate Democratic governors and their underfunded public pension funds. At a basic, fundamental level, many states will have to impose draconian austerity measures without federal support because governors need to balance their budgets. That means either more state employees joining the ranks of the unemployed, higher tax rates (and therefore less money changing hands in local economies), further neglect of critical public infrastructure improvements, or once again shortchanging the pension promises of tomorrow to make the numbers add up today. Potentially all of the above.

Withholding state support, in other words, would directly counteract the measures that McConnell and his fellow senators have already set in motion to bolster the American economy. What good is a $1,200 check if states are backed into raising taxes that take most of it away? Will small businesses bounce back if their neighbors are unemployed, or local roads and bridges remain decrepit?

Fortunately, while McConnell and Republican senators have a "fulsome" discussion on whether and how to send more aid to state and local governments, the Federal Reserve has taken the unprecedented step I advocated for a year ago and will buy up to $500 billion in muni bonds. It was almost too predictable how this would play out:

> The easy answer would be directing more cash from the federal government to the states. But the 2009 stimulus program already transferred an unprecedented amount of money into state coffers and the results were middling at best. In the current political

> climate, and with U.S. deficits already running close to $1 trillion, it's anyone's guess whether a similar package could come together.
>
> That means it might be up to the the Fed to get involved in the $3.8 trillion municipal-bond market to give states a much-needed boost.

For now, the muni market can take some solace in knowing the Fed has its back. That should prevent any sort of wild swings like last month. And it buys some time for House Speaker Nancy Pelosi, who said on Bloomberg TV on Wednesday that a "major package" of aid for state and local government will be in the next stimulus legislation considered by Congress, putting her clearly at odds with McConnell.

For all the posturing, no politician truly wants to impose austerity. Just before the 2018 midterm elections, McConnell brought up the idea of slashing spending on Social Security, Medicare and Medicaid, and that's gone nowhere. Expect the same for state bankruptcy.

Bloomberg Opinion

By Brian Chappatta

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Brian Chappatta is a Bloomberg Opinion columnist covering debt markets. He previously covered bonds for Bloomberg News. He is also a CFA charterholder.

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Opportunity Db

April 22, 2020

McConnell State Bankruptcy Remarks Raise Constitutional Questions.

Municipal finance experts say that it may be unconstitutional for Congress to allow states to declare bankruptcy, and that even if it is constitutional, it would be a bad idea.

Experts on state and local government finances say that Congress may not have the right to grant states the ability to file for bankruptcy under the Constitution. They also argued that bankruptcy wouldn't be particularly helpful in addressing states' coronavirus-related challenges.

"Bankruptcy is just not a viable solution to the issues state and local governments are facing," said Michael Decker, senior vice president for federal policy at the Bond Dealers of America.

People are talking about the issue because Senate Majority Leader Mitch McConnell (R-Ky.) this week suggested it would be better for states to be able to declare bankruptcy rather than have the federal government provide more money to help them through the coronavirus crisis.

"I would certainly be in favor of allowing states to use the bankruptcy route," he said on conservative talk show host Hugh Hewitt's program.

"There's not going to be any desire on the Republican side to bail out state pensions by borrowing money from future generations," he added.

A senior Senate GOP aide said McConnell's comments came after he was asked specifically about the issue. The leader doesn't see allowing states to file for bankruptcy as being a priority for the next coronavirus bill and is well aware of the law. But the aide said McConnell's larger point was that some states were in tough financial straits due to prior mismanagement or overspending.

The U.S. bankruptcy code does not include provisions that allow states to declare bankruptcy. Local governments have the ability to file for bankruptcy under Chapter 9 of the code, but only if their state authorizes them to do so.

Very few localities have filed for bankruptcy over the years, with the most prominent recent example being Detroit in 2013. Congress passed a law in 2016 that created a bankruptcy-like process for the federal territory of Puerto Rico.

Professors who have studied the issue say there would be obstacles to Congress allowing states to declare bankruptcy, and that a law on this topic would likely spur a legal case that would likely go to the Supreme Court.

Kenneth Katkin, a law professor at Northern Kentucky University, said that a law about states filing for bankruptcy would set up a debate over whether Congress's ability to write bankruptcy laws preempts the prohibition in the Constitution on states impairing their own obligations under contracts.

"It's not clear how the court would rule," he said.

Others have suggested that there could be concerns about whether allowing states to file for bankruptcy would conflict with the 10th amendment of the Constitution, which states that powers not delegated to the federal government nor prohibited for states are reserved to the states.

Municipal finance experts also said that even if a law on state bankruptcies was found to be constitutional, it would be an unwise policy because it would make it harder for states to sell bonds used to finance capital projects.

Such a law "would upend the traditionally low borrowing costs of state and local governments," said Richard Ciccarone, president of Merritt Research Services.

Frank Shafroth, director of the Center for State and Local Government Leadership at George Mason

University, said that if states could declare bankruptcy, it would allow state politicians to pass off some decision-making to a judge.

“It would save too many governors and state legislators from making hard decisions,” he said.

Experts also said that bankruptcy might not be a particularly helpful remedy for the challenges states are experiencing due to the coronavirus crisis. Because of the pandemic and measures taken to reduce the number of infections, states have new spending needs and are facing a decline in tax revenues.

Eric Kim, head of the state government group at Fitch Ratings, said that companies will file bankruptcy to address long-term liabilities, but states’ main issue is currently the economy and lower revenues rather than long-term liabilities.

“Declaring bankruptcy doesn’t fix the economy,” he said.

States have been asking for additional funds from the federal government, not the ability to seek bankruptcy protection.

The National Governors Association earlier this week asked Congress for $500 billion in direct aid to states to replace their lost revenue. The group’s leaders, Maryland Gov. Larry Hogan (R) and New York Gov. Andrew Cuomo (D), have both blasted McConnell’s comments on bankruptcy.

Brian Sigritz, director of state fiscal studies at the National Association of State Budget Officers, said states on the whole were in a strong fiscal position prior to the coronavirus-related economic downturn, experiencing strong revenue growth and putting more money into their rainy-day funds.

“They had been taking steps to prepare for the next downturn,” he said. “No one was planning for a decline like this.”

McConnell expressed concerns about state pensions. Some experts said that while some states have pension challenges, pension funds are not overall a major burden.

“State pensions generally actually are in pretty good shape,” Kim said. He added that in the long run, state pensions could be affected by market declines, but the current pressing problem for states is revenue losses, not pensions.

However, desire among state politicians for pension relief from Congress is not zero. Last week, Illinois state senate president Don Harmon (D) sent a letter to the state’s congressional delegation asking for $10 billion in pension relief, arguing that state pension payments crowd out funding for other services and that the crowding out will be exacerbated this year due to revenue losses. Illinois is among the states with the biggest pension issues.

Additional aid to states is becoming a key issue in the debate in Congress over subsequent coronavirus relief legislation.

Funding for states is a top priority for many Democrats, who want quick congressional action on another bill. But McConnell has said he wants to take a “pause” to see which parts of previous bills are working and which are not.

“I think this whole business of additional assistance for state and local governments need to be thoroughly evaluated,” McConnell told Hewitt on Wednesday.

Karol Denniston, a municipal bankruptcy lawyer at Squire Patton Boggs, said that McConnell's comments to Hewitt are starting a conversation about what other options might exist besides additional federal money for state and local governments, even if bankruptcy isn't the best alternative.

McConnell's comments have "opened up the discussion," she said.

THE HILL

BY NAOMI JAGODA – 04/25/20 12:50 PM EDT

U.S. State Bankruptcy Push Would Disrupt Municipal Bond Market - BofA

CHICAGO, April 24 (Reuters) – Allowing U.S. states to file for bankruptcy is not the way to deal with deep financial problems the governments are facing from the COVID-19 economic disaster, and would knock down the municipal bond market, BofA Global Research said on Friday.

In a research report BofA said the $3.8 trillion muni market where states, cities, schools and other issuers sell debt would "certainly sell off" if the idea garnered support.

U.S. Senate Majority Leader Mitch McConnell on Wednesday brought up state bankruptcy as a preferred alternative to sending more federal money to the governments to plug their budget holes and potentially pay for pensions. President Donald Trump on Thursday said his administration would look at the idea.

Several Democratic governors slammed the notion as irresponsible. Municipal market analysts said the move would face big political and constitutional hurdles and was unlikely to gain traction.

"It will be highly disruptive to the municipal bond market broadly and will result in significantly higher borrowing rates at a time when those costs are least absorbable," the BofA report said.

It added states would not likely opt for bankruptcy for fear of hurting their market access and that most municipal bankruptcies have resulted in a better treatment for pensions than bondholders.

Currently, only cities and other local governments can use Chapter 9 municipal bankruptcy to restructure their debt if allowed by their states. Puerto Rico, a U.S. commonwealth, commenced a form of municipal bankruptcy in 2017 after the U.S. Congress authorized it.

The National Governors Association has been pushing for $500 billion in federal money to replace revenue lost by states. The $2.3 trillion federal CARES Act allocated $150 billion to states and local governments exclusively to cover virus-related expenses.

With social distancing and stay-at-home orders in place around the nation aimed at slowing the virus' spread, nonessential businesses and services have shuttered, leading to skyrocketing unemployment and lower consumer spending. As a result, cities and states are starting to project deep revenue losses, particularly for big money generators like income and sales taxes

In addition, the stock market downturn could push overall state pension debt to an all-time high, according to a new report from The Pew Charitable Trusts. With 75% of state pension assets invested in stocks and alternative investments, pension debt, currently at $1.2 trillion, could climb

by $500 billion, absent positive returns in the next three months.

By Karen Pierog

April 24, 2020

(Reporting by Karen Pierog in Chicago Editing by Alden Bentley and Matthew Lewis)

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NABL Webinar: Financings of Charter Schools

NABL just released its latest webinar "*Financings of Charter Schools*" in the 201 Series on NABL U Now. This webinar explores some of the issues associated with financing charter schools, including: how charter schools are structured, various types of financing charter schools usually undertake, certain state specific issues you need to consider and disclosure issues. Panelists, Leah Sandbank, McManimon, Scotland & Baumann, LLC, and Sarah C. Smith, McCarter & English, LLP, pose two hypotheticals to illustrate the types of issues practitioners encounter in charter school financing.

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