Fitch: State and Local ARPA Uses Illustrate Broad Budgetary Flexibility

Fitch Ratings-New York-18 January 2022: Initial allocations of the $350 billion in direct aid available via the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to state and local governments under the American Rescue Plan Act (ARPA) reflect the law's wide discretion and governments' generally robust ability to manage budgets, says Fitch Ratings. Many state and local governments are adjusting budgets to minimize potential credit risks of relying on one-time federal aid for operating support. Additionally, the majority of SLFRF remains unspent, providing governments with an important fiscal cushion.

Data regarding SLFRF appropriations remains difficult to compare accurately across jurisdictions with official reports somewhat dated. Fitch reviewed spending plans filed with the US Treasury Department (Treasury) last summer and ARPA spending compilations from the National Conference of State Legislatures, National Association of State Budget Officers, Council of State Governments and the Center on Budget and Policy Priorities. Additional data will become available following upcoming federal reporting deadlines on Jan. 31 (states and large locals) and April 30 (all others). Local government SLFRF allocation trends will be difficult to assess until then.

Fitch estimates approximately half of states' SLFRF funds have been programmed. A much smaller share has actually been spent, with most allocations spanning multiple years. Approximately 70% of the total $350 billion has been distributed by Treasury, with the remainder expected in 1H22. The final SLFRF rule published on Jan. 6 is largely consistent with the interim rule released last spring. Restrictions against directly using SLFRF for debt repayment and reserve replenishment remain in place.

Despite strong economic and fiscal recoveries, states have allocated between $10 billion to $20 billion for 'revenue replacement', the largest category to date of the four primary ARPA-authorized uses. Treasury guidance allows revenue replacement to cover any government services, a very broad authorization, and also allows for streamlined reporting and compliance with this designation. One-time revenue replacement poses the risk of creating fiscal cliffs for state and local governments if it directly funds recurring operating needs.

In many cases governments allocating SLFRF for revenue replacement are separately forecasting budget surpluses or significant one-time expenditures, thereby mitigating credit risk. Given the flexibility of revenue replacement uses, governments can apply SLFRF dollars to operating needs and subsequently apply state-source revenues to other uses, such as debt repayment or reserves.

California and Illinois are among the states that allocated the most toward revenue replacement, $8.6 billion and $2.0 billion, respectively, with California projecting large surpluses over the next few years and Illinois budgeting to use state dollars to pay down liabilities. California's Legislative

Analyst Office projected operating surpluses of $3 billion to $8 billion annually through fiscal 2026 in its November 2021 fiscal outlook report. Illinois' fiscal 2022 enacted budget includes $1 billion to pay down federal pandemic loans, which the state completed earlier this month, and $900 million to repay interfund borrowing.

Up to 10 states have not made any allocations of SLFRF funds, as is the case with many local governments, and most allocated funds have not actually been spent. While Fitch anticipates continued economic and revenue growth in 2022 in the US, pandemic uncertainty and inflation remain downside risks, and the fiscal cushion provided by unallocated or unspent SLFRF will support state and local governments' fiscal resilience in the near term.

Disputes around SLFRF use, including lawsuits against Treasury's rule prohibiting the use of SLFRF to fund tax cuts and the federal government's challenge of Arizona's allocation of funds in ways that may conflict with federal public health guidance for schools, are not expected to affect credit as SLFRF funding is not a key rating driver for most governments.

Contacts:

Eric Kim
Senior Director, US Public Finance
Head of US State Ratings
+1 212 908-0241
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019

Sarah Repucci
Senior Director, Fitch Wire
Credit Policy – Research
+1 212 908-0726

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

GOP Governors Resist Biden's Attempts to Restrict Infrastructure Spending.

They're cautioning the White House against pushing "a social agenda" under the public works law.

Sixteen Republican governors pushed back at the Biden administration over its plans for how to dole out money coming from a new federal infrastructure law.

"We ask that your administration not burden states or private sector partners with needless and unnecessary red tape," the Republican governors wrote in a letter sent to Biden on Wednesday.

“Excessive consideration of equity, union memberships or climate as lenses to view suitable projects would be counterproductive. Your administration should not attempt to push a social agenda through hard infrastructure investments and instead should consider economically sound principles that align with state priorities,” the Republican governors added.

Continue reading.

Route Fifty

By Daniel C. Vock

JANUARY 20, 2022

Biden's Infrastructure Czar Offers Tips for Cities Seeking Grants.

Mitch Landrieu, a former mayor, suggested that local governments can act now to prepare for competitive funding programs available under the new $1.2 trillion public works law.

The senior White House advisor tasked with overseeing the recently approved $1.2 trillion infrastructure package says there are immediate steps cities can take that could help them compete for grants federal agencies will award under the law.

“You don’t have to wait,” Mitch Landrieu, former mayor of New Orleans, told members of the U.S. Conference of Mayors on Friday.

For instance, he said city leaders should make sure proposed road and bridge projects are part of their regional planning organization’s transportation improvement plan. Additionally, he said, they could determine where they’d like to install electric vehicle chargers, map and inventory lead pipes that need to be replaced, and work with states to identify broadband gaps.

He also suggested that mayors preparing to pursue grant funding should loop in their congressional representatives as allies—even if those lawmakers voted against the infrastructure legislation. “Even those that voted no, still want the dough,” he quipped.

The mayors group was gathering in Washington, D.C. this week for its annual winter meeting.

Landrieu, who served as Conference of Mayors president from 2017-18 during his mayoral tenure, was sympathetic to concerns among city officials that major funding streams from the public works law will go to states, rather than directly to cities.

“I know that for some of you in this room the fact that the money has gone to the states gives you headaches … and it may not easily trickle down to your community,” he said. “You’ve got to do your work on that level, to make that happen and to make your case.”

Landrieu urged attendees to pick up a fact sheet available at the meeting in Washington, D.C. meant to provide a thorough list of the competitive grant programs that the infrastructure law includes for cities. He said a more detailed guide for states and localities, covering different programs in the package, would be released in the coming weeks.

And he said his team was working on developing a “technical assistance pipeline” to help cities through grant application processes, acknowledging that, especially for smaller cities with limited staff, applying for federal funding can be a heavy lift.

Route Fifty

By Bill Lucia

JANUARY 21, 2022

MSRB Launches Emma Labs as the Regtech Innovation Sandbox for the Future Of Municipal Bond Market Transparency.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today launched EMMA Labs, its innovation sandbox for transparency enhancements for the $4 trillion municipal securities market. EMMA Labs enables investors and other market data users to test and develop prototypes collaboratively and provide feedback. The goal is to enhance the utility and accelerate the deployment of potential data analytics tools on the MSRB's Electronic Municipal Market Access (EMMA®) website , which provides free public access to real-time trade data and disclosures from tens of thousands of state and local governments and other entities.

"We are excited about EMMA Labs' potential to drive collaboration with market participants and allow us to co-create the future of municipal market transparency," said MSRB Chair Patrick Brett. "EMMA Labs is a key part of the MSRB's strategic plan to leverage data to deepen market insights and facilitate regulatory modernization – and it opens up a technological pathway for engaging with stakeholders on opportunities for strengthening our market to serve the public interest."

EMMA Labs serves as a proving ground for functional prototypes, called Active Labs, that could ultimately be deployed on the EMMA website. EMMA Labs is debuting with two Active Labs:

- A keyword search engine that unlocks the information contained within hundreds of thousands of disclosures submitted to the EMMA website as unstructured PDFs, and
- A dynamic dashboard for market data analysis that empowers users to discover and visualize market trends.

"With EMMA data now in the cloud, we will increasingly be able to leverage technology to create powerful analytical tools that empower data users to better identify, visualize and understand market trends," said Brian Anthony, MSRB Chief Data Officer. "The first Active Labs are an invitation to collaborate: Any individual can create a free EMMA Labs account to provide feedback on prototypes, and we welcome ideas for future Active labs, tools and partnerships."

The MSRB will host recurring virtual Innovation Office Hours to discuss ideas submitted through EMMA Labs.

Date: January 19, 2022

Contact: Leah Szarek, Chief External Relations Officer
202-838-1300
lszarek@msrb.org

Will the OPEB Ostriches Ever Run Out of Excuses?

Many years ago, public financiers woke up to the problem of funding "other post-retirement benefits," but then some of them went back to sleep. Younger public employees should demand an actuarial wake-up call.

Flash back to 2004, when the governmental accounting community began to seriously address the balance sheet and cost-accounting liabilities for "other post-employment benefits" such as retiree health care in particular, but also certain life insurance and deferred compensation arrangements — benefits provided in addition to pension distributions and known by CFOs as OPEB.

It was a time when pension accounting was moving to the corporate model for expensing the benefits when earned and booking the liabilities on employers' balance sheets, and the practice of actuarial funding through pension reserve funds was well established. Although most systems had unfunded pension liabilities, they at least had some assets on their books. Even the commonwealth of Massachusetts, once notorious for "pay-as-you-go" can-kicking, had migrated to the pension pre-funding model in the 1980s.

But there and elsewhere, OPEB benefits were largely unfunded as a matter of practice, with many public employers relying on future taxpayers to cover the costs. That's a classic violation of the concept of intergenerational equity.

Continue reading.

governing.com

by Girard Miller

Jan. 18, 2022

Draft Companion Compliance Resources for Dealers and Municipal Advisors.

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) Notice 2021-12 requesting comment on draft companion compliance resources for brokers, dealers and municipal securities dealers and municipal advisors.

View the SIFMA comment letter.

Fitch Ratings Updates Public Finance and Global Infrastructure ESG Dashboard and Other Tools for 4Q21.

Fitch Ratings-New York/London-19 January 2022: Fitch Ratings has updated the Interactive ESG Dashboard for Public Finance and Global Infrastructure, the ESG Relevance Heatmap, and the Discovery Tool for 4Q21.

The dashboard shows the distribution of Fitch's ESG Relevance Scores (ESG.RS) for 2,750 issuers and transactions across the Global Infrastructure Group (Infrastructure), International Public Finance Local and Regional Governments (IPF LRG), IPF Government Related Entities (IPF GRE), and US Public Finance Tax Supported (USPF Tax) and USPF Revenue Supported (USPF Revenue) sectors.

Mexico City's Airport Trust (Grupo Aeroportuario de la Ciudad de Mexico, S.A. de C.V. [GACM]; BBB-/Stable) had its ESG.RS for Financial Transparency revised to '3' from '4' to incorporate the observed improvement in the quality of financial disclosure. The improvement was concurrent with a revision to GACM's Outlook to Stable from Negative, which reflect improved cash flow performance above Fitch's rating-case assumptions.

Labour-related budget pressure led to several French IPF GRE hospitals receiving a '4' in 'Labor Relations and Practices'. Higher compensation for employees was intended to improve the appeal of public hospitals.

Three Argentinian LRGs had ESG.RS lowered to '4' from '5' for 'Creditor Rights', including the Province of Neuquen (CC) and Municipality of Cordoba (CCC-), reflecting their improved willingness to service and repay debt obligations. The revision for the Province of Chubut (CC) reflected the completion of the province's distressed debt exchange in December 2020 and its adherence to the agreed-upon terms in 2021.

In USPF Revenue, North Miami Beach (FL) [Water Utility] (SCP: a+/Negative) had its ESG.RS revised to '5' from '3' for 'Management Strategy' due to an inefficient operational strategy that has resulted in rapidly escalating operating costs and variable financial performance.

The reports, 'ESG Public Finance Interactive Dashboard – 4Q21', 'Public Finance ESG Relevance Heatmap – 4Q21', 'Public Finance ESG Credit Discovery Tool – 4Q21', are available at fitchratings.com.

Marcy Block
Senior Director, Sustainable Finance
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019
+1 212 908-0239

Kwok Wan
Associate Director, Sustainable Finance
+44 20 3530 1593

Media Relations: Tahmina Pinnington-Mannan, London, Tel: +44 20 3530 1128, Email: tahmina.p-mannan@thefitchgroup.com

Additional information is available on www.fitchratings.com

[S&P: Navigating The Strengths, Challenges, And Best Practices In Sustainable Finance Frameworks And Transaction Documentation.]

Key Takeaways

- Reaching $960 billion in 2021, sustainable debt issuance continues to climb to impressive heights, but the credibility and legitimacy of sustainable debt instruments is still sometimes murky.
- Because the issuer assigns the "sustainable" label to a transaction, there are several factors that can set transactions or financing frameworks apart as stronger or weaker in our sustainable financing opinion analysis. In use of proceeds transactions and frameworks, these could include risk management and reporting practices, while for sustainability-linked they include KPI relevance and SPT ambition.
- The strengths and weaknesses that we have identified thus far in the market may soon look very different, and we expect the transparency and detail disclosed in documentation to increasingly go beyond minimum requirements as the push toward greater granularity in disclosure, from issuers, investors, and intermediaries, accelerates.

Continue reading.

18 Jan, 2022

S&P Outlook For U.S. Public Finance Housing: Strong Metrics Will Hold Up The Roof In 2022

Sector View: Stable

Our view remains stable as issuers and providers have proven resilient in managing their loan or property portfolios, with generally stable financial results. We expect elevated nonperforming assets from the sharp downtown in 2020 will resolve this year, and that stable performance will continue despite headwinds from inflation, the coronavirus, rising rates, and employment and supply chain challenges.

Continue reading.

18 Jan, 2022

S&P: Amid Price Volatility, Cost Recovery And Risk Management Are Key To Rating Stability For U.S. Municipal Gas Utilities

Key Takeaways

- Under ordinary circumstances, municipal gas utilities effectively use pass-through mechanisms to recover volatile and sometimes high costs of the commodity they sell, which helps preserve credit ratings. The rating distribution for U.S. municipal gas utilities (with most ratings in the 'A' category) reflects the strength of management's tools to mitigate price volatility.
- Extreme weather, such as this past February's polar vortex, can exacerbate natural gas price volatility, result in extreme unbudgeted costs for U.S. Municipal Gas Utilities, and affect credit quality.
- Given the rise in natural gas prices this fall, the use of risk management strategies by many municipal gas utilities help shield utilities and their customers from price volatility. Examples of

these strategies include the use of cost adjustment mechanisms, physical gas storage or other hedging practices, and maintenance of sufficient liquidity.

[Continue reading.](#)

18 Jan, 2022

[S&P Outlook For U.S. Municipal Utilities: Stable, With Expanding Operating Margins](#)

Sector View: Stable

Robust financial performance cushions the sector from near- and longer-term pressures. Rate-setting flexibility has long underpinned the strong financial performance that is the cornerstone of the sector; however, we believe affordability concerns could limit this strength for some. Asset resilience will be critical in meeting climate-related challenges.

[Continue reading.](#)

19 Jan, 2022

[S&P Outlook For Global Not-For-Profit Higher Education: Out Of The Woods, But Not Yet In The Clear](#)

U.S. Sector View: Stable

After four years of it being negative, we have revised our sector view for U.S. higher education to stable. Most colleges and universities have successfully responded to the pandemic, with significant help from federal emergency funding and record investment gains in fiscal 2021. A return to on-campus learning in fall 2021 buoyed tuition and auxiliary revenues, but the effectiveness of health and safety measures will be critical to continued in-person learning amid new variants. While financial flexibility has improved, additional risks remain, such as inflation and enrollment pressures. Schools with weaker demand and financial profiles still have less operating flexibility and could face credit deterioration. Notably, despite their worst crisis in decades, no rated colleges or universities defaulted on their debt.

[Continue reading.](#)

20 Jan, 2022

[Federal Policies Help Spur Municipal Bond Market, but Headwinds Remain.](#)

Analysts are generally optimistic about the stability of government finances, but lingering issues—Covid, inflation and supply chain bottlenecks—pose economic and fiscal risks in the short term.

Municipal bond analysts are generally optimistic about the stability of state and local government finances in 2022, largely thanks to the influx of federal funding over the past two years. But lingering issues including the rapid spread of the omicron variant, accelerating inflation and supply chain bottlenecks still pose economic and fiscal risks to governments in the short term.

Bond issuance last year totaled $476 billion, a slight decrease over 2020, which saw unusually heightened refinancing activity as governments tapped the market for cash to weather the onslaught of the pandemic. Ratings analysts expect government issuance this year to be comparable to 2021's total and predict that any year-over-year increase in activity is likely to be driven by new debt.

The $350 billion in fiscal recovery funds to governments from the American Rescue Plan has played a big role in stabilizing the revenue picture by providing money to offset decreases in revenue. More recently, the passage of the Infrastructure Investment and Jobs Act represents $550 billion in new, one-time funding that can either supplement state and local infrastructure project costs or pay for them outright.

Continue reading.

Route Fifty

by Liz Farmer

JAN 19, 2022

Muni Credit Improves With Upgrades Outpacing Downgrades in 2021.

- **Fitch Ratings recognizes slow but continued recovery**
- **Rates most muni sectors as stable heading into the new year**

More municipal bond borrowers were upgraded than downgraded last year, a shift from 2020 when state and local government credit took a hit in the early stages of the coronavirus pandemic.

In 2021, Fitch Ratings upgraded 95 U.S. public finance ratings and downgraded 91, compared to 101 and 181, respectively, in 2020, the company said in a report published Tuesday.

Last year was marked by "slow but continued recovery" after Covid-19 vaccines became widely available and many pandemic-related restrictions were lifted, wrote Arlene Bohner, head of U.S. public finance ratings, and her colleagues in the report. "Economic and fiscal recovery continued to out-pace projections in most locations, in some cases by considerable margins."

In the coming year, the company expects slower but above average U.S. economic growth with inflation and supply chain disruptions posing headwinds. In addition, the recent spike in virus infections poses risks to the leisure and travel industry; college and university enrollment; and staffing for hospitals and life plan communities, the group said.

The company is "stable" on most sectors of the $4 trillion municipal bond market with improving trends most evident in U.S. states, not-for-profit hospitals and higher education sectors. Fitch didn't downgrade any states in 2021, compared to cutting four ratings at the height of the pandemic in 2020. Four states — New Jersey, Ohio, Illinois and Michigan — had a positive outlook as of the end of the fourth quarter, as bottom lines were bolstered by strong tax collections and the White House's

American Rescue Plan.

“States and local governments will benefit from their share of the hundreds of billions of dollars in direct aid provided under ARPA,” the report said. “Fitch anticipates this aid, the vast majority of which remains unspent and even unallocated, will provide cushion in the event of unexpected economic or public health setbacks.”

Bloomberg Markets

By Danielle Moran

January 18, 2022

Wall Street Stays Positive on Muni Debt as Retail Buyers Retreat.

- **State, local bond sales to pick up, with credit ratings solid**
- **Investors waver as imminent Fed rate increases sour demand**

The optimism Wall Street has for municipal bonds this year remains intact, even if the promise of higher interest rates is hitting munis almost as hard as other markets.

“There are aspects that are unique to the muni market and just looking at those, it’s poised to be a pretty good year,” said Daniel Solender, head of municipals at Lord Abbett & Co. “The economy is doing well, a lot of balance sheets are flush with cash from the stimulus. The true wild card is what is going to happen with rates.”

The $4 trillion municipal market is likely to benefit from a continued bounty of new bond sales and a strong credit environment, with states and localities bolstered by tax revenues and pandemic-era federal aid, a review of annual outlooks and interviews with analysts and investors at more than a dozen firms show.

The forecast for investor demand is less robust, with the Federal Reserve poised to raise rates to combat the fastest inflation in almost 40 years and U.S. tax increases less likely than anticipated last year. So far this year, tax-exempt municipal bonds have lost about 1.3%, after gaining 1.5% for all of 2021, and they are on track to post the worst monthly performance since February, according to Bloomberg’s benchmark index.

While January’s muni return isn’t all that attractive, it beats those of U.S. Treasury securities and investment-grade corporate debt, which have dropped 1.95% and 2.8% respectively, according to Bloomberg indexes.

“It’s likely that muni bonds won’t perform as well as they used to, but I don’t expect it to be a massively awful year,” said Cooper Howard, director of fixed income strategy at the Schwab Center for Financial Research.

A troubling sign is a recent drop in demand. Muni mutual funds saw $239 million withdrawn during the week ended Wednesday, halting a streak of 45 straight weeks of gains, according to Refinitiv Lipper US Fund Flows data. Municipal bond funds had a record amount of inflows in 2021, helped by anticipation of higher taxes from the Biden administration’s spending plans, some of which are now stalled in Congress.

“The likelihood that demand weakens is higher in 2022 than it was in 2021,” wrote Adam Stern, co-head of research at Breckinridge Capital Advisors in an outlook note published earlier this month.

In another signal of waning investor interest, about $1.4 billion of municipal bonds were being offered for bids from potential buyers on Thursday, the most since April 2020, according to a Bloomberg index.

“Treasuries are really in the driver’s seat,” Paul Malloy, head of municipals at Vanguard Group, said in an interview. “While fundamentals are really good, we expect munis to move alongside Treasuries.”

Still, most market professionals aren’t calling for a major retreat from the asset class.

“We believe that investors’ appetite toward munis will continue in 2022; however, should tax rates be lower than current expectation, there could be a mild pullback in demand,” according to Brian Rehling, Peter Wilson and Luis Alvarado at Wells Fargo Investment Institute, in a Jan. 18 strategy note. They have a “favorable” view of municipal bonds, saying that rising rate cycles by the Fed have historically been positive for the market.

Strong Issuance

Analysts agree that borrowing by state and local governments will continue apace. Municipalities sold a record of more than $460 billion of debt in 2021, according to data compiled by Bloomberg, and they’re likely to match or exceed that total this year.

“We’re off to a slow start but issuance will pick up,” said Solender of Lord Abbett. “Issuers have a lot of cash on their balance sheets. That may make governments more confident in issuing more bonds.”

States and local governments alone received $350 billion of stimulus aid from the federal government, not counting additional funds that flowed to other municipal borrowers like colleges and hospitals.

“Municipal credit enters the year on a strong footing, largely due to assistance of the federal government during the pandemic,” wrote Patrick Luby and John Ceffalio, municipal analysts at CreditSights, in a 2022 outlook note published on Jan. 19. Their “base case” is that credit will continue to improve as the economy recovers and the worst of the pandemic passes.

Investment Strategies

Peter Hayes and Sean Carney, municipal heads at BlackRock Financial Management Inc., one of the largest municipal bond investors, say the market will continue to outperform other fixed-income assets, even if returns are muted.

“While broader bond markets tend to struggle during periods of rising rates, munis have proven relatively resilient to interest rate increases,” Hayes and Carney wrote in a report to clients. “We will focus on defensive sectors and pay particular attention to bond structures, favoring those with higher coupons and shorter calls.”

The BlackRock managers advise investors to avoid bonds sold to finance speculative projects, like private train lines and retail shopping centers. “Many of these deals are extremely risky, with bondholders ultimately assuming equity-like risk for mid single digit yields,” they said. “We believe many of these projects are ‘uninvestable’ based on their upside down, risk reward profile.”

Schwab's Howard recommends lower-investment grade debt, those in the A or BBB rating tiers, because "credit concerns are relatively low right now," he said. He doesn't think investors are being properly compensated for the risk of taking on junk or unrated bonds.

And in a nod toward coming interest-rate increases, Thornburg Investment Management Inc. portfolio managers are "invested in more floating-rate notes, which will serve as a buffer to protect the short end of our portfolio if rates move higher," wrote Eve Lando, David Ashley and John Bonnell, adding "since spreads have been very narrow, we have preferred higher-quality credits over lower-quality ones."

Bloomberg Markets

By Danielle Moran

January 21, 2022

[Bankruptcy Woe Ends for Puerto Rico, But Not Wall Street: Joe Mysak]

- **Judge says auditing certain bond issues would be 'helpful'**
- **Oversight board sought to cancel $6 billion of bonds in 2019**

The Puerto Rico bankruptcy isn't over for Wall Street.

The commonwealth is poised to exit its Title III debt restructuring, after Judge Laura Taylor Swain approved the debt-reduction plan of the island's oversight board this week. And now for the unfinished business.

It's mentioned briefly on page 29 of the Findings of Fact and Conclusions of Law filed by the judge, in a footnote that's easy to miss if you aren't looking for it.

"Many residents of Puerto Rico, political leaders, and investors have called for specific auditing of the bond issues and the application of the proceeds of certain bond issues and/or prosecution of individuals or entities that may have misapplied bond proceeds," the footnote states. "Such inquiries could be helpful to Puerto Rico as it grapples with its past and moves toward the future."

But this reckoning isn't what these proceedings are about, the footnote continued. The oversight board, "in its capacity as the Debtors' representative, has focused on the identification of resources that can be marshaled for application to outstanding debts, and on reaching agreements to reduce outstanding debts without extensive further litigation."

And this has been accomplished, not quite seven years since Governor Alejandro Garcia Padilla announced in the New York Times that "the debt is not payable," which is my nomination for the first entry in any proposed Quotable Municipal Bond Market.

Debt Leader

Now it's time to find out how this happened. For me, Exhibit I of "this" is defined by the annual state debt medians report published by Moody's Investors Service, which showed how the U.S. territory of Puerto Rico, an impoverished Caribbean island of about 3.3 million people, led the nation when it came to per capita debt.

Every year Moody's would publish the list of 50 states and then way at the bottom, below the states and on a line all its own, would be Puerto Rico, "not included in any totals, averages, or median calculations but provided for comparison purposes only."

In 2004, for example, Connecticut had the most tax-supported debt per capita at $3,558. At the time, I wrote, "The actual No. 1 borrower isn't a state at all. Puerto Rico has $5,758 in net tax-supported debt per capita. That's a little scary." That was the first time I pointed out the incongruity, and I wished I'd done more with it back then.

But far worse was to come. The 2015 report showed that Connecticut still had the most tax-supported debt per capita, at $5,491, and Puerto Rico's had grown to $15,637. In terms of 2014 net tax-supported debt as a percentage of 2013 state gross domestic product, Hawaii topped the state list at 9.18%. Puerto Rico's was 53.85%.

How did this happen? How was Puerto Rico allowed to keep piling on the bonded debt that eventually swallowed the island up? Finding out, as the judge wrote, would be "helpful," as the island "grapples with its past and moves toward the future."

It may do well to keep in mind that back in 2019, the oversight board sought to repudiate $6 billion in full-faith-and-credit bonds because their issuance breached debt limits in the island's constitution. That particular gambit proved a useful negotiating tactic to seal creditor agreement, and otherwise went nowhere, but the board had a point.

The above-cited footnote concludes, "confirmation of the Plan does not preclude further investigations or law enforcement activity with respect to conduct in connection with the past issuance of debt and application of debt proceeds."

Bankers and underwriters may find themselves facing more questions about what happened in Puerto Rico.

Bloomberg Markets

By Joseph Mysak Jr

January 21, 2022

SEC Taking a Closer Look at Issuer Disclosure.

The Securities and Exchange Commission's acting director for its Office of Municipal Securities singled out disclosures related to its Rule 15c2-12 as an area the office is watching closely, following an academic study that found serious deficiencies in continuing disclosure.

Ernesto Lanza raised that subject in his remarks before the Government Finance Officers Association's Committee on Governmental Debt Management during GFOA's 2022 Winter Meeting.

"We think it needs to be more refined," Lanza said. "We think there's more to be looked into in that area. If there are ambiguities in the rules, we should have conversations around that. If there are people who need redouble efforts then we think they need redouble efforts," he added. "So that's an important thing."

The concern is over two 2019 amendments to SEC Rule 15c2-12, which require bond issuers to disclose the incurrence of a financial obligation of the issuer or obligated person, if material, in addition to any agreements to covenants, events of defaults, remedies, priority rights or other similar terms of a financial obligation of the issuer or obligated person, if material.

This matter caused some stir at the Brookings Municipal Finance Conference last year, when Federal Reserve economists Ivan Ivanov and Nathan Heinrich, in addition to the University of Cologne's Tom Zimmermann asserted that there was pretty significant underreporting under the two new provisions and that it remains a significant risk for investors.

Lanza acknowledged the Commission's efforts to quell the concerns that came out of the conference and further guidance on the issue may very well be on the way.

"We continue to think that disclosure is an important area to help provide some guidance," Lanza said.

A GFOA Committee Member remarked that during their time in the muni market, general disclosures have improved over time, but things are still not perfect. "We're always looking for ways we want to make it better," Lanza said. "And I think improvements are not across the board."

"I'd like to have some input and discussions around where the rough edges are," Lanza said. "Again, it looks relatively simple on paper but it is fairly complex to analyze what's in what's out and what needs to be disclosed." Lanza said.

The topic of disclosure eventually led participants to press Lanza on the Commission's as well as the Municipal Securities Rulemaking Board's efforts concerning ESG, a matter recently highlighted in the Board's request for information on ESG, which some believe is overstepping its boundaries and convoluting the matter even further.

"I think it's important for them to get whatever they think is important information and research and market input in order to make decisions on whether or not they undertake rulemaking or not," Lanza said.

"I don't adhere to the view that they can only ask questions on things that are directly related to a specific proposal that they're undertaking," he added. "I think they need to understand the marketplace to be able to undertake rulemaking."

But there is a line. "That doesn't speak to what they do with the information afterwards," Lanza said.

Ultimately the Commission leaves the MSRB to conduct its own fact finding mission if it hopes to provide further rulemaking on a particular issue. As for the SEC, there are no immediate plans to enact further rules, though they are keeping their eyes peeled.

"There's nothing on the agenda for us right at this moment, although we're obviously paying attention to that," Lanza said. "It can change from day to day in terms of what we're asked to do."

"It bothers me sometimes when sometimes, participants get the impression that there are certain comments that regulators don't want to hear," Lanza added. "We need to hear everything."

Lanza also said he champions efforts to provide more transparency in fixed income markets.

"There are existing transparency systems for post trade transactions," Lanza said. "We want to explore with the two SROs, FINRA and the MSRB, potential incremental improvements on the data flow, data quality, timeliness and the extent of the information."

"Clearly, those are areas that are not of direct concern to the municipal securities issuer community, but certainly have significant knock on effect in terms of efficiency of pricing, and that ultimately will have, if nothing else, potential impact on pricing and new issues down the line," he added. "We think that's an important thing to keep in mind."

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 01/24/22 01:12 PM EST

Treasury's Letter to Arizona May Impact Muni Issuance Disclosures.

The Department of the Treasury's Friday letter detailing its intentions to clawback some of Arizona's COVID-19 relief aid if the state doesn't redesign two of its pandemic-related programs may impact the disclosure of any state facing the prospect of a fight over those funds.

The American Rescue Plan Act's final rule on how its State and Local Fiscal Recovery Fund Program may be used included a provision which would deem programs, including using the stimulus funds to offset tax cuts, as "ineligible uses". The letter to Arizona Gov. Doug Ducey indicated that two programs, one being the $163 million grant program for schools that follow state laws banning public school mask mandates, would fall in that category.

"This is a unique situation since the letter was addressed to the state," said Eryn Hurley, deputy director of government affairs at the National Association of Counties. "Under ARPA, the state was allocated a portion of the funds and the counties were given their own allocations."

The American Rescue Plan Act allocated $65.1 billion to counties, which is separate from the state allocation and dispersed directly from the Treasury to the counties. Since the letter is addressing actions at the state level, its impact will largely stay at the state level and won't bleed into counties, Hurley said.

According to Dave Erdman, capital finance director for the State of Wisconsin, the Treasury's move to reign in Arizona shows they're willing to enforce the exact language on ARPA and SLFRF.

"From a municipal bond issuance perspective, it's clear that the Treasury will threaten and use these programs that came out of the ARPA," Erdman said. "But the biggest question is in regards to disclosure."

"How does a clawback of such need to be disclosed?" he added. "If the State of Arizona was going to do a public offering, or any state threatened with clawback, how do you get this information to investors, because it could be material."

A clawback at the state level could then affect future bond offerings, Erdman said, if a state was preparing an offering then gets hit with a clawback from Treasury.

"Treasury has to be careful when making those kinds of statements because it could scare investors and have an impact on the pricing of a transaction," Erdman said.

The Treasury letter gives the State of Arizona 60 days to remedy its two related programs, which from Ducey's Twitter response, doesn't seem likely.

"When it comes to education, President Biden wants to continue focusing on masks," he wrote. "In Arizona, we're going to focus on math and getting kids caught up after a year of learning loss."

"We will respond to this letter and we will continue to focus on things that matter to Arizonans," he added.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 01/18/22 02:47 PM EST

Fitch: Texas and Arizona Recover Pandemic Employment Losses

Fitch Ratings-New York-21 January 2022: As of November 2021, Texas and Arizona became only the third and fourth states to achieve pre-pandemic employment levels, according to Fitch Ratings.

"November saw solid state employment growth with the state median jobs recovery hitting 77 percent, a 2-percentage-points increase from the prior month," said Olu Sonola, Head of U.S. Regional Economics. "But these recovery trends, boosted by in-person education and greater return to in-person work, may be threatened by the still uncertain economic implications of the omicron variant."

California's recovery rate increased to 70 percent, a 2-percentage-points (pps) increase from the prior month. New York's recovery rate increased to 60 percent, a 1pps increase from the prior month. As of November 2021, 48 states have recovered over 50 percent of the jobs lost since the start of the pandemic. Utah and Idaho also hit pre-pandemic employment levels in February 2021 and December 2020, respectively.

The median Fitch-adjusted unemployment rate, which reclassifies people who have left the labor force as unemployed, marginally declined to 5.8 percent from 5.9 percent in October; however, the rate remains above the 4.2 percent median state official unemployment rate.

Notable increases in the Fitch-adjusted unemployment rate between June 2021 and November 2021 include New Hampshire at 6.0 percent from 5.2 percent, New York at 8.9 percent from 8.5 percent, and Nevada at 9.8 percent from 9.5 percent.

Leisure and hospitality, education and health services, and local government combined have been responsible for 50 percent or more of job losses nationally since February 2020.

For more information, a special report titled "U.S. States Labor Markets Tracker" is available at www.fitchratings.com.

Contact:

Olu Sonola
Head of U.S. Regional Economics
+1 212 908 0583
Fitch Ratings, Inc.
300 W 57th Street

New York, NY 10019

Nicholas Rizzo
Analyst
+1 212 908 0596

Media Relations: Elizabeth Fogerty, New York, Tel: +1 212 908 0526, Email: elizabeth.fogerty@thefitchgroup.com

Additional information is available on www.fitchratings.com

Rising Interest Rates Hit Municipal-Bonds Market

Investors expect climbing rates to fuel more volatility in the year ahead

Municipal bonds are off to their worst start since 2011.

The early-year bond rout has dragged returns on the S&P Municipal Bond Index to minus 1.1% through Jan. 20, counting price changes and interest payments. The loss is an early sign that rising interest rates could make 2022 rockier than last year, when federal stimulus and elevated demand from homebound savers led to record low volatility and historically high prices.

Now investors are eyeing those prices more warily. Muni bond mutual and exchange-traded funds took in a net $830 million through Jan. 19, compared with $6.1 billion last year, according to Refinitiv Lipper. After Fed officials indicated they could lift short-term rates sooner than expected, muni yields jumped alongside Treasury yields, with 10-year AAA muni yields rising to 1.28% Jan. 20 from 1.03% Dec. 30, according to Refinitiv Municipal Market Data. Yields rise as bond prices fall.

Continue reading.

The Wall Street Journal

By Heather Gillers

Jan. 23, 2022

TAX - VIRGINIA

Emmanuel Worship Center v. City of Petersburg

Supreme Court of Virginia - January 6, 2022 - S.E.2d - 2022 WL 52390

Taxpayer filed bill of review challenging issuance of decree of sale.

The Circuit Court dismissed bill. Taxpayer appealed.

The Supreme Court held that:

- Action underlying taxpayer’s bill of review sounded in equity, rather than being an action at law for which bill of review would be unavailable, and

- Fact that taxpayer would be barred by statute of limitations from bringing an action against city to challenge validity of assessments on property allegedly subject to the self-executing exemption for property owned by religious organizations did not preclude taxpayer's use of such exemption as defense to city's attempt to sell the property in a tax sale.

Action underlying taxpayer's bill of review, in which city sought to sell taxpayer's property to collect delinquent real estate taxes, sounded in equity, rather than being an action at law for which bill of review would be unavailable.

Fact that taxpayer would be barred by statute of limitations from bringing an action against city to challenge validity of assessments on property allegedly subject to the self-executing exemption for property owned by religious organizations did not preclude taxpayer's use of such exemption as defense to city's attempt to sell the property in a tax sale; it would be an absurd result if a locality could issue assessment against any tax-exempt property and then seek sale if taxpayer did not respond within limitations period.

TAX - NEW HAMPSHIRE

Appeal of City of Berlin

Supreme Court of New Hampshire - January 12, 2022 - A.3d - 2022 WL 108571

City sought judicial review of order of Board of Tax and Land Appeals (BTLA) determining that city over-assessed taxpayer, an electric utility company, and challenged BTLA's decision to apply Department of Revenue Administration (DRA) median equalization ratio for intended tax year instead of prior tax year to determine proportionality of city's assessment of taxpayer's hydroelectric facility.

The Supreme Court held that BTLA's decision was unjust and unreasonable.

Board of Tax and Land Appeals' (BTLA) decision to apply Department of Revenue Administration (DRA) median equalization ratio for intended tax year instead of prior tax year to determine whether tax placed on hydroelectric facility was disproportionately higher in relation to its true value than to other property in general in city was unjust and unreasonable; when agreeing to admit taxpayer's exhibit showing DRA median equalization ratio, BTLA expressly noted that, standing alone, it did not establish propriety of particular ratio for city, and taxpayer failed to introduce any evidence regarding general level of assessment in city or supporting its preferred equalization ratio.

Puerto Rico Released From Bankruptcy as Economic Problems Persist.

A federal judge approved the largest-ever restructuring of U.S. municipal bonds, easing the island's re-entry to capital markets

Puerto Rico received court approval to leave bankruptcy through the largest restructuring of U.S. municipal debt ever, ending years of conflict with creditors as the U.S. territory confronts other stubborn economic problems.

Tuesday's court ruling approved a write-down of $30.5 billion in public debts built up during an economic decline marked by high joblessness, outward migration and unsustainable borrowing that tipped Puerto Rico into bankruptcy in 2017. The restructuring plan calms tension between Puerto Rico and its Wall Street creditors dating to its debt default, the largest ever on bonds backed by the full faith and credit of a U.S. municipality.

In approving the bankruptcy plan, Judge Laura Taylor Swain overruled objections to the financial restructuring and said it enjoys “broad but not universal support” among affected creditors and will preserve Puerto Rico as a “viable public entity.”

The restructuring marks a win for the oversight board steering Puerto Rico’s finances, an unelected body that shares power with elected officials and has faced opposition from many of the island’s three million residents, who have referred to it as the “junta.” Judge Swain’s ruling doesn’t remove the board, which under federal law can only disband after four consecutive years of balanced budgets.

But slashing debt does free up cash for spending that would otherwise go to bondholders. Puerto Rico’s debt-servicing costs will fall to roughly $666 million for the next 10 years, from $2.1 billion before its default. Creditors will receive $7.4 billion in new debt and $7 billion in cash, as well as tradable securities known as contingent value instruments that pay out if the economy improves.

Big investors including BlackRock Financial Management Inc. and Silver Point Capital LP backed the negotiated plan, which has pushed the value of some core government bonds to four times what they were worth after Hurricane Maria hit Puerto Rico in 2017. The benchmark general obligation bond has rallied to more than 90 cents on the dollar, compared with lows in 2017 of 21 cents on the dollar.

Puerto Rico joins Detroit; Jefferson County, Ala.; Orange County, Calif.; and the California cities of Stockton, San Bernardino and Vallejo as municipal borrowers that have shed debts through a court-supervised bankruptcy. The end of the bankruptcy case will slow the professional fees for lawyers, bankers and consultants who advised Puerto Rico on its restructuring and have racked up roughly $1 billion in bills so far, at taxpayers’ expense.

The territory entered bankruptcy with $74 billion in bond debt and a $55 billion gap between the pension benefits promised to employees and retirees and the funding set aside to pay for them. Public agencies were racked with cronyism and failed for years to draw up accurate budgets or account for expenses, according to a 2018 investigation commissioned by the board.

Sprawling bureaucracy and a high cost of doing business discouraged investment, especially after the expiration of some corporate tax breaks in 2006 pushed some pharmaceutical and other manufacturers to depart. To make up for a shrinking tax base, officials borrowed to paper over deficits and skimped on pension contributions, losing Puerto Rico its investment-grade credit rating in 2014.

Many residents of Puerto Rico, political leaders, and some investors have called for an independent audit of how the huge debt was built up and the prosecution of individuals who might have misspent public funds, according to Judge Swain’s decision.

She said her ruling “does not foreclose further investigation, whether through regulatory, law enforcement, or civil litigation channels, into the origins of Puerto Rico’s debt crisis.”

Despite the board’s sweeping powers over fiscal matters, many of its proposed overhauls of business rules and economic policy in Puerto Rico have languished. Lawmakers resisted the board’s proposed cuts to pension benefits and quashed attempts to relax labor laws and tighten welfare requirements, reflecting popular anxiety that cutbacks to the safety net would push more into poverty.

The board's executive director, Natalie Jaresko, disputed on Tuesday that it had implemented harsh austerity measures, as its critics allege.

"There were no layoffs. There was not a single major agency of any size shut down. There were reductions in budget, but it wasn't austerity," said Ms. Jaresko. She said the plan of adjustment protects pensions and ensures that lawmakers don't go back to making promises that aren't paid for.

"This period of financial crisis is coming to an end," she said. "The uncertainty that every person, every business in Puerto Rico felt is coming to an end."

Many of the fiscal problems that drove Puerto Rico's decline haven't been fixed. Government audits remain years overdue. The economy relies heavily on tax breaks to spur development, issuing $21.4 billion in incentives to businesses and individuals in 2018, the most recent data available. The labor participation rate in Puerto Rico was 43.4% in November, well below the lowest rate among U.S. states, West Virginia's 55.1%.

Electricity service is dogged by outages, including after the business of delivering power was privatized last year at the board's urging. In November, a local court issued an arrest warrant for the chief executive whose company now runs the power grid after he allegedly failed to turn over information to lawmakers. The warrant was quickly rescinded. Power service remains costly and prone to outages after years of inadequate maintenance.

Jose Villamil, CEO of economic consulting firm Estudios Tecnicos, said there has been "relatively little private-sector investment in Puerto Rico in the past six to seven years," except for real estate. He doesn't expect that to change soon.

Puerto Rico has a big cash balance because the government hasn't been making debt payments during its bankruptcy, but could run up deficits once debt servicing resumes, Mr. Villamil said. The board also predicts that government deficits will reappear by 2035 unless lawmakers adopt labor, business and tax overhauls that so far have failed to gain traction.

As the restructuring plan gained momentum, the board backed off demands to cut pensions for retired teachers, judges and bureaucrats, bowing to Gov. Pedro Pierluisi and legislative leaders whose help it needed to close the debt deal with bondholders.

That concession left accrued retirement benefits fully intact, a potential source of fiscal stress in coming years. The pension funds at issue cover 167,000 retired workers, or 5% of the island's population, making them the largest creditor group in the bankruptcy.

At the same time, teachers' and judges' unions opposed the restructuring plan because it stops current employees from accumulating any more defined pension benefits while switching them to less generous 401(k)-style programs. Judge Swain agreed with the board that without the benefit freeze for active workers, the restructuring plan might not be feasible.

Puerto Rico in its journey through bankruptcy was confronted with catastrophic hurricanes in 2017, street protests that caused a governor's resignation and succession crisis in 2018, coastal earthquakes in 2019 and the arrival of Covid-19 in 2020. Its relationship with Washington, strained for years, deteriorated under former President Donald Trump, who criticized elected leaders on the island and restricted its access to federal disaster aid.

The territory forged a path out of bankruptcy despite the pandemic, buoyed by an influx of federal assistance and a broad rally in municipal bonds that eased investor concerns about the territory's return to capital markets after a long exile. The municipal-bond market has largely shrugged off Puerto Rico's troubles, viewing the default as an isolated incident and not an indicator of broader weakness among state and local governments.

Ignacio Alvarez, CEO of San Juan-based bank operator Popular Inc., said Tuesday that Puerto Rico has bounced back better than expected from the pandemic but still faces an uncertain economic future. The expected influx in federal funds won't last forever, he said.

The board "has tried to drive a fine line between those two extremes, where some people would say we should try to wipe out the debt, and the bondholders saying we should get 100%," he said.

The board hopes the aftermath of the restructuring will include "material new investments that turbocharge the economy" following a historic decline in population, board lawyer Martin Bienenstock said in court in November. By 2026, the island's population is projected to fall to 2.76 million, 10% less than in 2019, Mr. Bienenstock also said in court hearings over the restructuring plan. The population was close to 3.7 million in 2010, according to census data.

The board has worked to put safeguards in place to prevent Puerto Rico from again taking on too much debt, such as only allowing for long-term bond sales for capital investments, rather than for financing deficits, court filings show.

Board chairman David Skeel said Tuesday that critics of the adjustment plan are incorrect in arguing that it leaves Puerto Rico to face an unsustainable debt obligation. Under the plan, Puerto Rico will pay roughly 7.2 cents of every dollar collected in taxes and fees to bondholders, compared with 25 cents before the bankruptcy.

"This is absolutely sustainable," Mr. Skeel said. "It's not going to lead to more cuts."

The Wall Street Journal

By Andrew Scurria and Soma Biswas

Jan. 18, 2022

'In a Muni Bankruptcy, the Same Entity Emerges': Puerto Rico Exits Bankruptcy with Questions Remaining

Is statehood the answer?

Puerto Rico on Tuesday received court approval to exit its municipal bankruptcy, restructuring over $30 billion of debt, but leaving plenty of questions about the sustainability of its finances.

The island entered bankruptcy in 2017 after years of excessive borrowing, abetted by Wall Street. Its municipal bonds were exempt from federal, state and local taxes in any U.S. jurisdiction, making them attractive to fund managers in a market long starved for supply. Puerto Rico's financial position was worsened by a weak economy, out-migration to the mainland, and its location in the Caribbean, making it vulnerable to costly storms like Hurricane Maria.

Critics of the approved plan of adjustment say it leaves in place conditions that aren't sustainable, such as generous retirement benefits, even as it slashes the island’s overall debt load. But for the municipal bond market HYD, -0.24%, especially those hunting yield, the big question is whether Puerto Rico will return to the position it held for years before Gov. Alejandro García Padilla declared it could not pay its debts.

Continue reading.

MarketWatch

By Andrea Riquier

Jan. 20, 2022

Registration is Open for GFOA's 116th Annual Conference!

We’re excited to be returning to an in-person event for **GFOA’s 116th Annual Conference, June 5–8, 2022, at the Austin Convention Center, Texas**. Attend the conference to learn from leading practitioners and subject matter experts on how to leverage tools found in public finance to build a better community.

CONFERENCE HOMEPAGE

The Municipal Bond Market In 2022 (Radio)

Eric Kazatsky, Senior US Municipals Strategist with Bloomberg Intelligence, discusses the latest news from the municipal bond market. He talks about the start to 2022 for municipal bonds and year-to-date returns. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

Jan 21, 2022

Novogradac Online LIHTC Property Compliance Workshop.

The Novogradac Online LIHTC Property Compliance Workshop is an 11-hour, two-day course, led by knowledgeable instructors, to provide attendees with the most up-to-date low-income housing tax credit (LIHTC) compliance knowledge and industry trends critical to owners and property managers. At the conclusion of the workshop, attendees have the opportunity to pass an exam to obtain the Novogradac Property Compliance Certification (NPCC), a certification for members of the LIHTC community.

For instructor information, agenda, pricing and more, visit the content page.

Dates:
Tuesday February 8 – Wednesday February 9
11:30 am to 5:00 pm ET (8:30 am to 2:00 pm PT)

Register

Muni Market Outlook - Don't Panic, Value Starting To Emerge

Summary

- Munis have been selling off lately, driven by above-average valuations going in to 2022, high duration risk, and a stalled federal spending plan.
- Over time, this has proven to be a reasonable way to earn income, especially given the tax advantages. I continue to view sell-offs as a buying opportunity.
- Despite this, I caution readers from getting too exposed to long duration funds. Interest rates will rise this year, most likely, and they don’t want to be caught with too much duration risk.
- Munis continue to have a low correlation to other assets, and provide a reasonable way to manage volatility. While the short term has been painful, longer-term investors in this space should not panic.

Continue reading.

Seeking Alpha

Jan. 24, 2022

Puerto Rico Bankruptcy is Ending. Next Step: Grow Its Economy

- **Governor sees hope in reconstruction funds, manufacturing base**
- **Federal oversight board warns deficits could reappear by 2035**

After more than four years, Puerto Rico’s record municipal bankruptcy is coming to an end. For the U.S. commonwealth, the timing seems auspicious.

The island, which has been in an economic slump for a decade and has been battered by hurricanes, earthquakes and political rifts, will have to grow its more than $100 billion economy or risk again running the kinds of deficits that pushed it to financial ruin.

Yet it’s coming out of bankruptcy just as federal reconstruction funds, pandemic relief and burgeoning bioscience and tourism industries are converging to give local officials confidence they can produce stronger balance sheets going forward.

“In terms of the fiscal challenges that Puerto Rico will be facing, we will have no problem whatsoever in maintaining the fiscal house in order,” Governor Pedro Pierluisi said in a phone interview.

The federal judge overseeing the bankruptcy case on Tuesday approved a debt restructuring plan that’s seen as the last major hurdle in order to exit court protection. It shrinks $22 billion of bonds down to $7.4 billion and establishes a reserve trust to fund the island's broke pension system.

While the bankruptcy process cut Puerto Rico's annual bond payments down to $1.15 billion, it's not a panacea that resolves underlying issues, including a shrinking population and weak infrastructure. And the government still needs to come up with $3.4 billion a year to cover all its debt and pension benefits costs.

"It is not a perfect debt restructuring plan, but it will considerably reduce the financial burden on the residents of the island and the local government," Representative Raul Grijalva, the chairman of the U.S. House Natural Resources Committee and an Arizona Democrat, said in a statement. "Moving forward, the focus must be on rebuilding the Puerto Rican economy so that even its most vulnerable residents are able to thrive."

Pierluisi said the debt deal, along with more than $40 billion in federal reconstruction funds set to flow into the economy in coming years, have set the stage for transformation.

Manufacturing, which represents about 48% of the island's gross domestic product, has been running strong amid a pandemic that shined a spotlight on the island's bioscience sector. Puerto Rico is home to almost 50 pharmaceutical factories, including for drugmakers such as Merck & Co., Pfizer Inc. and Eli Lilly & Co.

In addition, tourism saw a record-breaking year in 2021 as mainlanders who were locked out of international markets due to Covid-19 restrictions hopped on domestic flights to the Caribbean destination. And the island's generous tax breaks are attracting a new wave of service-export companies rising amid the work-from-anywhere movement.

"Those three sectors – manufacturing, tourism and professional services – should be driving a lot of our future growth," Pierluisi said.

Population Decline

Still, the island faces monumental hurdles.

Puerto Rico lost 12% of its population from 2010 to 2020 — more than any other U.S. jurisdiction — as years of economic decline and 2017's Hurricane Maria chased away talent.

Growing an economy with a shrinking population "is very difficult," said Sergio Marxuach, the policy director at Center for a New Economy, a Puerto Rico-based think tank.

"That's the real problem for Puerto Rico," he said. "We can always get people to move back if things get better, but increasing the number of live births is more complicated."

There are also questions about the island's reliance on federal money. Since 2012, the economy has only grown during two years — 2019 and 2021 — and in both cases it was directly tied to an influx of federal funds.

Still, local officials are betting more federal funds can improve infrastructure enough to stimulate private industries.

If the government can fulfill its pledge to improve the island's battered electrical grid and rebuild roads "this could be an ideal place to do business," said Yandia Perez, the executive director of the Puerto Rico Manufacturers Association. The island's strategic location and unique status — a Caribbean outpost under U.S. laws — makes it attractive to global firms trying to break into the

Latin American and U.S. markets.

“Coming out of bankruptcy also removes a huge stigma for us, which was making it a challenge to attract industry and investment to Puerto Rico,” she said.

Looming Tax Threat

Much of Puerto Rico’s past success has been tied to generous tax breaks it offers global companies. But a proposal by the G7 nations and supported by Washington would impose a global minimum tax of 15% — striking at the heart of Puerto Rico’s appeal.

In addition, U.S. Internal Revenue Service rules that allow companies to deduct a 4% excise tax from their federal contribution sunsets at the end of this year.

“We can still compete based on our productivity and the skills of our labor force in the manufacturing field as long as we are not discriminated against,” Pierluisi said. “To the extent that the conditions we are getting are comparable to the ones that foreign countries will be getting, I’m not concerned about it.”

As for the excise tax, the administration is in the process of overhauling its tax code to make up for the shortfall.

Puerto Rico’s Secretary of Economic Development and Commerce Manuel Cidre said the island can’t rely on its existing manufacturing base — or government funding — for future growth. Puerto Rico needs to lure more U.S. midsize companies, boost local agriculture, reinforce its bioscience sector and become more attractive to entrepreneurs, he said.

“Everyone needs to play their part in this transformation,” Cidre said, “because the government can’t do this alone.”

Bloomberg Markets

ByJim Wyss

January 20, 2022

— With assistance by Michelle Kaske

Puerto Rico's Looming Bankruptcy Exit Set to Soothe Island's Turbulent Muni Debt.

- **G.O. bond trades at 90 cents after falling to 21 cents in 2017**
- **Judge may rule as soon as this month on Puerto Rico debt plan**

Puerto Rico’s anticipated exit from bankruptcy is pushing up prices on one of the most actively-traded securities in the $4 trillion municipal-bond market — a commonwealth 8% coupon general obligation bond — with the momentum poised to continue after a debt restructuring.

The commonwealth is inching closer to resolving its more than four-year bankruptcy, which will slash $22 billion of bonds down to $7.4 billion through a debt exchange and enable the commonwealth to begin repaying bondholders again as soon as this year.

While longtime investors who bought Puerto Rico securities at full value will experience losses on their holdings, other buyers who scooped up the debt at distressed levels are poised to see gains. Post-restructuring, investors would benefit from the island's improved balance sheet.

Continue reading.

Bloomberg Markets

ByMichelle Kaske

January 18, 2022, 8:07 AM PST

Puerto Rico Approved to Exit Bankruptcy, Ending Record Saga.

- **Court approval allows Puerto Rico to begin exiting bankruptcy**
- **Plan reduces $22 billion of municipal bonds to $7.4 billion**

The judge overseeing Puerto Rico's bankruptcy approved its debt-cutting plan, a decision that leaves the island poised to exit bankruptcy after hurricanes, political turmoil and the pandemic prolonged the more than four-year process.

U.S. District Court Judge Laura Taylor Swain released the ruling Tuesday, saying "the provisions of the plan constitute a good faith, reasonable, fair, and equitable compromise and settlement of all claims and controversies resolved pursuant to the plan."

Puerto Rico's bankruptcy, the largest in the $4 trillion municipal-bond market, will reduce $33 billion of debt, including $22 billion of bonds. The restructuring plan is the result of years of negotiations between the commonwealth and its financial oversight board, hedge funds, bond insurers, mutual funds and labor groups. The lengthy process has ballooned the cost of Puerto Rico's bankruptcy to more than $1 billion.

Exiting bankruptcy will allow Puerto Rico to move beyond default, begin repaying bondholders and creditors, focus on growing its economy and rehabilitate a weak electrical grid that suffers from chronic outages.

"The bankruptcy of the commonwealth has been like a dark cloud on top of Puerto Rico for too long," Governor Pedro Pierluisi said in a telephone interview ahead of the approval. "It is a new day for the government and the economy of Puerto Rico."

Prices on some commonwealth securities already increased this month as investors were anticipating Swain's ruling. A Puerto Rico general obligation with an 8% coupon and maturing in 2035 traded Tuesday at an average price of 90.3 cents on the dollar, up from 87.5 cents at the start of the year, according to data compiled by Bloomberg.

Debt Forgiveness

The island's financial oversight board anticipates swapping out the legacy debt with new restructured bonds by March 15, as Puerto Rico and the board must take a series of administrative steps to implement the reorganization plan.

"We started out with what seemed like unbridgeable differences of views and projections about what the future was going to look like," David Skeel, chairman of the oversight board, told reporters Tuesday following Swain's ruling about the negotiations with creditors. "We were able to bridge those differences of opinion through some remarkable innovations in this plan of adjustment."

The debt plan will forgive $3 billion of pension bonds and slash $18.8 billion of general-obligation bonds and commonwealth-backed securities to $7.4 billion. Along with new bonds, investors will receive a $7 billion upfront cash payment and a security, called a contingent value instrument, that pays if sales-tax revenue surpasses projections.

Those cuts mean bondholders will receive as little as 67.7 cents on the dollar to as much as 80.3 cents, depending on the type of security they hold and when it was first sold.

Post-restructuring, Puerto Rico will only have to pay an average of $666 million annually for debt service on new general obligation bonds for the first 10 years, down from an average $1.6 billion.

The workout also establishes a reserve trust to begin rebuilding the commonwealth's broke pension system, which owes current and future public employees an estimated $55 billion.

Still, Puerto Rico's fixed costs will remain high, even post-bankruptcy. The commonwealth spends about $2.3 billion each year to cover retirement benefits for public workers because its pension system is depleted. Medicaid costs may increase if the federal government fails to boost its Medicaid allocations to the island.

Puerto Rico may struggle again in future years to pay debt service. The commonwealth is estimated to face deficits in fiscal 2036 with a $119 million shortfall, even if island lawmakers implement changes such as making it easier to do business there and installing programs to expand workforce participation, according to the commonwealth's current multi-year fiscal plan.

Puerto Rico has been in bankruptcy since May 2017, after years of borrowing to cover budget deficits, population decline and economic contraction.

Bloomberg Markets

By Michelle Kaske

January 18, 2022

— With assistance by Jim Wyss, and Steven Church

Puerto Rico's Bankruptcy Exit Isn't the Finish Line.

The U.S. commonwealth is still saddled with heavy debts relative to its economy.

When I first saw the news on Tuesday that Puerto Rico's bankruptcy judge had approved its debt-restructuring plan, allowing the commonwealth to begin to exit this painful, almost five-year chapter of its history, I had to stop and think. After all, the island's drawn-out struggle with its creditors has been in the background during most of my professional career, dating back to when I helped chronicle its financial collapse as part of Bloomberg News's municipal-bond team in the mid-2010s.

I want to say what Governor Pedro Pierluisi told my colleague Michelle Kaske ahead of the approval. "The bankruptcy of the commonwealth has been like a dark cloud on top of Puerto Rico for too long," he said. "It is a new day for the government and the economy of Puerto Rico."

Of course, exiting a bankruptcy that began in May 2017 and that was prolonged by hurricanes and a global pandemic should be framed as reason for optimism for all Puerto Ricans. However, it's just as important to have a clear understanding that this restructuring plan, even if it lops off tens of billions of dollars of debt, is not a cure-all for what snared the commonwealth in an economic tailspin in the first place. A lot of hard work still remains to put the island on a sustainable fiscal path.

For one thing, it sure looks as if Puerto Rico, after more than $1 billion in costs, still couldn't do much through bankruptcy to impair the holders of its general obligation bonds and commonwealth-backed securities. While those bonds will total only $7.4 billion now instead of $18.8 billion, investors will also get about $7 billion in cash upfront and billions of dollars worth of "contingent" debt that will pay if sales-tax collections exceed projections. It always seemed impossible that bondholders would be made whole — but this agreement isn't all that far off. The legacy debt should be swapped out for the new obligations by March 15.

Puerto Rico will still be on the hook for an average of $666 million a year over the next decade on debt service for the new general obligation bonds alone. For some context, the commonwealth's general fund collections totaled $11.7 billion in the 2021 fiscal year, bolstered by federal disaster funds and pandemic relief aid. Debt service will remain a large slice of the government's expenses.

Meanwhile, the viability of the commonwealth's pension system remains tenuous. The restructuring plan lays out specifics for creating a reserve trust. Still, it owes some $55 billion to current and future retirees because any accrued benefits weren't impaired by the approved restructuring plan. Puerto Rico has been spending about $2.3 billion each year to cover such retirement payouts because its assets are depleted. In an acknowledgment that rebuilding a defined-benefit fund from scratch would be nearly impossible, current workers will move to a 401(k)-type plan.

Perhaps most strikingly, the commonwealth's own multiyear fiscal plan projects budget deficits will flare up again in fiscal 2036, even after factoring in reforms to promote business development and expand workforce participation. That's not exactly a clean bill of health.

Detroit, the largest U.S. city to ever file for bankruptcy, is a useful case study several years removed from its 2014 exit from court protection. Its general obligation bonds are rated BB- by S&P Global Ratings and Ba3 by Moody's Investors Service, both three steps below investment grade. The rating "balances the city's robust reserves and strong financial planning practices with its weak property tax base, significant debt and pension leverage, and substantial resource demands, including the need for further capital investments," Moody's analysts wrote last year. The problems that plagued the Motor City didn't disappear with some of its debt.

Puerto Rico, too, looks poised to have strong financial planning for years to come because its oversight board isn't going anywhere. According to the Puerto Rico Oversight, Management, and Economic Stability Act, the board must remain in place until the island achieves balanced budgets for four consecutive years and can access the bond market at reasonable interest rates. That could take a while — after Detroit's bankruptcy, it needed the state to implement additional safeguards to win over investors. Puerto Rico doesn't have that option.

To be clear, I hope that Puerto Rico will stage a comeback and become an attractive place to work and live. But it's going to take more than just a smattering of hedge fund tax dodgers or a community of crypto advocates building their own paradise on a sliver of the island. It's going to take sensible policies to prevent the "brain drain" of the commonwealth's best and brightest to the

U.S. mainland. It's going to take government officials that are technocrats first and foremost, rather than susceptible to scandal and cronyism. And, most likely, it's going to take a good deal of luck to avoid the kind of devastation brought by Hurricanes Irma and Maria in 2017 that could set back any recovery efforts.

Exiting bankruptcy alone won't bring Puerto Rico prosperity and vitality. But it's a crucial first step. Pierluisi is correct that it is a new day for the commonwealth. It's also going to be a workday.

Bloomberg Politics

By Brian Chappatta

January 19, 2022, 8:00 AM PST

Private Letter Ruling Provides Extension for LLC to Self-Certify as QOF.

The Internal Revenue Service (IRS) last week released a private letter ruling granting an extension to a limited liability company to make a timely election to be certified as a qualified opportunity fund (QOF). PLR 202202009 determined that the failure of the LLC's accounting firm to file IRS Form 8996–which allows the self-certification as a QOF for the opportunity zones (OZ) incentive–was unintentional and the LLC acted reasonably and in good faith. The IRS also ruled that the government's interests are not prejudiced by providing an additional 45 days to file a Form 8996 to self-certify as an QOF. PLRs are directed only to the taxpayer requesting them and may not be used or cited as precedents.

A range of topics concerning OZs will be discussed at the Novogradac 2022 Spring Opportunity Zones Conference, April 21-22 in Long Beach, California.

Novogradac | Jan. 17

- Hawkins Advisory: Final Treasury Reissuance Regulations Addressing Modifications of Debt Instruments to Replace IBORs
- ARPA Final Rule – The "B-Sides Collection": Funding Capital Projects
- Log4j Code Vulnerability Emboldens US Public Finance Cyber Attacks.
- Exploring Demographic & Organizational Trends in a Post-COVID World: NFMA Webinar
- *Bellock v. United States* – District Court holds – as a matter of apparent first impression – that a developer could treat debt instruments (i.e. bond anticipation notes) issued by a political subdivision as a cost of construction pursuant to Rev. Proc. 92-29 (Alternative Cost Method) while also treating interest on the repayment of that debt instrument as tax exempt pursuant to 26 U.S.C. § 103.
- And finally, You Had Me At Perchloroethylene is brought to us this week by *Gavora, Inc. v. City of Fairbanks*, in which the court noted that, "Dry-cleaning tenants contaminated groundwater with tetrachloroethylene, also known as perchloroethylene." Oh! Now we get it! Tetrachloroethylene seemed vaguely familiar, but not until we were reminded that it is also known as our old friend perchloroethylene did things begin to make sense.

TAX - COLORADO

Bellock v. United States

United States District Court, D. Colorado - December 8, 2021 - F.Supp.3d - 2021 WL 5893982

"This case presents an issue of first impression on a question of the interplay between two different tax provisions: Rev. Proc. 92-29 and 26 U.S.C. § 103."

To construct the infrastructure for proposed residential subdivision, the developers (Developers) formed metropolitan districts (Metro Districts). The Metro Districts sought to pay for the necessary infrastructure through advances from Developers. The Developers invested a total of approximately $39 million for infrastructure in the various Metro Districts. In exchange for these payments, the Metro Districts issued the Developers bond anticipation notes (BANs). The Metro Districts intended to pay 8.5% interest on the BANs out of future property taxes levied on homeowners and businesses in the districts.

The Developers elected to treat their development costs pursuant to the Alternative Cost Method, set out in Rev. Proc. 92-29, 1992-1 C.B. 748. Under the Alternative Cost Method, upon the sale of a portion of property, a developer is entitled to take an allocable share of the estimated expenses for common improvements in computing the costs of goods sold with respect to the sold property. Costs of common improvement may include funds advanced to third parties, such as the advances made to the Metro Districts here. The Developers thus included the advances to the Metro Districts as costs of construction for purposes of determining the costs of goods sold. "There is no dispute that the Developers did not act improperly when using the Alternative Cost Method."

With regard to the interest from the Bond Anticipation Notes, the Developers used the "accrual basis," which required them to take income into account when earned, not necessarily when received. Each year, the Developers treated the repayment of principal on the BANs as ordinary income; the Developers separately took the interest accruals on the BANs in each year into income as tax exempt pursuant to 26 U.S.C. § 103. Pursuant to section 103, gross income does not include interest on any state or local bond.

The IRS audited the Developers' tax returns for 2010 to 2013. The IRS determined that it was permissible for the Developers to have treated their investments as development costs pursuant to the Alternative Cost Method. However, the IRS found that, having done so, the Developers were foreclosed from treating the interest accruals on the BANs as tax exempt. The IRS thus assessed increases in tax liability for the Developers.

Neither Party disputed that the interest paid on the bonds issued by the Metro Districts would ordinarily be tax-exempt and qualify for the section 103 exclusion. The United States instead argued that the Developers' application of the Alternative Cost Method transformed the underlying transaction, such that the section 103 exemption could no longer apply.

The Developers paid the assessed increases and sought a refund of their payments.

The United States District Court held that nothing in Rev. Proc. 92-29, or the Developers' application thereof, removed this transaction from the purview of section 103.

"The obligation at issue in this case is an obligation to repay the bonds issued by the Metro Districts — that is, to repay the principal on the bonds. The interest on that obligation reflects a promise to pay 8.5% for the right to defer payment on the bonds to allow the Metro Districts to pay out of future property taxes. Thus, regardless of whether the underlying obligation is characterized as a bond, a purchase of goods, etc., the interest on that obligation is distinct and remains tax-exempt under section 103."

"The exemption in section 103 applies to the transaction here. The interest at issue in this case is interest on an obligation of a political subdivision and, as such, is tax-exempt. Neither the case law nor the general tax principles cited by the United States supports its argument that the Alternative Cost Method, set forth in Rev. Proc. 92-29, forecloses tax-exempt treatment under section 103. The IRS's assessment in this matter was thus erroneous."

REAL PROPERTY - ALASKA

Gavora, Inc. v. City of Fairbanks

Supreme Court of Alaska - December 30, 2021 - P.3d - 2021 WL 6141628

Purchaser of property with contaminated groundwater brought action against vendor, a city, for misrepresentation, fraud, breach of contract, breach of implied covenant of good faith and fair dealing, breach of implied warranty of fitness for public use, implied indemnity, and negligence based on allegations that vendor misrepresented the property's environmental status during purchase negotiations.

The Superior Court ruled in vendor's favor. Purchaser appealed.

The Supreme Court held that:

- Fiduciary duty or similar relation of trust did not exist between vendor and purchaser, such that vendor had no duty to disclose contamination;
- Vendor had no reason to know purchaser did not know about contamination, such that vendor had no duty to disclose contamination;
- Superior court's finding that vendor and vendor's primary negotiator did not actively deceive purchaser, as used to support conclusion that vendor was not liable for failing to disclose dangerous condition known to it, was not clearly erroneous;
- Purchaser had reason to know about groundwater contamination on the property, such that vendor was not liable for failing to disclose dangerous condition known to it; and
- Superior court's finding that there was no physical harm after purchase of property, as used to support conclusion that vendor was not liable for failing to disclose dangerous condition known to it, was not clearly erroneous.

REFERENDA - ARIZONA

Arizona School Boards Association, Inc. v. State

Supreme Court of Arizona - January 6, 2022 - P.3d - 2022 WL 57291

School board association and others brought action seeking declaration that sections of four legislative budget reconciliation bills violated constitutional title requirement or single subject rule.

The Superior Court ruled that challenged sections violated title requirement and that one bill violated single subject rule. State appealed, and appeal was transferred.

The Supreme Court held that:

- Plaintiffs had standing under Uniform Declaratory Judgments Act (DJA);
- Bill titles did not satisfy title requirement;
- One bill violated single subject rule;
- An act that violates the single subject rule is void in its entirety, abrogating *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 99 P.3d 570; and
- Holding that bill violated single subject rule would be applied retroactively.

PUBLIC UTILITIES - CALIFORNIA

Cannara v. Nemeth

United States Court of Appeals, Ninth Circuit - December 30, 2021 - F.4th - 2021 WL 6141690 - 22 Cal. Daily Op. Serv. 109 - 2022 Daily Journal D.A.R. 4

Public utility ratepayers brought action for declaratory and injunctive relief against California Public Utilities Commission (CPUC), its members, and various state government entities, alleging that California bill which established wildfire fund to help cover utility liabilities resulting from wildfires and the related surcharge proceeding initiated by CPUC violated their right to procedural due process and qualified as an unlawful taking under Fifth Amendment.

The United States District Court for the Northern District of California granted defendants' motion to dismiss for lack of subject matter jurisdiction. Ratepayers appealed.

The Court of Appeals held that:

- Ratepayers' action challenged state utility rate-making within meaning of Johnson Act, which barred federal courts from exercising jurisdiction over suits affecting state-approved utility rates, and
- CPUC's surcharge proceedings provided reasonable notice and hearing within meaning of Johnson Act, such that Act barred federal courts from exercising jurisdiction over the action as one affecting state-approved rates.

Public utility ratepayers' claims against California Public Utilities Commission (CPUC), its members, and state government entities for declaratory and injunctive relief, alleging that California bill which established wildfire fund to help cover utility liabilities resulting from wildfires and related surcharge proceeding initiated by CPUC violated their right to procedural due process and qualified as an unlawful taking, challenged state utility rate-making within meaning of Johnson Act, and thus the Act barred federal courts from exercising jurisdiction over the suit; ratepayers asked court to find unconstitutional and enjoin sections of bill which created the fund and process by which a utility could seek assistance from fund, and this relief would necessarily affect utility rates.

Surcharge proceedings initiated by California Public Utilities Commission (CPUC), which resulted in imposition of ratepayer surcharge to support wildfire fund that was created to cover utility liabilities resulting from wildfires, provided "reasonable notice and hearing" under Johnson Act, and thus Act barred federal courts from exercising jurisdiction over ratepayers' action against CPUC challenging constitutionality of surcharge and legislation that created fund, although there was no evidentiary hearing, where CPUC allowed anyone interested to become party to proceedings, circulated notice of hearing in newsletter, allowed parties to present opinions at multiple stages, allowed oral argument, accepted comments on proposed decision, and responded to those comments in final decision.

Compliance with state-law procedures in public utility rate-making proceedings is relevant in assessing whether a rate-making order was entered following “reasonable notice and hearing” within meaning of Johnson Act, for purposes of determining whether the Act bars federal court from exercising jurisdiction over suit affecting state-approved utility rate, but it is not itself determinative because state law could provide fewer procedural protections than the Johnson Act’s basic standard requires.

PUBLIC RECORDS - MARYLAND

Baltimore Action Legal Team v. Office of State's Attorney of Baltimore City

Court of Special Appeals of Maryland - December 17, 2021 - A.3d - 2021 WL 5990784

Requester brought action against the Office of the State’s Attorney, alleging violations of the Maryland Public Information Act (MPIA).

The Circuit Court granted the Office of the State’s Attorney’s motion for summary judgment. Requester appealed.

The Court of Special Appeals held that:

- “Do not call” list did not qualify for the personnel records exemption under MPIA;
- That the Office of the State’s used internal affairs records to create the “do not call” list did not support its blanket denial under the personnel records exemption;
- Office of the State’s Attorney could not invoke investigatory records exemption to support blanket denial of the request;
- “Do not call” list was not created in anticipation of litigation as required for work-product exemption;
- That the records could constitute Brady material did not transform them into work-product protected from disclosure;
- Denial of MPIA fee waiver request made in conjunction with request for full investigatory files into alleged criminal activity of any police officer was arbitrary and capricious; and
- Denial of MPIA fee waiver request made in conjunction with request for investigatory files of a specific police officer was arbitrary and capricious.

ZONING & PLANNING - NEBRASKA

Main St Properties LLC v. City of Bellevue

Supreme Court of Nebraska - January 7, 2022 - N.W.2d - 310 Neb. 669 - 2022 WL 68163

Property owner brought action against city, seeking declaratory and injunctive relief arising from city’s adoption of a rezoning ordinance that prohibited owner from parking its rental business moving vans, trucks, and trailers on the south side of its building as it had been doing pursuant to an agreement with the city.

City moved to dismiss based on lack of subject matter jurisdiction. The District Court granted the motion. Owner appealed.

The Supreme Court held that city exercised a legislative power rather than a judicial function subject to the petition-in-error process when it adopted the rezoning ordinance.

Property owner's complaint, allegations, and exhibits properly embraced within the complaint showed that when city adopted a rezoning ordinance that prohibited owner from parking or storing its rental business's moving vans, trucks, and trailers south of the north face of the building, it was exercising a legislative power subject to a collateral attack of the ordinance, rather than a judicial function for which the sole means of challenging the ordinance was to file a petition in error; owner's allegations showed that city adopted a rezoning ordinance based on the recommendation of the planning commission, not that the city council decided a dispute of adjudicative fact, and further, the city council was not statutorily required to act in a judicial manner.

EMINENT DOMAIN - TEXAS

United States v. 4.620 Acres of Land, more or less, in Hidalgo County, Texas

United States District Court, S.D. Texas, McAllen Division - December 20, 2021 - F.Supp.3d - 2021 WL 5999388

United States brought eminent domain action to take 4.620-acre tract of land in fee simple with certain reservations.

United States moved to exclude testimony of expert, and property owner moved for summary judgment.

The District Court held that:

- Reliability of expert's appraisal was not affected by discrepancy of week to month between date of taking and expert's effective date;
- Expert opinion and report were unreliable to extent expert did not consider all elements that contributed to value of property and all elements that detracted from it to arrive at unitary market value for single piece of property acquired;
- Whether expert's questionable damage model and 40% diminution calculation were credible based on disputed sale evidence and damage modeling was issue for jury;
- Rebuttal report did not have to be stricken on basis of post-deadline supplement of one additional piece of data to timely original report;
- Court had jurisdiction over issue of whether landowner was entitled to some measure of just compensation for bollard fence improvement that United States previously had wrongfully placed upon land at issue;
- Tucker Act did not jurisdictionally bar compensating landowner for bollard fence improvement; and
- Landowner was not entitled to value of bollard wall that United States previously had placed on that property.

ATTORNEYS' FEES - WASHINGTON

Koler/Land Use & Property Law, PLLC v. City of Black Diamond

Court of Appeals of Washington, Division 1 - December 27, 2021 - P.3d - 2021 WL 6112336

Attorneys filed lawsuit against city seeking injunctive and declaratory relief as well as monetary damages for city's breach of their contracts for legal services.

The Superior Court granted summary judgment to city. Attorneys appealed.

The Court of Appeals held that:

- Mayor lacked exclusive authority to determine who would act as city attorney, and
- City counsel had authority to contract for legal services to challenge mayor's conduct in rejecting council's resolutions discharging purported city attorneys.

Mayor of noncharter code city lacked exclusive authority to determine who would act as city attorney, where city had not passed ordinance making city attorney an appointive officer, legal service agreements for purported city attorneys were terminable at will either on 30 or 60 days' notice despite city code provision requiring appointive officers to receive salary and setting maximum term of one year for such officers, and agreements were more consistent with alternative method of obtaining legal advice through reasonable contractual arrangement for such professional services.

City counsel for noncharter code city had authority to contract for legal services to challenge mayor's conduct in rejecting council's resolutions discharging purported city attorneys, even though lawsuit initiated on behalf of council was dismissed with prejudice without ruling in council's favor, where there were clear disputes between mayor and council regarding legality of mayor's conduct and council would have prevailed in lawsuit had it proceeded to final resolution.

Flush With Federal Aid, City Finance Officers Offer Optimistic Outlook.

"It has been a rather incredible two-year period," notes one official.

Three finance officers from major U.S. cities on Thursday described how the fiscal outlook for their governments has brightened substantially since the early days of the Covid-19 outbreak and stressed how federal aid has provided an important boost.

When the pandemic first struck in early 2020, it sent shockwaves through the world of state and local finance. Since then, budgets in most places have stabilized following massive infusions of federal relief dollars to states and localities directly and to American households. At the same time, certain key state and local revenue streams never dried up as badly as many first anticipated.

Brendan Hanlon, chief financial officer for the city and county of Denver, recalled how the government there entered into the pandemic with a $1.5 billion general fund budget and then lost around $200 million in 2020. One way Denver closed the gap was cutting labor costs, leaving open jobs vacant and offering retirement incentives.

"It has been a rather incredible two-year period. It's been the depth of the lows and now, with federal funds, we have so many opportunities for investment. It's a bit of a high of the highs," he said during an event held by the Milken Institute.

The American Rescue Plan Act, with its $350 billion of direct state and local aid, is proving to be an especially significant source of help for states and localities. They're also gearing up for an influx of new federal dollars for public works under the $1.2 trillion infrastructure law President Biden signed in November.

'It Helped Us Manage'

Elizabeth Reich, chief financial officer for Dallas, noted that the city has received hundreds of millions of dollars in federal aid over the course of the pandemic—its direct ARPA aid alone totals $355 million and an earlier CARES Act allotment was around $234 million. “It helped us manage through the last two years,” she said.

“But money alone doesn’t cut it. And more important is how you invest that money,” Reich added. She explained how Dallas focused its earlier pandemic spending using CARES Act dollars on immediate needs like testing, vaccinations, protective equipment for workers, rental aid, shelter for the homeless and small business assistance.

With ARPA spending, the city has turned its attention to longer-term infrastructure and economic development investments, targeting areas like water and sewer upgrades, housing preservation in lower-income neighborhoods and solving gaps with internet connectivity.

Meanwhile, Reich said that sales taxes in the city have completely recovered and based on the latest figures have been coming in stronger than expected in recent months, which she says is likely attributable to factors like the expanded federal child tax credit and other federal stimulus spending, as well as the city capturing tax revenue from online sales.

She also said that despite fears earlier in the pandemic that Covid-19 would drive down property values and, in turn, sales tax collections, Dallas isn’t seeing clear signs of erosion at this point. Property value grew by about 4.56% in 2021, with commercial property value growth slightly outpacing residential, Reich said.

Taxes from weekday hotel stays are down compared to pre-pandemic levels, a sign of decreased business travel, she said. But she also noted that Dallas is seeing companies and people relocate to the city, and that unemployment is falling, although not quite to pre-pandemic levels.

“Overall, Dallas is in a strong position,” she said.

Jennie Huang Bennett, Chicago’s CFO, said that after Covid struck, the city was facing lost revenues in the ballpark of $1.5 billion in 2020 and 2021, on top of earlier financial difficulties. But she said that the losses from the pandemic were largely one-time hits and federal aid has helped bridge the city’s path to recovery, and to support investments in low-income neighborhoods.

Bennett said the city is on track to achieve “structural balance” with its budget by 2023 despite the turmoil Covid caused. Bennett said that income, sales and real estate-based taxes have been performing strongly. But the city is seeing some lagging revenues tied to tourism and hotels, along with ride-sharing, parking garages and utilities, with remote work a likely culprit behind these declines.

Hanlon said it’s still unclear what the long-term effects of remote work will be on downtown real estate in Denver. But he said that the city is considering options to potentially promote more residential growth in the area. “We’ve been talking about how do we make sure we have a nimble, flexible response to different uses of space,” he said.

Route Fifty

By Bill Lucia

JAN 13, 2022

Treasury's Final American Rescue Plan Guidance Means It's Time for Local Leaders to Invest in an Inclusive Future.

Ten months after the passage of the $1.9 trillion American Rescue Plan Act (ARP), local officials across the United States continue to possess significant opportunities to deploy the act's $350 billion in flexible Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to address critical priorities. And last week, these leaders received final guidance on how to use this massive investment to build an inclusive future for their communities.

Back in May 2021, the U.S. Department of the Treasury published an interim final rule laying out permitted SLFRF uses, and invited feedback from local officials and other experts. It provided state and local officials with guidance on four statutorily prescribed uses: responding to COVID-19's public health and economic impacts; providing premium pay; investing in water, sewer, and broadband infrastructure; and replacing lost public sector revenue.

Subsequently, cities, counties, and states issued preliminary reports detailing how they intended to use SLFRF dollars. However, as we observed last fall, the lack of a final rule from Treasury on implementing the program may have discouraged some cities from making firm decisions about how they would use their funding allocations, as they awaited clarifications or assurances regarding eligible activities.

Continue reading.

The Brookings Institution

by Alan Berube and Eli Byerly-Duke

Friday, January 14, 2022

ARPA Final Rule – The "B-Sides Collection": Funding Capital Projects

Much has been written by various prognosticators regarding the January 6, 2022, release by the U.S. Treasury of its Final Rule as to the use by state and local governments of federal stimulus funding under the American Rescue Plan Act (ARPA).1 One head-turning change under the new guidance is the Treasury presuming up to $10 million in revenue has been lost by each local government due to the public health emergency. Recipients are permitted to use up to that amount (not to exceed their respective awards) to fund "government services."2 The U.S. Treasury itself has published a high-quality overview describing the Final Rule's guidance.

Here, we embark on a concept borrowed from the music recording industry. Rather than rehash key takeaways from the Final Rule (the "A-side" singles heard on Top 40 radio, if you will), we intend to share our takes on some of the lesser publicized aspects of the new ARPA guidance (the "B-sides").

We're launching this series of articles here by reviewing in detail an aspect of Local Fiscal Recovery Funds that garner a great amount of attention from our clients: funding capital projects.

Counties, metropolitan cities and non-entitlement units of local government (i.e., non-metro cities and townships in Ohio) may use their ARPA Local Fiscal Recovery Fund payments under four buckets of use set forth in the statute.3 Among the listed eligible uses, the first and third buckets are relevant in the context of capital projects: “a) To respond to the public health emergency…; c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency”.4

As a response to the COVID-19 public health emergency (i.e., the 1st bucket), a capital project could be funded, in whole or in part, by ARPA funds, subject to heightened reporting and justification procedures written into the Final Rule.

Under this 1st bucket of eligible use analysis, the Final Rule presumes certain enumerated uses — relating to building improvements — as reasonably proportional responses to the pandemic. One such use is the “installation and improvement of ventilation systems in congregate settings… or other public facilities”.5

Continuing with the 1st bucket analysis, the Final Rule makes a clear distinction that capital projects, in and of themselves, are not presumed to be reasonably proportional responses to the COVID-19 emergency.6 Having said that, ARPA funds indeed may be deployed to certain capital expenditures as responses to the pandemic.7

First, local governments must satisfy the U.S. Treasury’s two-part framework: (1) there must be a negative public health impact resulting from or exacerbated by COVID; and (2) the local government’s response must be designed to address the identified health impact, which such response must be “reasonably proportional” (i.e., the scale of the response as compared to the scale of the harm).8

Second, if a project has total capital expenditures of less than $1 million (i.e., Treasury’s “safe harbor”), the local government must write-up sufficient supporting information (i.e., answer the two-part framework) for its audit file as to those funded components. If a project is equal to or more than $1 million, the local government also must prepare a written justification for the funded components.9

Along these lines, local government recipients may consider deploying their ARPA funds to HVAC improvements in public facilities (presumed eligible use), or undertake capital projects that involve building improvements and new facility construction, so long as such projects satisfy the U.S. Treasury’s justification and reporting protocols.

As a provision of government services (i.e., the 3rd bucket), a local government may instead choose to deploy its ARPA funds to parts (or the entirety) of a capital project as a government service, according to its determined amount of lost revenue.

In so doing, the jurisdiction may deploy up to $10 million to the provision of government services, which Treasury defines generally as “services provided by the recipient governments… unless Treasury has stated otherwise”.10

But such broad swath of activities remain subject to the Final Rule’s restrictions on use, which are applicable to every ARPA dollar spent.11

Finally, local governments must encumber their ARPA funds under capital projects no later than December 31, 2024, with full pay-out on such encumbrances (i.e., purchase orders) by December 31, 2026.

Procurement considerations to guide federal stimulus expenditures

Local governments must keep in mind some key notions when using these funds. First, procurements must comply with applicable state and local laws. The sealed bidding process is always a good option. However, other state statutes establish alternative procurement methods that may be used. For example, Section 167.081 of the Ohio Revised Code allows local governments to utilize cooperative purchasing through a council of governments in lieu of bidding the project itself. Local governments may also use alternative delivery models, such as construction manager at risk or design-build, which have their own statutory procurement methods to be followed.

Second, because this funding is through federal grants, procurements must also comply with *federal law*. Federal regulations, known as the Uniform Guidance, provide their own procurement methods that must be followed when non-federal entities use federal funds. Fortunately, the federal requirements are fairly analogous to Ohio law. For example, for purchases exceeding $250,000, the Uniform Guidance requires local governments to use either a sealed bidding process or a competitive proposal process. These options line up with state and local sealed bidding processes, or the competitive proposal processes in the construction manager at risk or design-build statutes.

Additionally, the Uniform Guidance permits — and in fact expressly "encourages" — the use of cooperative purchasing programs. However, the underlying contract between the cooperative purchasing program and the contractor must itself have complied with the requirements of the Uniform Guidance. It is ultimately the local government's responsibility to confirm this federal compliance. Additionally, as discussed above, the cooperative purchasing program utilized must also comply with the requirements of state law.

Interestingly, the U.S. Treasury has been clear that federal Davis-Bacon Act wage requirements are inapplicable to projects whose federal funding is comprised solely with ARPA Local Fiscal Recovery Funds (although, if a state has a prevailing wage law – and Ohio does – that state's prevailing wage requirements still apply).12

Finally, local governments must remember that capital projects may require compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,13 particularly in those projects involving vacant or abandoned properties.14

1 H.R. 1319, Public Law 117-2.

2 31 CFR 35.6(d)(1).

3 See ARPA, Title IX Sec. 603(c)(1)(A) through (D).

4 U.S. Treasury, Final Rule, Supplementary Information, at pages 4-5 (emphasis added).

5 31 CFR 35.6(b)(3)(i)(A).

6 See U.S. Treasury, Final Rule, Supplementary Information, at page 57.

7 Id., at pages 190 – 205.

8 See 31 CFR 35.6(b)(1); see also U.S. Treasury, Final Rule, Supplementary Information, at pages 21 – 22, and at page 194.

9 See 31 CFR 35.6(b)(4); see also U.S. Treasury, Final Rule, Supplementary Information, at page 194.

The written justification is comprised of (1) a description of the public harm to be addressed by the capital expenditures; (2) an explanation why such capital expenditures are appropriate to address that harm; and (3) a comparison against two alternative types of capital expenditures (see U.S. Treasury, Final Rule, Supplementary Information, at pages 196 – 198). This document must be either kept in the audit file or filed with the U.S. Treasury (see 31 CFR 35.6(b)(4); see also U.S. Treasury, Final Rule, Supplementary Information, at pages 204 – 205).

10 See U.S. Treasury, Final Rule, Supplementary Information, at page 259.

11 Id. at page 260. The Final Rule's restrictions on use are divided into (1) statutory restrictions under ARPA: offsetting the local government's reduction in net tax revenue; and (extraordinary) deposits into pension funds; and, (2) other restrictions: debt service and replenishing reserves; settlements and judgments; and general restrictions (efforts that contradict the effort to contain COVID-19; conflicts of interest and ethics rules; and other federal, state and local laws).

12 See U.S. Treasury FAQs, updated as of November 15, 2021, Item 6.17. Projects that are funded with other federal funds, in addition to ARPA, must comply with Davis-Bacon Act requirements.

13 42 U.S.C. 4601, and Department of Transportation regulations at 49 CFR Part 24.

14 See U.S. Treasury, Final Rule, Supplementary Information, at pages 136-137.

By Jeffry D. Harris, Caitlin A. Langfitt, Christopher L. McCloskey

Friday, January 14, 2022

Bricker & Eckler LLP.

NASBO: FY2023 Proposed Budget Summaries

Overview

Over the coming months, governors in 33 states will propose a new budget for fiscal 2023. 30 states will approve a one-year budget for fiscal 2023, while 3 states (Kentucky, Virginia, and Wyoming) will consider a two-year budget for fiscal 2023 and fiscal 2024. Seventeen states previously enacted a biennial budget for both fiscal 2022 and fiscal 2023; in some of these states, the governor will propose a revised or supplemental budget. 46 states begin their fiscal year on July 1 (New York begins its fiscal year on April 1, Texas on September 1, and Alabama and Michigan on October 1).

Continue reading.

Log4j Code Vulnerability Emboldens US Public Finance Cyber Attacks.

Fitch Ratings-New York/Austin-14 January 2022: The Log4j code vulnerability, nicknamed Log4Shell, could pose significant risk to public finance entities running Java-based software that incorporates the Log4j open source code, says Fitch Ratings. Public finance entities are broadly exposed due to the widespread use of Log4j, and bad actors will have ample opportunity to exploit the vulnerability. This could result in increased ransomware attacks, placing pressures on public finance entities' operations and finances. In addition, cyber insurance, which is increasingly cost prohibitive, may become unattainable for those entities that are not able to demonstrate robust cyber defenses.

Compromised systems can directly affect public finance entities in the near term through ransom payments and/or the costs of remediation and restoration of data and service. Over the longer-term economic disruption from cyberattacks could lead to loss of revenues for state and local governments and enterprises. The ratings impact of a cyberattack will depend on if an issuer has a material financial, operational, or reputational risk as a result of a breach, along with the effectiveness of disaster recovery and operational continuity plans. Pressures that result in a deterioration of financial metrics could lead to negative rating actions. Robust systems monitoring, capital investment in digital assets, regular software updates, network segmentation, and employee and management vigilance against phishing remain important safeguards against cybercrime.

Experts consider Log4Shell to be one of the most serious cyber security threats in decades, adding to an already challenging ransomware landscape. The US Cybersecurity and Infrastructure Security Agency (CISA) termed the vulnerability "critical" and documented international threat actors gearing up to exploit the vulnerability, advising vendors to prioritize software updates. However, due to the widespread use of the code, it will be difficult to identify and mitigate exposure quickly, and risks may not manifest for months if cyber criminals are able to plant malicious code before software is patched.

Log4j is an extremely common and highly configurable library of code that tracks changes and is used in any number of Java-based applications. A critical vulnerability was discovered on Dec. 9, 2021 that permits unauthorized access to Java-based applications and allows threat actors to insert malicious code into the Log4j framework. The vulnerability currently has no easy, comprehensive mitigation solution and allows hackers to adversely affect programs, data and computer networks.

Ransomware attacks on public finance entities have increased in the past three years. Log4Shell makes the risk of attacks more acute due to the ubiquity of Java-based software, the prevalence of a patchwork of legacy systems across the sector and the finite resources of IT staff. Many Java applications are unsupported or proprietary and organizations that do not have robust asset inventories of active applications may not be able to quickly identify embedded Log4j code. Additionally, the large costs of updating existing equipment and software generally mean that institutions, particularly smaller entities, may rely on legacy systems for many years, even with outdated or unsupported software, leading to gaps in institutional security.

Subsequently, proving a 'clean bill of health' with regard to Log4Shell may be difficult, further compounding the existing challenges that public finance issuers face in acquiring cyber insurance. Insurer guidelines necessitate ever more stringent security audits and adherence to industry best practices, such as staffing and system and software updates, in order to qualify for cyber insurance. Cyber insurance was already increasingly unaffordable for public entities with smaller budgets, with diminishing coverage limits and increasing insurance premiums, and Log4Shell will exacerbate this trend. For further discussion on cyber insurance costs, see our commentary Rising Insurance Costs Add to US Public Finance Cyber Pressures.

Contacts:

Omid Rahmani
Associate Director, US Public Finance
+1 512 215-3734

Fitch Ratings, Inc.
Terrace 1
2600 Via Fortuna, Suite 330
Austin, TX 78746

Sarah Repucci
Senior Director, Fitch Wire
Credit Research & Risk Analytics
+1 212 908-0726
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email:
sandro.scenga@thefitchgroup.com

Tax Revenue Is Rising With Inflation. That's Good for Munis.

- **Credit for some munis could improve from bigger tax hauls**
- **Firm promotes active trading stance amid market slide**

Inflation might not be all that bad for municipal bonds.

State and local debt has already posted a 0.9% loss since the start of the year amid speculation the Federal Reserve could raise interest rates as soon as March to combat inflation.

However, munis can offer a hedge against rising prices because their credit quality could actually improve as a result of it, according to MacKay Municipal Managers.

In a report released Thursday, MacKay Shields' municipal-bond team noted that higher price pressures can mean municipalities are collecting more in taxes that support bond repayment. For example, toll road operators often adjust their debt service coverage levels to inflation as part of their bond covenants.

As a result, John Loffredo, co-head of MacKay Municipal Managers, said his team is looking to increase exposure to sectors that will see their revenues benefit from inflation, such as bonds backed by excise taxes.

To be sure, rising prices and interest rates still pose a risk to the overall municipal bond market. But the firm's stance is illustrative of the way asset management companies are looking to navigate a less rosy outlook for munis in 2022.

"We cannot sit still and wait for the market to perform," said Loffredo, who's expecting the market index to be flat or slightly down in 2022. "To make a positive return, you're going to have to be very active."

Among the the greater threats from rising interest rates will be the hit to low-coupon bonds, which the firm is avoiding. Over the past few years, low-coupon bonds have been embraced by investors because they can offer higher yields, but their longer duration can be a risk during rate hikes.

"Structure is going to be important" this year, said Bob DiMella, co-head of MacKay Municipal Managers, adding the biggest query his team gets from clients is about inflation.

Another possible bright spot through at least the first half of the year could be high-yield municipals, which the firm has an overweight position on.

The high-yield portion of the market will benefit from Puerto Rico's emergence from bankruptcy, given the territory is in the "ninth inning" of its restructuring, Loffredo said.

Once the territory begins repaying its bonds again, the asset class could see strong demand from investors, which will support performance.

"The way you create alpha and positive return is the active trading stance that we're taking," Loffredo said.

Bloomberg Markets

ByAmanda Albright

January 13, 2022, 5:30 AM PST

S&P Outlook For U.S. Public Power And Electric Cooperatives: Stability Amid An Evolving Landscape

Sector View: Stable

We expect our ratings on public power and electric cooperative utilities to remain largely stable in 2022. Our economists expect the U.S. economy to continue to grow. They further conclude that while virus variants might delay a full economic recovery, they do not expect these developments to derail the recovery. These economic views, combined with our expectations that utility management teams will continue to constructively respond to legislative, regulatory, environmental, and operational developments in 2022, lead us to anticipate generally stable revenue streams and ratings in the sector.

Continue reading.

13 Jan, 2022

S&P Outlook For U.S. Not-For-Profit Transportation Infrastructure: Mostly Stable; Airports Remain Positive As Operators Navigate A New Variant And A New Normal

Sector View: Mostly Stable

Cautious optimism remains, despite omicron. Our view of business conditions and credit quality across U.S. public transportation infrastructure is positive for airports and special facilities; stable for toll roads, ports, mass transit, and GARVEEs; and negative for parking.

Continue reading.

12 Jan, 2022

S&P Updated U.S. Transportation Infrastructure Activity Estimates Show Air Travel Normalizing By 2023 And A Stymied Transit Recovery.

Key Takeaways

- The prospect of a continued or permanent shift to remote or hybrid work and the growth of online shopping will limit the recovery in public transit ridership and contribute to the longest recovery compared with other U.S. transportation infrastructure asset classes.
- The recent surge in coronavirus infections from the omicron variant will likely delay the positive momentum gained in the second half of 2021 for air travel, as assumed in our downside activity estimates. However, we expect industry conditions will improve in 2022, leading to further recovery and normalizing activity levels.
- Our current baseline activity estimates show public transit recapturing almost 70% of pre-pandemic activity by the end of 2022 and only 75% by the end of 2024; and U.S. systemwide enplanements returning to near pre-pandemic levels in the second quarter of 2023, with the international component continuing to lag the broader domestic rebound.
- Our current downside activity estimates, which assume some pullback of recent gains and slower recoveries due to the threat of coronavirus variants, staffing shortages, or weakening consumer confidence, show public transit ridership returning to only 70% of pre-pandemic levels by the end of 2024 and U.S. systemwide enplanements returning to near pre-pandemic levels by the end of 2023.

Continue reading.

12 Jan, 2022

S&P Outlook For Charter Schools: While Growing Demand And Stimulus Funds Provide Flexibility, Risks Persist

Overall, our stable sector view reflects a balance of opportunities and risks in 2022. The opportunities are primarily driven by generally growing charter school demand, economic recovery, and the disbursement of meaningful federal stimulus funds to states and also directly to public schools, providing financial support for operations and growth in reserves. We expect continued credit stability for states and therefore at least stable per-pupil funding trends. But while financial flexibility has improved, risks remain, such as inflation, coronavirus variants, and mid-term elections. Schools with relatively strong enrollment and reserves are likely to continue to fare better, while schools struggling with enrollment declines will have less operating flexibility.

Continue reading.

11 Jan, 2022

NTIA Issues a Request for Comment on Broadband Funding Programs.

Key Points

- This request for comment is the first formal step for NTIA to establish rules for distributing more than $48 billion in broadband funding contained in the Infrastructure Investment and Jobs Act.
- NTIA is seeking comments on general funding issues as well as issues specifically involving the Broadband Equity, Access and Deployment Program and the Middle Mile Broadband Infrastructure Program.
- Written comments are due by February 4, 2022.

On January 10, 2022, the National Telecommunications and Information Administration (NTIA) published a request for comment on how it should administer several of the broadband funding programs created under the recently enacted Infrastructure Investment and Jobs Act (IIJA). The IIJA tasked NTIA with disbursing more than $48 billion in broadband funding and this release is the first formal step in getting that funding to broadband providers.

NTIA seeks comment on specific components of the IIJA, including the Broadband Equity, Access and Deployment (BEAD) Program, the Digital Equity Planning Grant Program, and the Middle Mile Broadband Infrastructure (MMBI) Program, as well as general comments on the broadband package as a whole. At a later date, NTIA will be seeking comment on the State Digital Equity Capacity Grant and Digital Equity Competitive Grant Programs, as well as conducting a Tribal consultation regarding the additional funding for the Tribal Broadband Connectivity Program.

Set forth below is a general overview of the topics of greatest interest to broadband providers and investors about which NTIA would like stakeholders to comment. Written comments are due by February 4, 2022, and NTIA will be holding additional "listening sessions" regarding the broadband funding programs on January 12, January 26, February 9 and February 23. The IIJA requires NTIA to issue the first notice of funding opportunity for the $42.45 billion BEAD program by May 14, 2022, which among other things will request states to declare their intention to participate in the program, and contain additional details about the program, including the permissible uses of grants, and standards for how states should assess broadband providers' capabilities.

General Comments

- **Coordinating with Other Broadband Programs:** Given the array of existing federal and state broadband funding programs, NTIA asks how to verify that IIJA funding complements other federal and state broadband programs. For example, NTIA will likely be interested in how to ensure that broadband providers do not receive duplicative funding to meet the same buildout requirements, and how current recipients of state or federal broadband funds can use those funds in conjunction with IIJA funds.
- **Matching Funds Requirement:** Certain programs under the IIJA require recipients to put up their own matching funds or obtain them from other sources. The law allows NTIA to grant waivers, and NTIA would like comment on the circumstances and criteria that should be required for a waiver of the matching funds requirement.
- **NTIA Influence Over State Broadband Programs:** States will be the primary recipients of funding and will be responsible for allocating funds toward projects in accordance with state

broadband plans. However, NTIA will first need to approve those plans to release funding. NTIA wants to know how it should assess such plans and whether specific types of competitive subgrant processes (e.g., publicly released requests for proposals and reverse auctions) should be presumed acceptable. Additionally, NTIA would like comment on how best to ensure that a wide variety of potential providers are able to access funds, including municipal broadband, public-private partnerships, cooperatives, utility companies, and small and large traditional providers.

- **Made in America / Supply Chain Problems:** The IIJA contains “buy American” requirements to help support American industry. However, there are currently supply chain interruptions and workforce shortages, and NTIA would like comment on how best to balance the concerns animating the “buy American” requirements with the goal of deploying broadband quickly.
- **Data Collection Requirements:** NTIA wants to know what data recipients of IIJA broadband funding should be required to collect and submit to the federal government to help with program assessment and funding coordination.

Broadband Equity, Access and Deployment Comments

- **Technical Requirements:** What technical requirements should NTIA impose on recipients of BEAD funding? The IIJA requires broadband speeds of at least 100/20 Mbps, and NTIA asks what guidance or requirements it should provide with respect to factors such as cybersecurity, latency, network resiliency, and other service quality features and metrics. Moreover, NTIA wants to ensure that BEAD-funded networks meet Americans’ evolving needs in the future, and the IIJA directs states to give precedence to “priority broadband projects,” which could have more stringent speed, latency, reliability, upgradability and other service requirements as defined by NTIA.
- **Low-Cost Broadband Option:** Recipients of BEAD funding will be required to offer a low-cost broadband option. NTIA will set the eligibility standards, and states will be able to determine (in consultation with NTIA) what features the low-cost product must have (price, speeds, data caps, etc.). NTIA would like comment on how to determine consumer eligibility for the low-cost option, and the best way to guide states in defining their low-cost options. Some commenters could argue that a recipient’s subscribers outside of the BEAD funded areas should be eligible for the low-cost option.
- **Eligible Areas:** While BEAD funding must wait until the Federal Communications Commission (FCC) has completed the new broadband availability maps, areas where service providers have committed to provide service through other programs—but have not yet deployed—will not be captured in the new maps. NTIA would like comment on how to handle such areas for purposes of the BEAD program. Here, NTIA will need to balance the risk of providing duplicative funding to a provider with the risk that a provider might not meet the broadband service commitment it has made through another funding program.
- **Other Uses of Funds:** The IIJA already allows BEAD funding to be spent on deployment, data collection, and adoption programs, but also gives NTIA broad discretion to designate other expenses as eligible. What other expenses should NTIA deem eligible for BEAD funding?

Middle Mile Broadband Infrastructure (MMBI) Grants

- **How to Target Funding:** MMBI funding will be needed in areas that currently lack middle-mile infrastructure, as well as in areas where middle-mile services are too expensive. The absence of adequate middle-mile broadband facilities has often been a bottleneck, contributing to the digital divide. NTIA seeks comment on how best to target and prioritize middle-mile funding, and how competition or high-cost factors should be considered.
- **Splice Points:** The IIJA seeks to encourage carrier-neutral interconnection points and bring down backhaul costs. Should NTIA impose requirements on MMBI grant recipients regarding the

location of or access to splice points? Should recipients be required to allow other providers to interconnect?
- **Scalability:** As network demand intensifies, NTIA would like to know what, if any, scalability requirements should be imposed on MMBI funding recipients with respect to middle-mile capacity.

Akin Gump Strauss Hauer & Feld LLP – Matthew B. Berry, Preston James Wise and Joseph Calascione

January 11 2022

[More Broadband Projects Eligible for Funding Under New ARPA Rules.]

The U.S. Treasury Department revised its rules specifying how states can use federal funding provided by the American Rescue Plan Act (ARPA), enabling a broader range of broadband projects to receive support.

The agency originally specified that funding could only be used to provide coverage to un- and underserved locations which lack access to a wireline connection offering speeds of 25 Mbps downstream and 3 Mbps upstream. Its preliminary rules, which were issued in May 2021, also encouraged states to prioritize fiber projects, the inclusion of affordable service options and support for local networks owned and operated by local governments, non-profits and cooperatives.

A set of final [rules] issued late last week includes two key changes: one provides more flexibility in what areas are eligible for support and the other is designed to ensure consumers can actually afford to use the broadband networks built with ARPA funding.

During a public comment period, stakeholders argued the original 25/3 Mbps service standard was too restrictive and said states should be allowed to fund projects in areas which are technically served but require investment to address issues around broadband quality, reliability and affordability.

So, in its final rules the Treasury Department said it will drop the speed restriction and allow states to fund projects in areas where they have identified a need for additional broadband investment. “Examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of affordable access to broadband service, or lack of reliable broadband,” the rules state.

States are now encouraged to prioritize projects that provide service to locations which lack access to a wireline connection offering speeds of at least 100 Mbps downstream and 20 Mbps upstream.

The Treasury Department also moved to address affordability by requiring funding recipients to either participate in the Federal Communications Commission’s Affordable Connectivity subsidy program or otherwise provide an affordability program for low-income consumers.

“The final rule requires recipients to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, given that such a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve,” the rules note.

Treasury’s final rules continue to encourage the use of fiber technology where available and maintain a requirement that funded projects be designed to deliver symmetrical speeds of 100 Mbps (or else 100/20 Mbps in areas where the former isn't feasible). They also continue to encourage support for local networks owned and operated by local governments, non-profits and cooperatives.

The final rules will take effect on April 1, 2022.

fiercetelecom.com

by Diana Goovaerts

Jan 10, 2022

Using the Municipal Bond Market to Help Create Racial Equity: Ice Miller

This Bond Markets and Racial Equity Project is such an important endeavor by the Public Finance Initiative (PFI) and the National League of Cities (NLC) that will have a lasting impact not only in the municipal bond market, but in efforts to close the racial wealth gap. It is all of our responsibility to use our expertise, skills and ability in our respective professions to effect change in an attempt to level the playing field, and it is great to see such distinguished organizations collaborating to move the needle on racial equity.

> The Public Finance Initiative (PFI) and the National League of Cities (NLC) are pleased to announce the launch of the Bond Markets and Racial Equity Project, a bold effort to center equity in municipal bond-funded investments and to measure how social determinants of equity change over time. Funded by a $4 million Robert Wood Johnson Foundation grant described in a case study on the Foundation's website, this initiative will further identify the factors in a municipal bond issuance that signal progress toward racial equity and income equality to investors and other stakeholders.

https://www.prnewswire.com/news-releases/public-finance-initiative-national-league-of-ci-ies-and-collaborating-partners-receive-4-million-grant-to-elevate-racial-equity-i--bond-markets-301460569.html

Ice Miller LLP – Matthew J. Miller

January 13 2022

Public Finance Initiative, National League of Cities, and Collaborating Partners Receive $4M Grant to Elevate Racial Equity in Bond Markets.

BOSTON, Jan. 13, 2022 /PRNewswire/ — The Public Finance Initiative (PFI) and the National League of Cities (NLC) are pleased to announce the launch of the Bond Markets and Racial Equity Project, a bold effort to center equity in municipal bond-funded investments and to measure how social determinants of equity change over time. Funded by a $4 million Robert Wood Johnson Foundation grant described in a case study on the Foundation's website, this initiative will further identify the factors in a municipal bond issuance that signal progress toward racial equity and income equality to investors and other stakeholders.

The project team will develop a range of tools for cities, public authorities, and their financial advisors to elevate racial equity considerations in bond issuances. Initial lead project partners include the Excellence and Equity in Public Finance Program at the Milken Institute, the Urban Institute, the Government Alliance on Race and Equity (GARE) at Race Forward, and Urban American City, LLC. The Initiative for Responsible Investment at the Harvard Kennedy School’s Center for Public Leadership will also serve as a subgrantee.

“We have an opportunity to disrupt long-held patterns of inequality and segregation and to elevate racial equity in new arenas via a program of work that will begin by listening to issuers, investors, and other market stakeholders in national focus groups that we will convene across America,” said Lourdes Germán, PFI’s Executive Director, who will lead the effort together with NLC. “This project seeks to take what we learn and develop a program to help issuers center racial equity as a key consideration within the municipal bond market, enabling communities and investors to better understand how to effectively leverage the issuance process—and, with this funding, we will develop the metrics, measurement, and reporting to make that possible.”

“The Bond Markets and Racial Equity Project is a first-of-its-kind investigation into how public officials can center equity in bond issues in targeted ways that lead to improved social determinants in their communities,” said Clarence E. Anthony, NLC CEO and Executive Director. “Along with our key partners, we look forward to enabling more conscientious fiscal decisions, elevating bond markets as an equity vehicle, and supporting individual cities in their impact journeys.”

“We are proud to support the creation of tools for policymakers, practitioners, and investors to effectively prioritize equity throughout their work—and to accurately measure the outcomes,” said Kimberlee Cornett, Director of Impact Investments at the Robert Wood Johnson Foundation. “We and our partners believe that this essential lens must be developed for the public finance market, which so many communities rely on and so many investors put capital towards.”

As the United States has reckoned with systemic racism in its cities, practitioners and policymakers have wondered how the $4 trillion municipal bond market addresses—or fails to address—race and equity. The municipal bond market is one of the largest pools of private investor capital flowing into America’s states and localities, and it thus shapes the character of the built environment in communities and directly impacts the social determinants of health and equity in a place.

Regulators, elected officials, and other public leaders have called attention to the challenges at hand. Notably, the recent $1.2 billion federal Infrastructure Investment and Jobs Act explicitly highlights the importance of centering equity across various functional areas of infrastructure investment and of acknowledging the legacy of systemic racism throughout the history of American infrastructure, construction, and maintenance decisions.

Despite efforts to scale up such bonds and create guidance for issuers, however, no common framework currently exists to address racial equity in all phases of municipal bond issues. Additionally, bond issuers lack the training and resources to evaluate equity impacts associated with the infrastructure projects they fund, and they lack long-term data to measure how equity changes in a jurisdiction over time, particularly in low-resource settings with the highest needs.

Throughout 2022, the Public Finance Initiative, in partnership with the National League of Cities, will convene city and public authority leaders through focus groups, online publications, research reports, and more to explore how issuers center racial equity—or fail to do so—in the context of bond issuances or infrastructure projects. Future project outcomes will include a racial equity framework, data tools, research, technical assistance for low-resource jurisdictions, additional guidance on evaluation practices, and other data-driven and impact-focused interventions.

About the Public Finance Initiative
The Public Finance Initiative (PFI) develops public finance programs that center the values of equity, sustainability, and inclusive growth in fiscal decision making with leading foundations and partners. PFI furthers city-to-city learning and builds local governments' capacity to use technology and data in improving their governance, fiscal health, and investment operations. The Public Finance Initiative is a fiscally sponsored organization of TSNE MissionWorks, a 501(c)3 tax-exempt organization. Learn more at publicfinanceinitiative.com and stay connected with PFI on Twitter, LinkedIn and Facebook.

About the National League of Cities
The National League of Cities (NLC) is the voice of America's cities, towns, and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions. Stay connected with NLC on Facebook, Twitter, LinkedIn, and Instagram.

Muni Markets And Refurbishing Cleveland's Stadium (Radio)

Joe Mysak, Editor of the Bloomberg Brief: Municipal Markets, discusses the latest news in the municipal bond market. He talks about muni trends and refurbishing the Cleveland Guardians' baseball stadium. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

Jan 14, 2022

Hawkins Advisory: Final Treasury Reissuance Regulations Addressing Modifications of Debt Instruments to Replace IBORs

Attached is a Hawkins Advisory describing recently released final Treasury Regulations providing guidance in connection with the reissuance consequences arising from modifications of existing debt instruments and other contracts to replace discontinued Interbank Offered Rates with alternative reference rates.

View the Hawkins Advisory.

US Bond funds Post Ouflows on Expectations of Fed Tightening.

Jan 14 (Reuters) – U.S. bond funds faced outflows for the first time in four weeks in the seven days to Jan. 12 on rising prospects that the U.S. Federal Reserve will begin tightening its policy with an interest rate hike as early as March.

According to Refinitiv Lipper data, investors offloaded U.S. bond funds of $3.15 billion, marking the first weekly outflow since Dec. 15.

Investors feared that the Fed will be more aggressive in lifting interest rates after they interpreted minutes from the central banks' December meeting as being more hawkish. Goldman Sachs, J.P. Morgan and Deutsche Bank expect the Fed will raise rates four times this year.

U.S. taxable bond funds posted net selling of $2.96 billion, the biggest outflow in four weeks, while U.S. municipal bond funds received just $7 million in inflows.

U.S. short/intermediate investment-grade funds and U.S. mortgage funds witnessed outflows of $1.4 billion and $466 million respectively, while U.S. loan participation funds and general domestic taxable fixed income funds saw inflows of about $1.8 billion each.

Meanwhile, inflation-protected funds witnessed their first weekly outflow in over five months, although they were a marginal $10 million.

U.S. equity funds drew inflows of $7.99 billion, their smallest net buying in four weeks.

Among sector funds, financials obtained $2.58 billion, the biggest weekly inflow since mid-February 2021. Industrials, tech and consumer staples also lured $0.95 billion, $0.88 billion and $0.81 billion respectively.

U.S. investors secured value funds of $2.8 billion in a fourth successive week of net buying, while growth funds posted outflows of $7.19 billion, the biggest since Dec. 15.

U.S. money market funds saw outflows of $28.4 billion in a second straight week of net selling.

Reuters

January 14, 2022

Money Is Yanked From Junk Muni Funds for First Time in Months.

- **High-yield muni mutual funds lose $364 million in week**
- **Rate volatility and a negative total return spook investors**

Municipal bond investors have pulled money from high-yield mutual funds for the first time in nearly three months, showing that the unprecedented demand muni funds enjoyed for much of the last year may be waning.

High-yield municipal bond mutual funds lost $364 million in the week ended Wednesday, according to Refinitiv Lipper U.S. Fund Flows data. That's the first outflow for junk state and local government debt since October, the data shows.

Municipal funds more broadly are coming off a record year of demand, collecting nearly $100 billion of cash in 2021 as investors spooked by the prospect for higher taxes flooded tax-friendly investment strategies. That demand helped push municipal bond prices higher and boosted returns for the asset class, making state and local government debt a top performer among fixed-income in 2021.

The riskiest state and local government debt returned almost 8% last year, besting nearly every other fixed income asset class as a booming economy gave investors confidence in junk and unrated securities, causing spreads to compress and the payout for owning such debt to shrink.

However, increased rate volatility and a negative total return so far this month may have worried some investors, said Kathleen McNamara, senior municipal strategist at UBS. “That causes investors to hesitate and/or pull money from mutual funds,” she said.

Month to date, high yield municipals are down about 0.73%, according to Bloomberg’s index.

Paul Malloy, head of municipals at The Vanguard Group, said he’s being more cautious on risky debt in 2022 as valuations richened last year.

“It’s the kind of market, with everything compressed, we like better quality,” said Malloy, who oversees Vanguard’s $267 billion of municipal debt. “We don’t believe this is the time to go bottom feeding at these valuation levels. We are relying on credits with strong long-run fundamentals.”

Bloomberg Markets

By Danielle Moran

January 13, 2022, 12:18 PM PST

Puerto Rico Bonds Rise as Judge Set to Accept Modified Debt Plan.

- **Swain orders revisions and will approve ‘promptly’ once filed**
- **Board will review judge’s changes and intends to refile**

Prices on some Puerto Rico bonds increased after the judge overseeing the island’s bankruptcy signaled she may confirm a debt-restructuring plan soon, a ruling that would allow the commonwealth to exit from more than four years of court oversight.

U.S. District Court Judge Laura Taylor Swain late Monday directed the island’s financial oversight board to revise its debt-restructuring deal by Friday and said she plans to confirm that workout plan soon after.

The judge’s changes aren’t expected to alter the debt plan dramatically. Many of her revisions involve paying eminent domain claims, which the board was already preparing to budget for, according to a court document the panel submitted on Dec. 21.

“It seems like it’s minor changes and it can be done quickly and she seems confident that she can move it ahead,” said Daniel Solender, head of municipals at Lord Abbett & Co., which manages $36 billion of state and local debt, including Puerto Rico securities.

If Swain were to approve the debt-restructuring plan, it would mean Puerto Rico’s bankruptcy, the largest ever in the $4 trillion municipal-bond market, would finally wind down after hurricanes, earthquakes, political turmoil and the pandemic delayed the process.

Friday Deadline

General obligations with an 8% coupon and maturing in 2035 traded Tuesday at an average 90.1 cents on the dollar, up from 89.3 cents on Monday, according to data compiled by Bloomberg.

Swain detailed changes she wants the board to make to the debt adjustment plan and submit the revised version by Friday, 11:59 p.m. Atlantic Standard Time, which is 10:59 p.m. Eastern Standard Time, according to an order filed late Monday.

Once the board files the revised plan on Friday, Swain would then "promptly" submit her confirmation order approving the debt restructuring plan, according to the judge's order.

The oversight board is reviewing Swain's order and intends to file the revised debt plan by Friday, Matthias Rieker, spokesperson for the board, said in a statement Monday following Swain's order.

"The oversight board welcomes this latest progress towards confirmation of the plan, which would significantly reduce the Puerto Rico government's total liabilities," Rieker said in the statement.

Eased Payments

The restructuring deal would reduce $33 billion of debt and other obligations, including cutting $22 billion of bonds to $7.4 billion. It would ease Puerto Rico's annual debt service payments and establish a reserve trust for its broke pension system, which owes current and future retirees an estimated $55 billion.

Swain's revisions include treating allowed eminent domain claims as secured, rather than unsecured, and that Puerto Rico must pay the full amount of what a court determines is the value of those claims, according to the order.

Swain's order included a 149-page findings of fact and conclusions of law and a 93-page confirmation order for the plan of adjustment that the court is prepared to file "promptly" once the board submits its revised debt plan.

Bloomberg Markets

By Michelle Kaske

January 10, 2022

Vanguard and Nuveen See Dimmer 2022 Muni Outlook.

- **Biggest muni managers during 2021's record year spot headwinds**
- **Rising Treasury yields and hawkish Fed likely to dent market**

The two biggest muni managers during last year's record breaking wave of issuance and demand expect the next 12 months to be less sunny.

"This year could be a little bit tougher than last year when we had the wind at our backs," said John Miller, head of municipals at Nuveen, which captured $11.2 billion of muni fund flows in 2021.

Already the $4 trillion municipal bond market looks to be off to its worst start in more than two decades. While January is typically a strong month for munis, the asset class has been hit by the dramatic rise in Treasury yields, spurred by expectations the Federal Reserve will start to raise interest rates as soon as March.

The sharp increase in yields and a more hawkish Fed will be the "biggest headwind" for municipal bonds, Miller said in an interview.

Moreover, those tensions are likely to last for much of the year, with munis unlikely to match their 2021 outperformance, said Paul Malloy, head of municipals at Vanguard Group, which saw $24.5 billion in muni fund flows last year.

“Treasuries are really in the driver’s seat,” said Malloy. “While fundamentals are really good, we expect munis to move alongside Treasuries.”

Combined, Nuveen and Vanguard captured more than a third of last year’s muni fund flows, or money added to state and local-government debt funds, according to Refinitiv Lipper U.S. Fund Flows data.

Unprecedented demand, driven in part by investors’ fear of higher tax rates, helped drive strong muni returns that bested nearly every other fixed income asset class in 2021. But now, with funds flush with cash and valuations still richer than historical average, Vanguard is turning “back to basics,” Malloy said.

“It’s the kind of market, with everything compressed, we like better quality,” said Malloy, who oversees Vanguard’s $267 billion of municipal debt. “We don’t believe this is the time to go bottom feeding at these valuation levels. We are relying on credits with strong long-run fundamentals.”

That includes states and local governments that have continued fully funding their pension payments and bonds sold by colleges with strong endowments.

“Last year we were more aggressive in what we call the mediocre middle,” he said. “This is an environment where there is no need to pursue something that you don’t love for the long run.”

Likewise, Vanguard is avoiding the lowest-quality bonds.

“Anything that we’re not touching is really the lowest quality. The stuff that gets done because there’s not a lot of yield elsewhere and you look at it and go ‘wow, everything has to go 100% right,’ those are the characteristics of what we’re avoiding,” Malloy said, detailing that they’re “not keen” on the more speculative project finance names.

Miller — who oversees Nuveen’s $223 billion of state and local debt — said he’s favoring “credit exposure” over pure interest rate risk.

“We are looking at couponing and other structural characteristics that can provide some cushion should rates continue to migrate higher,” he said. Additionally, the Chicago-based manager continues to be positive on major Illinois-based credits, like the City of Chicago and the state’s general obligation bonds. “There is still a little further to run there,” he said.

Miller runs the muni market’s largest high-yield fund, which returned 9.7% in 2021, besting the junk muni benchmark and 98% of peers over the last year, according to data compiled by Bloomberg. High-yield municipals returned almost 8% last year, outperforming the overall muni market by more than 6 percentage points. But, he said those kind of gains are unlikely a second year in a row. One-hundred to 200 basis points of outperformance “would be pretty good compensation for the risk of high yield just to moderate those expectations a bit this year.”

Both fund managers called the recent surge in coronavirus cases a “blip” and said they aren’t changing their portfolio positions because of the omicron variant.

“People, including myself, are trying to look at this as a short-term blip as far as economic impact,” Miller said.

It’s “nothing that changes our long-run fundamental view,” Malloy added.

Bloomberg Markets

By Danielle Moran

January 11, 2022, 10:54 AM PST

Flush California Can Forgo Wall Street and Tap Cash for Projects.

California, girded with billions of dollars in surplus, can afford to pay for construction costs without asking for help from bond investors.

Governor Gavin Newsom’s budget for the next fiscal year calls for paying $500 million to complete four capital projects, instead of selling taxable municipal bonds, according to the state’s finance department. That would save the state $350 million in financing costs.

“We’re swapping lease revenue bonds for cash,” Newsom told reporters in a Sacramento briefing on the budget Monday. “It’s an example of some of the work we’re doing to yes, make government more efficient.”

Of the projects, which are nearing completion, three are in state corrections facilities and the other is the headquarters of the military department, according to the finance department. Because of construction delays, the ventures don’t qualify for tax-exempt financing under federal rules. The state is awash with a $45.7 billion surplus, including $21 billion of funds that lawmakers can tap for any use.

Legislators must approve Newsom’s budget, which will be updated in May.

Bloomberg Politics

By Romy Varghese

January 11, 2022, 12:49 PM PST

How to Play the Selloff in Munis.

Kim Friedricks, managing director of fixed income at Kayne Anderson Rudnick Investment Management, discusses the selloff in municipal bonds with Bloomberg’s Taylor Riggs on “Bloomberg Markets: The Close.”

Watch video.

Bloomberg Markets: The Close

January 12th, 2022

[Eagle Senior Living Files for Bankruptcy, Citing Labor Costs]

Eagle Senior Living filed for Chapter 11 bankruptcy on Friday, citing “exponential” increases in labor costs.

The pre-arranged filing will allow the chain to operate without interruption and make needed capital improvements, Eagle said in a Friday press release. The company listed both assets and liabilities in the range of $10 million to $50 million. It also holds $215 million in municipal debt.

Plunging occupancy during the pandemic and higher wage and supply costs have pummeled the sector, resulting in $1.67 billion in municipal bond defaults for senior living facilities last year. Not only did Eagle’s occupancy decline, Eagle President Todd Topliff said in a court filing, but the pandemic “placed unprecedented stress on the sales and marketing efforts of the Facilities.”

Even with fewer residents, the company wasn’t able to reduce staff because of health and safety protocols, all the while contending with higher costs for supplies and meals, according to Topliff.

Eagle was formed only in 2018 with the purchase of facilities from Brookdale Senior Living Inc. It now operates 15 facilities in seven states including Florida and Ohio with about 1,000 residents. It plans to sell its Vista Lake facility as part of the bankruptcy process.

The company is working with law firm Polsinelli and FTI Consulting.

The case is American Eagle Delaware Holding Company LLC, 22-10028, U.S. Bankruptcy Court for the District of Delaware.

Bloomberg Markets

By Lauren Coleman-Lochner and Martin Z Braun

January 14, 2022, 12:31 PM PST

[Exploring Demographic & Organizational Trends in a Post-COVID World: NFMA Webinar]

Keynote Speaker: Sergio Rebelo, *MUFG Bank Distinguished Professor of International Finance at the Kellogg School of Management*, Northwestern University

Moderator: Nicole Byrd, Senior Investment Professional, Nationwide Insurance

This webinar will open the NFMA’s Winter Advanced Webinar Series, with the theme, “Assessing the New Normal in a Post-Covid World”. Professor Rebelo will discuss the impact that large, ongoing structural transformations in the U.S. economy will have on U.S. cities. These transformations include the polarization of consumer demand into value and luxury, the emergence of remote work as an important part of the work landscape, the digital transformation of the service sector, and climate change.

To register, click here. This event is a benefit of NFMA membership, and non-members may attend for a registration fee of $100. As with all Advanced Webinars and Seminars, no press permitted.

Municipal Bond ETFs – Expect More from Your Munis

ETFs and mutual funds have become an increasingly popular means of gaining exposure to municipal bonds. These funds offer investors convenient, diversified access to broad and targeted municipal markets. VanEck's municipal income ETFs offer investors the ability to exercise control over their portfolio yield, duration, and credit exposure at different points in the interest rate cycle.

Target Exposures, Tax-Exempt Income and Low Cost Muni ETFs

The indices underlying each ETF target specific maturity ranges or credit exposures, resulting in distinct performance yield and duration characteristics.

Tactically Managed – Muni Allocation ETF (MAAX)

Actively managed with a proprietary model that uses various objective, data-driven indicators in an attempt to identify periods of heightened credit and/or duration risks. The strategy seeks the tax-exempt income and enhanced risk-adjusted total return by allocating among selected VanEck municipal bond ETFs.

Yield Curve Positioning – Short Muni ETF (SMB), Intermediate Muni ETF (ITM), Long Muni ETF (MLN)

Our investment grade municipal ETF product offerings seek to track indices that reflect a unique segmentation of the investment grade municipal yield curve.

Continue reading.

ETF TRENDS

JANUARY 15, 2022

- Muni Market's Regulator Is Seeking Standards for Disclosure on ESG Debt.
- IRS Updates Procedures for Determination Letter Requests.
- Treasury Provides Added Flexibility and Clarity With Final ARPA Rule.
- U.S. Treasury Rules Against Cities Using Pandemic Aid to Pay Debt.
- As States and Localities Embrace Cryptocurrency, Problems Grow.
- Bonds are the Key to Reining in Runaway Municipal Pension Plans.
- And finally, Take Your Stray Cat (But Not Your Daughter) To Work Day is brought to us this week by *Meade v. Township of Livingston*, in which the former city manager appeared to make a strong case that she was terminated 'cuz the police chief refused to comply with directives from a woman. The chief's issues included: failing to show up for work; picking favorites, "leading to poor morale;" refusing to remove excessive tint from police vehicles; and, most critically; dealing with the town's stray cat problem, "for which the Chief and his staff were responsible 'because the animal control officer is a police officer or under the aegis of the policed department.'" (It remains unclear to us

how exactly one manages to stick the “aegis” while fumbling the “policed department.”) All of which led to the inevitable question – one often applied to the BCB offices – “what kind of f—ing operation are you running here?”

PUBLIC UTILITIES - CALIFORNIA

California Public Utilities Commission v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - December 17, 2021 - F.4th - 2021 WL 5979312

California Public Utilities Commission (CPUC) filed petition to review Federal Energy Regulatory Commission’s (FERC) approval of California Independent System Operator Corporation’s (CAISO) proposed revision to compensation structure for its Capacity Procurement Mechanism (CPM), as voluntary program designed to provide electric capacity necessary to maintain grid reliability within CAISO’s network.

The Court of Appeals held that:

- FERC did not engage in reasoned decision-making when it approved CAISO’s proposed revision to compensation structure for its CPM, and
- Substantial evidence did not support FERC’s approval of CAISO’s proposed revision to compensation structure for its CPM.

Federal Energy Regulatory Commission (FERC) did not engage in reasoned decision-making when it approved proposed revision by California Independent System Operator Corporation (CAISO) to compensation structure for its Capacity Procurement Mechanism (CPM), as voluntary program designed to provide electric capacity necessary to maintain grid reliability within CAISO’s network, which resulted in variable, resource-specific and uncapped maximum rate intended to compensate particular resources, by relying on prior order approving soft-offer cap, which included 20% adder, that produced fixed, resource-agnostic maximum rate meant to facilitate competitive bidding process among many resource classes, and therefore approval was arbitrary and capricious in violation of Administrative Procedure Act (APA), since FERC did not discuss their material differences, and, instead, invoked sort of “consistency” rationale, and left it at that.

Substantial evidence did not support Federal Energy Regulatory Commission’s (FERC) approval of California Independent System Operator Corporation’s (CAISO) proposed revision to compensation structure for its Capacity Procurement Mechanism (CPM), as voluntary program designed to provide electric capacity necessary to maintain grid reliability within CAISO’s network, and therefore approval was arbitrary and capricious in violation of Administrative Procedure Act (APA), since neither CAISO nor FERC relied on findings supporting conclusion that 20% adder for above-cap resources would be just and reasonable mechanism to provide opportunity for sufficient recovery of fixed costs plus return on capital to facilitate incremental upgrades and improvement by resources.

PUBLIC UTILITIES - DISTRICT OF COLUMBIA

Newman v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - December 28, 2021 - F.4th - 2021 WL 6122669

Customers petitioned for review of orders of Federal Energy Regulatory Commission (FERC) that raised their electricity rates.

Developer that sought to build proposed electric power transmission line was granted leave to intervene in support of FERC.

The Court of Appeals held that:

- Clause stating that account shall include expenditures “for the purpose of influencing the decisions of public officials” included expenditures for purpose of indirectly, as well as directly, influencing decisions of public officials;
- Regulatory text favored reading clause to include expenditures for purpose of indirectly, as well as directly, influencing decisions of public officials;
- Regulatory history of account favored reading clause to include expenditures for purpose of indirectly, as well as directly, influencing decisions of public officials;
- FERC precedent favored reading clause to include expenditures for purpose of indirectly, as well as directly, influencing decisions of public officials;
- Regulatory purpose of account favored reading clause to include expenditures for purpose of indirectly, as well as directly, influencing decisions of public officials; and
- Accounts pertaining to “outside services employed” and “general advertising expenses” were not appropriate categories for disputed expenditures.

EMINENT DOMAIN - GEORGIA

Ansley Walk Condominium Association, Inc. v. Atlanta Development Authority

Court of Appeals of Georgia - December 30, 2021 - S.E.2d - 2021 WL 6141606

Landowners filed putative class action against city development authority, implementation agent for multi-use trail, and city for inverse condemnation and trespass, alleging that city failed to compensate property owners for unauthorized use and taking of their property to develop portion of multi-use trail on former railroad corridor.

After the superior court denied defendants’ motion to dismiss and the Court of Appeals affirmed, plaintiffs moved for class certification. The Superior Court denied motion, and plaintiffs appealed.

The Court of Appeals held that predominance requirement for class certification was not met.

Predominance requirement for class certification was not met, in landowners’ action against city development authority, implementation agent for multi-use trail, and city for inverse condemnation and trespass arising from development of trail on former railroad corridor; each claim required determination that class members owned property adjoining corridor and that their rights extended to center-line of corridor, which required analysis of each deed, approximately 60 property rights agreements needed to be reviewed to determine impact on claims and ownership as well as possible defenses, determination of purpose of original easement given to railroad required analysis of 13 individual handwritten conveyance instruments, and damages were individualized as properties had wide variety of uses.

POLITICAL SUBDIVISIONS - INDIANA

Lowe v. Northern Indiana Commuter Transportation District

Supreme Court of Indiana - December 16, 2021 - 177 N.E.3d 796

Employee of commuter transportation district, who sustained injuries to his shoulders while working on a portion of train track, sued the district under the Federal Employers' Liability Act (FELA).

Transportation district moved for summary judgment, alleging that employee failed to provide timely notice of tort claim, as required by Indiana Tort Claims Act (TCA). The Superior Court granted motion. Employee appealed. The Court of Appeals affirmed and employee petitioned to transfer decision.

The Supreme Court held that:

- Tort Claims Act applies to FELA suits against state entities;
- As a matter of first impression, the commuter transportation district was a political subdivision, not a state agency, under the Tort Claims Act; and
- Employee who provided notice of his work place injury to attorney general 263 days after the alleged injury did not substantially comply with Tort Claims Act.

Tort Claims Act applies to Federal Employers' Liability Act (FELA) suits against state entities; Congress does not have power under Article I of the United States Constitution to subject nonconsenting states to private suits for damages in state courts, the mere fact that FELA is a federal statute does not automatically exclude from consideration the procedural constraints of the Act, the Act applies to "a claim or suit in tort" against governmental entities and their employees, and FELA applies to causes of action for negligence.

The commuter transportation district was a political subdivision, not a state agency, under the Tort Claims Act, and thus employee was required to provide notice within 180-days of his injury; a political subdivision included a "separate municipal corporation," and a commuter transportation district is defined as a municipal corporation under enabling statute.

Employee who provided notice of his work place injury to attorney general 263 days after the alleged injury did not substantially comply with Tort Claims Act requirement that employee provide notice to the governing body of commuter transportation district political within 180-days of his injury; employee conceded at the summary judgment hearing that substantial compliance concerned the notice's content, not its timing.

INSURANCE - MICHIGAN

County of Ingham v. Michigan County Road Commission Self-Insurance Pool

Supreme Court of Michigan - December 21, 2021 - N.W.2d - 2021 WL 6062290

Counties brought action against intergovernmental road commission self-insurance pool for refund of unused portions of prior membership contributions to the pool, following counties' purported withdrawal of their road commissions from intergovernmental agreement and transfer of county road commissions' powers to counties' boards of commissioners.

The Circuit Court granted summary disposition in favor of pool and denied counties' motion for summary judgment. Counties appealed. The Court of Appeals reversed on the ground that counties were eligible for refunds as successors in interest to their dissolved road commissions. Pool applied for leave to appeal. The Supreme Court remanded to Court of Appeals for determination of whether governing documents of pool permitted it to decline to issue refunds of surplus premiums from prior-year contributions. On remand, the Court of Appeals reversed and remanded. Pool applied for leave to appeal.

The Supreme Court held that:

- Withdrawing counties had no right to share in any distribution of surplus equity;
- County which had dissolved its road commission and transferred commission's powers and duties to county's board of commissioners without executing an agreement to withdraw from pool was not eligible for membership; and
- Public policy did not require pool to include former members when distributing surplus equity.

Counties that had withdrawn from intergovernmental road commission self-insurance pool before effective date of resolutions dissolving road commissions had no right to share in any distribution of pool's surplus equity, even if permissive language in pool's declaration of trust on distribution of excess monies imposed affirmative obligation; declaration of trust, by-laws, and inter-local agreements did not mandate terms of any such distribution, declaration allowed pool to treat withdrawing members differently and less favorably than other members, agreements stated that trust, by-laws, rules, and regulations stated responsibility for disposing of surplus funds, and memorandum provided for forfeiture of withdrawing member's right to receive future distributions.

County which had dissolved its road commission and transferred commission's powers and duties to county's board of commissioners without executing an agreement to withdraw from intergovernmental road commission self-insurance pool was not a "county road commission" within meaning of by-laws limiting membership to county road commissions, and, thus, dissolution of road commission did not transfer road commission's membership to county itself; when by-laws were drafted and last revised, County Road Law required every county with a county road system to have a board of county road commissioners, and pool's members rejected resolution that would have allowed membership.

Public policy did not require intergovernmental road commission self-insurance pool to include former members when distributing surplus equity and thus did not require pool to include counties that had dissolved road commissions, even if counties expected amendment of pool's by-laws or change in withdrawal policy to their benefit; excluding the counties from surplus distributions did not deny them insurance coverage, pool's withdrawal policy was not a penalty since pool treated counties as any other former member, and statutory restriction on self-insurance group conditioning a refund of surplus equity on a member's continued participation in the group only applied in the context of worker's compensation insurance.

PUBLIC RECORDS - NEVADA

Las Vegas Review-Journal v. City of Henderson

Supreme Court of Nevada - December 23, 2021 - P.3d - 2021 WL 6102332 - 137 Nev. Adv. Op. 81

Newspaper filed suit against city to compel production of documents under the Nevada Public Records Act (NPRA), and it moved for attorney fees after records were produced.

The District Court granted in part newspaper's motion. City appealed, and newspaper cross-appealed. The Supreme Court reversed. Newspaper filed amended request for attorney fees based on intervening caselaw. The District Court denied the motion. Newspaper appealed.

The Supreme Court held that:

- Newspaper did not make reasonable attempt to settle dispute with city, as factor weighing against determination that newspaper was prevailing party under catalyst theory;
- District court adequately considered factor of when city voluntarily released records;
- Trial court was required to review merits of claim that documents were protected by deliberative-process privilege, in considering factor of whether newspaper was entitled to receive documents at earlier time; and
- District court clearly erred in determining that newspaper's suit against city was not frivolous based on Supreme Court's silence in prior appeals.

PUBLIC EMPLOYMENT - NEW JERSEY

Meade v. Township of Livingston

Supreme Court of New Jersey - December 30, 2021 - A.3d - 2021 WL 6139336

Female former employee brought action against employer, a township, alleging gender discrimination under Law Against Discrimination (LAD) after she was fired from her job as township manager and replaced with male township manager to whom the male police chief, who allegedly had gender bias against women as his superiors, would report.

The Superior Court granted summary judgment for employer. Employee appealed. The Superior Court, Appellate Division, affirmed. Employee appealed.

The Supreme Court held that:

- Employee established prima facie case of gender discrimination;
- Factual issues existed as to whether employee was fired because employer believed she was unable to control chief as a result of her gender; and
- Cat's paw theory of liability did not apply.

Female former employee, a township manager, established a prima facie case of gender discrimination under the Law Against Discrimination (LAD), where employee was a member of a protected group, she performed her job for 11 years, and she was fired and replaced with a male township manager.

Genuine issues of material fact existed as to whether township fired female township manager to replace her with a male manager because township believed she was unable to control male police chief as a result of her gender and as to whether township impeded female manager's efforts to terminate chief's employment, precluding summary judgment in gender discrimination action under the Law Against Discrimination (LAD).

Cat's paw theory of liability did not apply to female former township employee's action against township employer for gender discrimination under the Law Against Discrimination (LAD) arising from her firing from job as township manager and replacement with male manager who would supervise male police chief who allegedly had a discriminatory attitude towards women as his superiors, where employee did not allege that a subordinate influenced employer to fire her, but rather alleged that employer’s decision to fire her was influenced by the chief’s own discriminatory views.

SIFMA 2021 US Municipal Bonds Statistics.

SIFMA Research tracks issuance, trading, and outstanding data for the U.S. municipal bond market. Issuance data is broken out by bond type, bid type, capital type, tax type, coupon type and callable status and includes average maturity. Trading volume data shows total and average daily volume and has customer bought/customer sold/dealer trade breakouts. Outstanding data includes holders’ statistics. Data is downloadable by monthly, quarterly and annual statistics including trend analysis.

2021 statistics include:

Issuance (as of December) $475.9 billion, -1.8% Y/Y
Trading (as of December) $8.8 billion ADV, -26.4% Y/Y
Outstanding (as of 3Q21) $4.0 trillion, +2.0% Y/Y

Download Statistics.

January 4, 2022

Treasury Provides Added Flexibility and Clarity With Final ARPA Rule.

State and local advocates seemed generally pleased with final guidelines for the relief law’s $350 billion pandemic aid program. The rules offer a big win for smaller localities in particular.

State and local governments receiving pandemic aid payments under a $350 billion federal program gained new flexibility and further clarity with how they can use the funding, under a final rule that the U.S. Treasury Department issued this week.

The 437-page rule-making document released Jan. 6 provides additional information on how aid recipients can spend money from the American Rescue Plan Act on capital expenditures, employee pay and water, sewer and broadband projects, among other areas.

Treasury is also giving governments an option to put up to $10 million of their relief payments towards revenue losses, enabling them to spend the money on a broad range of general government expenses without jumping through administrative hoops outlined in an earlier version of the rule. This is a major win for many smaller communities.

State and local government advocacy groups that have been tracking the development of the rule and urging Treasury to make specific tweaks seemed generally pleased with the final product.

“It is a really well thought out, put together final rule that provides a lot of flexibility,” said Eryn Hurley, deputy director of government affairs for the National Association of Counties.

Emily S. Brock, director of the Government Finance Officers Association’s federal liaison center echoed that view. “They did an excellent job in expanding in a lot of areas,” she said, referring to the

Treasury Department. “It was a really thoughtful approach,” she added. “They did a lot of stakeholder outreach.”

Treasury in May released an “interim final rule,” which served as a foundation for the final draft. The department said it received over 1,500 comments on the interim guidelines. The final rule will officially take effect on April 1. But aid recipients can begin following the final guidelines now, ahead of the effective date, Treasury said.

States and localities were free to begin spending the aid funding under the interim final rule. Although some places have held back, awaiting the final regulations. Many officials are leery of doing anything that might run afoul of the federal rules for spending the money, potentially resulting in clawbacks or other repercussions.

“There’s already been a ton of investment,” said Hurley. “With the final rule coming out we’ll see that pattern continue.”

Revenue Losses

The text of the American Rescue Plan Act and subsequent Treasury rule-making specify categories of eligible spending for the state and local aid program.

Broadly these include: Responding to the pandemic (both the health and economic fallout); providing “premium pay” to workers doing “essential” work during the health crisis; water, sewer and broadband projects; and backfilling government revenue losses due to Covid-19.

The revenue loss category is the most flexible, giving states and localities a great deal of leeway to use their aid on a variety of general government expenses in an amount equal to revenue losses that they calculate based on a formula included in the Treasury guidance.

Under the final rule, governments can automatically spend up to $10 million under this category.

“That was huge for us,” said Hurley.

This is significant for smaller communities in particular. For some, it will unlock the possibility of using their entire aid allotment under the most flexible terms the program provides. And they can do so without completing the revenue loss formula, which some officials had described as complicated and time consuming to work through.

Hurley noted that there are about 2,100 counties that fall into this camp and have awards that are under the $10 million mark.

For governments that will have to complete the revenue loss formula, one concern that emerged earlier in the rule-making process was that a requirement to calculate losses based on calendar years as opposed to fiscal years would add to the administrative burdens.

But Treasury explained that it has made adjustments in the final rule to give recipients “the option to choose whether to calculate revenue loss on a fiscal year or calendar year basis,” with the caveat that they must choose one of the two options and stick with it.

Capital Spending and Payroll

The Government Finance Officers Association noted that the final rule expanded a list of uses for how governments can use the funding to respond to the pandemic and its economic effects. This included clarifying that aid recipients can use the money for certain capital expenses, such as building affordable housing, child care facilities, schools, hospitals and other projects.

State and local government groups have pressed for even greater flexibility here, that would permit the money to go more freely towards transportation-oriented projects. The rule doesn't go that far. But Brock said with the latest changes, "you have a lot of opportunity."

Additionally, the final rule expands the share of eligible workers who can receive "premium pay," without a written explanation of why they should qualify. This pay is meant for workers who took on added burdens on the job due to the pandemic.

The range of "eligible" workers that can qualify here is broad and not limited to the public sector. It includes not only workers in fields like health care, emergency response, child care and education, but also grocery and elections workers and transportation and warehousing.

But people in these professions must also meet certain criteria outlined in the rule for them to be eligible for premium pay programs that state and local governments might choose to set up using the federal funds. The allowable bonus pay is also capped at $13 an hour, or a maximum of $25,000 per worker.

In addition to premium pay, Treasury highlighted that its final rule provides governments with a broader set of options to use their aid to restore public employment, and to retain existing employees.

Funding recipients can either hire employees for positions that were filled as of Jan. 27, 2020 but unfilled or cut as of March 3, 2021. Or, they can use their relief dollars to increase the number of budgeted, full-time equivalent employees to 7.5% above their pre-pandemic baseline.

The second option, Treasury says, is meant to account "for the continued underinvestment in state and local governments since the Great Recession."

States and localities can also use the funding to offset pay cuts or lost pay due to furloughs that public employees experienced due to the pandemic, to maintain pay levels in order to avoid layoffs, and to provide retention incentives.

These provisions are notable given that governments have been struggling in a hot job market to recruit and keep workers for certain positions. Public sector employment at the state and local level is also still down compared to where it was before the pandemic hit.

Other Areas

The final rule also includes updates and clarifications related to water, sewer and broadband spending.

For example, Treasury makes clear that funding can be used under this eligible set of expenses on certain projects involving culvert repairs, private wells, dam and reservoir upgrades and preventing contamination in drinking water from lead pipes.

With broadband, the interim final rule specified that areas with internet download speeds of 25 mbps and upload speeds of 3 mbps were eligible for projects. The final rule expands eligibility, opening the door for investments in areas with 100/20 mbps speeds.

Hurley pointed out that the final rule, in contrast to the interim guidance, expands the set of households and communities that are considered to be adversely affected by the pandemic, where aid recipients can direct funds in certain ways without additional analysis to justify that spending.

Treasury made clear that state and local government aid recipients are still barred from dumping their aid into "rainy day" reserve funds, using it for debt service payments, or depositing it into pension funds to pay down liabilities.

The rule also specifies that states cannot use their funding to "directly or indirectly" offset reductions in tax revenue resulting from changes in law or policy, beginning on March 3 of last year. The law's restrictions around offsetting tax reductions have been facing legal challenges brought by multiple states.

An overview of the final Treasury rule can be found here.

Route Fifty

By Bill Lucia

JANUARY 7, 2022

U.S. Treasury Rules Against Cities Using Pandemic Aid to Pay Debt.

The U.S. Treasury Department stuck by its rule that states and cities can't use pandemic relief aid to pay down debt.

On Thursday, the Treasury released its final rule detailing how municipalities can use some $350 billion of aid from the Biden administration's American Rescue Plan. The rule bars governments from using the funds to pay debt service, one of several restrictions that the Treasury has put on the money.

A bevy of governments like Illinois had asked the Treasury to relax that restriction, arguing that they needed to take on debt when the pandemic upended their finances in 2020.

The Treasury has emphasized that the lifeline to states, cities, counties and other governments is intended to help them rebuild their workforces, maintain government services and aid in the U.S. economic recovery.

The final rule also bars governments from using the aid to replenish rainy day funds and to pay off legal settlements.

"First, debt service and reserve replenishment costs do not constitute the provision of services to constituents," the Treasury's final rule says. "As noted in the interim final rule, financing expenses – such as issuance of debt or payment of debt service – do not provide services or aid to citizens."

Bloomberg Politics

By Amanda Albright

January 6, 2022, 9:31 AM PST

As States and Localities Embrace Cryptocurrency, Problems Grow.

While a handful of cities dove in last year, 14 states enacted laws regulating digital currency and many others introduced bills to facilitate transactions while preventing scams.

It's only been a few months since the cryptocurrency MiamiCoin was introduced by Miami, but the venture already has yielded more than $21 million for the city, Mayor Francis Suarez has said. The mayor pledged to share the windfall with residents by distributing dividends in the form of cryptocurrency.

Miami residents eventually could use cryptocurrency instead of cash to pay their taxes and city fees, Suarez contends. The mayors of New York City and Austin, Texas, have said they, too, are working toward accepting and making payments using cyber cash. And other localities are investigating how then can best utilize cryptocurrency.

Meanwhile, multiple states updated their banking statutes to make room for cryptocurrency transactions. Last year, 20-plus state legislatures considered digital asset legislation, and more than a dozen signed bills into law.

But while some public sector leaders want to help facilitate crypto industries in their areas, noting the uptick in businesses and transactions, governments and consumers have fallen prey to scammers.

"States are looking at ways to allow these businesses, this industry, to develop, but they're also aware that they might need to step in as regulators if problems develop," Heather Morton, a legislative analyst for the National Conference of State Legislatures, said.

'A Lot of Promise'

In news interviews, Suarez has said he intends to make Miami the world's "cryptocurrency innovation hub" and has partnered with the company CityCoins to create a local cryptocurrency called MiamiCoin.

He predicted that the success of MiamiCoin eventually could eliminate the need for the city to collect taxes.

Miami's early success in the digital economy prompted New York City and Austin to approve their own coins. Campbell Harvey, a professor of finance at Duke University, predicted others will follow.

"Just think of its branded value," said Harvey, the author of *DeFi and the Future of Finance*, a book about decentralized finance. "These cities are operating and preparing themselves for the future. That's a powerful brand compared to these cities that are stuck in the past."

Harvey said cities that embrace Bitcoin and other cryptocurrencies are positioning themselves to attract businesses involved with that emerging economy, which, in turn, will create jobs for city residents.

Several technology and financial companies have relocated to Miami over the past year, for example. And the crypto wallet firm Blockchain.com announced it would move its headquarters from New York City to Miami because of the Florida city's "welcoming regulatory environment serving as a hotbed of crypto innovation."

The appeals to businesses of locating in a cryptocurrency-friendly city or state, Harvey said, are efficiency and cost savings. For example, payments via cryptocurrency are quicker and cheaper than through traditional credit cards or wire transfers, Harvey said.

"There's a lot of promise here," he said, but added, "It's really very early on."

In fact, city governments and state legislatures have some catching up to do before cryptocurrency can replace traditional means of payment.

In New York City, for example, new Mayor Eric Adams, during his campaign, pledged to accept his first three paychecks in cyber cash. But the city is not equipped to pay employees in that manner. He later explained he would have to convert his traditional paycheck into Bitcoin, but told Bloomberg he aims to eventually give city employees the choice between dollars and cryptocurrency.

Likewise, in Ohio, a 2018 experiment allowing businesses to pay state taxes in cryptocurrency failed when the attorney general determined that existing laws covering electronic payments did not permit it.

As Industry Grows, Problems Grow

Wyoming, which is marketing itself as a crypto-friendly place to do business, has enacted two dozen laws that make it easier for digital currency companies to operate in the state, including an alternative bank charter that allows crypto banks to locate there. By mid-2021, 48 businesses with "bitcoin" in their names had hung their shingles in the state.

"They are seeing some economic development benefits from encouraging these companies to do business in their state and to be basing themselves in Wyoming," Morton said.

Legislatures in 21 states, including Wyoming, considered legislation involving digital assets in 2021; in 14 of them, those bills became law last year.

Some of the states updated laws on the books to add virtual currencies to the list of items the state may return or dispose of under their unclaimed property laws. Several others defined cryptocurrency as a cash equivalent in laws related to sports wagers and criminal actions. And Arizona's lawmakers established a study committee on cryptocurrency.

Morton noted that cryptocurrency did not exist when states adopted their original financial laws regulating money transmissions, like wire transfers and money orders. "They're setting up requirements so cryptocurrency companies have to abide by the rules and regulations of money services and money transmission," she said.

Still, added Morton, a senior fellow in NCSL's fiscal affairs program, "States are very interested in allowing cryptocurrency to continue develop. … "States are looking at ways to allow these businesses, this industry, to develop, but they're also aware that they might need to step in as regulators if problems develop."

Problems have occurred in Massachusetts, Texas and New York, where the attorneys general have levied fines and imposed cease-and-desist orders on scammers posing as crypto companies or even as Tesla boss Elon Musk, promising large returns to investors who send them Bitcoin, according to an investigation by Stateline.

Morton acknowledged that as the industry grows, problems will arise. But she predicted that states' use of cryptocurrency will continue to expand, especially if the Federal Reserve Board eventually adopts a digital dollar, which it is reviewing.

"Those are the areas we're watching to see what happens," she said. "This is where technology meets money."

Route Fifty

By Sharon O'Malley

JAN 7, 2022

[S&P Outlook For U.S. States: Federal Funds Fuel Spending; Will Inflation Impede The Impact?]

Sector View: Stable

Positive credit strengths offset by significant uncertainties, leading to stable view. States have all come through the first two years of the pandemic holding or even improving credit quality. Much of this is due to the consistent and generous flow of federal funds, but additionally the generally highly rated sector responded to crisis as expected: taking actions to balance budgets. But as the federal monies flow, additional risks remain. We see inflationary uncertainty, coronavirus variants, and ongoing supply chain and employment challenges as potential impediments to further improvement of credit conditions.

Continue reading.

4 Jan, 2022

S&P Outlook For U.S. Local Governments: Risks Remain Despite Support From Stimulus

Sector View: Stable

The stable sector view reflects local governments' proactive management; economic growth; and strong federal fiscal and policy response throughout the pandemic. Multiple rounds of federal stimulus for pandemic-induced revenue and expenditure fluctuations continue to provide a solid foundation for addressing potential pressure caused by new virus variants. When coupled with economic growth around the U.S., we expect local government credit quality to remain stable in 2022; however, borrowers will have to remain flexible to adjust to changing conditions.

Continue reading.

5 Jan, 2022

S&P Outlook For U.S. Not-For-Profit Acute Health Care: A Booster May Be Needed

Sector View: Stable

Our view remains stable as the sector continues to weather the pandemic well–albeit with the benefit of significant federal aid. We expect that healthy balance sheets, demand for services, and improved revenue yield will continue to support hospitals. But there are operating headwinds given significant ongoing expense and revenue pressures likely to continue over the next year.

Continue reading.

6 Jan, 2022

Bonds are the Key to Reining in Runaway Municipal Pension Plans.

In what is the product of the sustained low-rate environment, many municipalities are considering addressing their pension position through bonds. This should be encouraged by policymakers and explored by pension systems.

Bond markets are offering municipalities the opportunity to exchange discount rates of 6, 7 and sometimes even 8 percent for bonds with yields below 3 percent. The spread between the discount rate and the bond yield is the root of the appeal of pension obligation bonds.

A natural question is "How do pension systems become underfunded?" The answer is a combination of issues. The two largest are underperforming investments and insufficient employee contributions.

Continue reading.

THE HILL

BY ERIC J. MASON

01/06/22

Pensions And The Municipal Market (Radio)

Eric Kazatsky, Senior US Municipals Strategist with Bloomberg Intelligence, discusses the latest news out of muni markets, including pensions. Hosted by Paul Sweeney and Taylor Riggs.

Listen to audio.

Bloomberg Radio

Jan 07, 2022

Retirement Communities Lose Residents, Attract Muni Investors.

Senior-living developments weakened by the Covid-19 pandemic hold appeal for bondholders in search of yield

Investors are snapping up municipal debt sold by senior-living facilities despite record default rates, pandemic-related revenue losses and costly labor shortages.

Covid-19's rapid spread through eldercare facilities, along with the pandemic's lockdowns, deterred many older Americans from moving into senior communities. Nearly 8% of the $41 billion in outstanding senior-living bonds are in default as of December, according to Municipal Market Analytics, the most since tracking began in 2009. The sector now accounts for almost one-quarter of defaulted debt in the muni market, not including bonds caught up in Puerto Rico's bankruptcy.

Yet investors remain bullish. After a fall in debt issuance in 2020, senior-living facilities sold $7.4 billion in new bonds in 2021 through Dec. 13, 21% more than they did in 2019, according to an analysis by ICE Data Services.

"The operations have not yet fully recovered, even though, in some places, bond prices have," said David Hammer, head of municipal-bond portfolio management at Pacific Investment Management Co. He said he has reduced his exposure to senior-living facilities.

The robust appetite for senior-living bonds is a window into investors' willingness to put aside worries about Covid-19-related financial weakness as the pandemic grinds on into its third year. Retirement communities are among the municipal borrowers hardest hit financially, with Covid-19 driving away prospective residents and adding costs for protective equipment. But with rock-bottom yields, demand for new bonds outstripping supply and the potential for tax increases, the pickings are slim for investors in search of tax-exempt income.

Yields on risky municipal bonds fell in 2021, with investors plowing a record $22 billion into high-yield municipal-bond funds through Dec. 15, according to Refinitiv Lipper. Borrowers rated BAA were paying 2.12% on 30-year bonds as of Dec. 31, according to data from Refinitiv, down 14% from a year earlier.

Meanwhile, 10-year senior-living bonds sold over the past six months yielded 6.6% for taxable debt financing the purchase of retirement facilities in Texas and Oklahoma and 4.4% for tax-exempt debt to buy and refinance a retirement facility in Kentucky, bond documents show. For an investor in the top tax bracket, a 4.4% tax-free yield equates to roughly 7.6%, according to data from Nuveen.

Several senior-living borrowers that considered issuing debt in 2020 and then opted against it, moved forward with selling bonds in 2021 after finding the market more receptive, said Seth Brumby of Reorg, a credit-research firm. The risky debt is a welcome addition for many high-yield funds trying to put investor cash to work.

"Senior-living deals were well-received with strong investor interest," said Jon Barasch, director of municipal evaluations at ICE Data Services.

Senior-living facilities include nursing homes as well as assisted-living and continuing-care retirement communities, whose offerings range from independent living to medical care and assistance with daily activities. These facilities are permitted by federal law to sell tax-exempt debt the same way that state and local governments do because they are perceived to have a public benefit.

Any individual facility's default or drop in bond prices would have limited impact on high-yield mutual funds, which mix senior-living bonds with those of other low-rated borrowers such as charter schools and college dormitories. And some recent trends have benefited senior-living facilities, including the graying of the baby boomers and a hot housing market for prospective residents looking to sell their homes.

Still several indicators point to more trouble ahead for the sector. Much of the revenue to pay back bondholders comes from entrance fees residents pay when they move into senior communities. But move-ins remain well below pre-Covid-19 levels. Nonprofit continuing-care retirement communities had an 87% occupancy rate in the third quarter of 2021, down from 93% in the first quarter of 2020, according to the NIC MAP Data Service.

Median net operating margins, including entrance fees, at 151 facilities tracked by Fitch Ratings fell to 18% in 2020 from 23% in 2019 for investment-grade borrowers and to 14% from 18% for those below investment-grade.

A tight labor market is also pressuring expenses, analysts said.

In addition to the $3.2 billion in senior-living muni debt currently in default, borrowers of a further $3.7 billion have reported impairments, such as having to dip into reserves, according to Municipal Market Analytics. MMA partner Matt Fabian said high investor demand has helped prop up struggling facilities by providing access to rescue cash.

"So the record default number understates the amount of disruption the pandemic has created," Mr. Fabian said.

The Wall Street Journal

By Heather Gillers

Jan. 4, 2022

An ESG Reckoning Could Be on the Horizon for Municipal Bonds.

The Municipal Securities Rulemaking Board, the self-regulatory organization over municipal bond issuers, has started a key first step on the way to regulation within the space. The MSRB has issued a Request for Information as of December, seeking to find out what ESG borrowers are disclosing regarding how their bonds relate to ESG, reports Bloomberg.

Municipal bonds related to ESG experienced a record year last year, bringing in $24.6 billion of green debt, the biggest portion of the ESG muni pie. However, an analysis done last year by a UN group found that borrowers weren't disclosing ESG data effectively or with any type of consistency, including risks that pertained to the environment and climate change.

Current ESG standards within municipal bonds are such that data and what is reported, as well as the frequency it is reported at, are all optional. The call for commentary, which is an appeal to public officials, bankers, investors, as well as the general public, focuses heavily on phrasing centered around the word "standard" or an iteration of it.

It's a bit of a writing on the wall situation and mirrors a larger call that the SEC put out in March 2021 requesting ESG commentary on climate disclosures by issuers. While no regulations have been forthcoming yet, analysts anticipate some sort of guidance at minimum to be released by the Commission this year.

The main culprit in drawing the regulatory attention within munis could be the very thing that brought in so much money to the space: green bonds. At their inception in 2013 when Massachusetts sold the very first self-styled green bonds to pay for a host of upgrades centered around energy efficiency, water quality, and pollution control, any state or local government could create a bond and decide that it was green without any oversight or standards. That's still mostly the case, though there have been some attempts at creating standards within the industry since.

"Many investors and other market participants are seeking ESG-related information beyond what historically has been provided to the market. In response, private vendors are offering ESG certification service," writes the MSRB in their statement.

The cropping up of private vendors centered around green bonds creates the potential for an uneven playing field for investors, with some investors having access to potentially better information, or even more information, than what is currently legally required. It's something the MSRB could be seeking to remedy in their Request for Information, and it remains to be seen what will come of the information gathered once the window closes for submissions.

ETF TRENDS

by KARRIE GORDON

JANUARY 5, 2022

IRS Updates Procedures for Determination Letter Requests.

The new procedures are outlined in Revenue Procedure (Rev. Proc.) 2022-04.

Rev. Proc. 2022-04 is a general update of Rev. Proc. 2021-4, published in Internal Revenue Bulletin 2021-01, which sets forth:

- general information about the types of advice provided by the IRS Employee Plans Office of Rulings and Agreements;
- general procedures for letter ruling and determination letter requests;
- specific procedures for determination letter requests; and
- user fees associated with advice requested from Employee Plans Rulings and Agreements.

In addition to minor non-substantive changes, including changes to dates, cross references and citations to other revenue procedures, the following substantive changes have been made to Rev. Proc. 2021-4.

Sections 5.01(4) and 8.01 are revised to provide that the procedures for obtaining an opinion letter regarding a 403(b) pre-approved plan's second six-year remedial amendment cycle beginning July 1, 2020 (and subsequent cycles) are set forth in Rev. Proc. 2021-37.

Sections 6.02 and 30.07 are revised to provide that Form 5300, Application for Determination for

Employee Benefit Plan, may be submitted electronically beginning June 1, 2022, and must be submitted electronically beginning July 1, 2022, and to update the procedures for submitting Form 5300 and Form 5310, Application for Determination for Terminating Plan, including payment of the user fee.

Section 6.02(2)(a) is modified to delete “Trust Document” from the list of required documents that must be included as part of a determination letter submission.

Section 8.02 is modified to specify that a Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans, should be used in the case of a determination letter request for a standardized plan that is not a multiple employer plan if the employer requests a determination solely on overriding plan language added to satisfy Section 415 or 416.

Section 10.03 is modified to delete “trust documents” from the description of materials that must be submitted with a determination letter application.

Section 11.04 is modified to clarify that a plan sponsor of a dual-qualified plan must submit a restatement showing compliance with the Internal Revenue Code and applicable lists when submitting a determination letter application.

Sections 12.02, 12.03, and 12.04 are amended to clarify that an adopting employer of a standardized plan does not file a Form 5300 to request a determination related to overriding language necessary to coordinate (1) the application of the limitations of Section 415, or (2) the requirements of Section 416 because the employer maintains multiple plans.

Section 14.02 is modified to clarify the scope of reliance for a determination letter issued for a multiple employer plan.

Appendix A, Sections .01 and .05 are revised to update the user fees relating to letter ruling requests and opinion letters on pre-approved plans.

AMERICAN SOCIETY OF PENSION PROFESSIONALS & ACTUARIES

BY JOHN IEKEL

JANUARY 5, 2022

TAX - PENNSYLVANIA

O'Donnell v. Allegheny County North Tax Collection Committee

Supreme Court of Pennsylvania - December 27, 2021 - A.3d - 2021 WL 6111680

Taxpayer, who had received qui tam payment under False Claims Act (FCA), filed a petition for administrative appeal after tax servicer for the school district and the borough mailed him a notice that his local earned income tax was delinquent.

The Appeals Board of the Allegheny County North Tax Collection Committee denied the petition for administrative appeal, and taxpayer appealed. The Court of Common Pleas affirmed, and taxpayer appealed. The Commonwealth Court reversed, and school district and borough appealed.

The Supreme Court held that:

- Taxpayer’s qui tam payment constituted “compensation” pursuant to Tax Reform Code’s definition of “compensation” as including incentive payments; qui tam payment was taxpayer’s incentive, and
- Taxpayer’s qui tam payment was taxable as compensation under Tax Reform Code and, therefore, as earned income under the Local Tax Enabling Act (LTEA).

By the terms of the False Claims Act (FCA), taxpayer’s qui tam payment was intended to incentivize whistleblowers like taxpayer to identify employer fraud, initiate the qui tam action, and provide valuable information to the federal government, and thus, taxpayer’s qui tam payment constituted “compensation” pursuant to Tax Reform Code’s definition of “compensation” as including incentive payments; qui tam payment was taxpayer’s incentive.

Because taxpayer’s qui tam payment under False Claims Act (FCA) was an incentive payment, it was taxable as compensation under the plain language of the Tax Reform Code and, therefore, as earned income under the Local Tax Enabling Act (LTEA), which authorized certain political subdivisions, such as school district, to impose a tax on the earned income of their residents.

While taxpayer’s qui tam payment under False Claims Act (FCA) was categorized most aptly as a taxable incentive payment, it also met Tax Reform Code’s definition of “compensation” for “similar remuneration for services rendered”; qui tam payment was rendered as remuneration for taxpayer’s services in providing useful information to the federal government about his employer’s fraud and for initiating the qui tam action.

The Windfall in US Infrastructure Spending Won’t be Coming from the Government Alone.

The recently-passed US infrastructure bill is poised to give $1.2 trillion to cities and states. Business and municipal leaders hope to funnel some of those dollars into a relatively new model for building America’s infrastructure: the public-private partnership (P3).

In these partnerships, public agencies and private investors share responsibility for financing, building, and maintaining infrastructure projects. P3s have been used to build US infrastructure including highways, water treatment systems, courthouses, and arenas. They were behind New York City’s Hudson Yards and the renovation of St. Louis’ Gateway Arch.

But the model is still a relatively unconventional way to fund infrastructure development projects in the US. There were 186 such projects under development in 2020, up from 94 in two years earlier, according to a study by the legal firm Husch Blackwell (pdf). Far more are on the way.

Continue reading.

qz.com

By Camille Squires

January 6, 2022

[Berkeley's Decision to Incorporate Blockchain into Microbond Financing Program Sparks Controversy.]

Berkeley residents expressed their concerns and frustrations following an announcement by Berkeley Mayor Jesse Arreguín on Twitter sharing the city's plans to incorporate blockchain into the municipal bond system.

The concerns raised by the residents include the environmental impact of blockchain and the security of the technology.

"Crypto and blockchain applications have—so far—taken a path that I believe is directly opposed to the city's stated goals around mitigating climate change," said Berkeley resident Marc Hedlund in an email.

According to City Councilmember Ben Bartlett, who is credited with introducing the idea to the city, the mining operations of earlier blockchain applications were environmentally caustic, but newer applications of blockchain are not.

However, Hedlund alleged in an email that only 4.2% of transactions use the more environmentally friendly blockchain technology, which requires far less electricity.

"If our intention is to make bonds available to people with lower net worth so they can invest more easily, should we be relying on systems that are the vast minority of an already just-emerging technology—the cutting edge of the cutting edge, so to speak?" Hedlund said in the email.

Berkeley resident Peter Seibel said in a Twitter direct message that he sees the value of microbonds but cites similar concerns and believes incorporating blockchain technology does not necessarily make it less risky for the city or the people who invest in them.

However, Bartlett refuted security concerns, stating the decentralized nature of blockchain makes it less hackable and less penetrable.

"Blockchains provide a real-time audit. You cannot erase what happened on it. It is immutable as they say," Bartlett said. "They are more secure and they allow programmability, so you can have the instruments do whatever you imagine they should be doing for the community."

The idea to introduce blockchain technology into the municipal bond market came after the federal tax cuts imposed during the Trump administration, according to Bartlett. He added that incorporating blockchain technology as a new tool for community finance creates a system that has the ability to withstand changes to federal policy.

Bartlett affirmed his faith in the consultants working to develop this project, citing their experience and "technological prowess" and believes criticism of the initiative is premature, asserting that the project is merely a pilot and participation is optional.

The council member further highlighted that the city has prior financing successes, such as the invention of Property Assessed Clean Energy, or PACE, financing, and that blockchain continues this legacy.

"This is our tradition of financial innovation for the people," Bartlett said.

THE DAILY CALIFORNIAN

BY ANNA ARMSTRONG

JANUARY 4, 2022

How Rising Interest Rates May Affect Muni Bond Investors.

KEY POINTS

- Money has piled into municipal bonds as investors aim to lower risk and reduce taxes.
- Some investors may worry about price declines as the Federal Reserve plans for interest rate increases.
- But muni bonds may see higher coupon rates, and a well-built portfolio may still achieve long-term goals, financial experts say.

Continue reading.

cnbc.com

by Kate Dore

JAN 6 20223

GASB Adds Major Project, Pre-Agenda Research Area to Technical Plan.

Norwalk, CT, January 6, 2022 — During its December 2021 meeting, the Governmental Accounting Standards Board (GASB) approved the addition of a major project on going concern uncertainties and severe financial stress and pre-agenda research activity on subsequent events as part of its technical plan for the first third of 2022.

Going Concern Uncertainties and Severe Financial Stress

The GASB added this project based on the results of more than five years of research on the GASB's existing standards for going concern uncertainties and current practice with respect to identifying governments experiencing or in danger of severe financial stress.

The concept of going concern uncertainties was not specifically developed or significantly modified for the government environment when incorporated into the current GASB literature. Pre-agenda research indicates that, even when governments are in or have been experiencing severe financial stress, few dissolve or cease operations. Although current guidance provides that financial statement preparers have a responsibility to evaluate a government's ability to continue as a going concern, such an evaluation often poses challenges and has resulted in diversity in practice. These challenges also include determining whether or when governments have a responsibility to evaluate and disclose their exposure to severe financial stress.

The objectives of the project are to consider (1) improvements to existing guidance for going concern considerations (including the definition of a going concern) to address diversity in practice and clarify the circumstances under which disclosure is appropriate, (2) developing a definition of severe financial stress and criteria for identifying when governments should disclose their exposure, and (3) what information about a government's exposure to severe financial stress is necessary to disclose.

Subsequent Events

The objective of the pre-agenda research item on Subsequent Events is to (1) evaluate the effectiveness of the existing guidance for identifying and reporting subsequent events and (2) consider the need for revisions to those standards. If additional guidance is determined to be needed, another objective would be to consider the development of revised accounting and financial reporting for subsequent events.

As part of its consideration of the first-third 2022 technical plan, the GASB also considered but chose not to add (1) a project on interim financial reporting and (2) a pre-agenda research activity on related-party transactions.

More information on the new project and pre-agenda research activity is available on the GASB website under the Technical Plan section.

Muni Market's Regulator Is Seeking Standards for Disclosure on ESG Debt.

- **MSRB asks for feedback on how issuers disclose credit risk**
- **Government finance officers released best practices in 2021**

There's a big mess in MuniLand, and the Municipal Securities Rulemaking Board wants to clean it up.

The mess is "Environmental, Social and Governance" practices by municipal issuers, and the MSRB, the self-regulatory organization in charge of the $4 trillion market, wants feedback — from bankers to public officials to investors and the general public — about what borrowers disclose on how ESG relates to their bonds.

The MSRB put out its Request for Information in December, and said it wants comments by March 8. It's an issue that Mark Kim, the MSRB's chief executive officer, flagged back in September as ESG munis were headed for a banner year: Issuance of green debt alone, the largest part of the muni ESG segment, totaled a record $24.6 billion in 2021, data compiled by Bloomberg show. But one analysis last year found that borrowers don't disclose relevant data consistently or effectively, such as risks related to the environment.

The regulator's request for comment contains the word "standard" or a variation at least nine times. It also uses terms such as uniform and metrics. So you can see where this may be going — ultimately, the establishment of disclosure standards.

Right now, as is typical in the municipal market, everything is optional. The MSRB reminds readers that it is charged with enhancing both issuer and investor protection and "the overall fairness and efficiency of the municipal securities market." So the current state of affairs will never do, at least according to the MSRB.

Self-Styled Issuance

I blame green bonds for the regulatory interest in this topic. The securities are increasingly common in the U.S. corporate market, where investors are pushing for more sustainable debt. Municipal borrowers began offering them in 2013, when Massachusetts sold $100 million in self-styled green bonds to pay for improvements to water quality, energy efficiency and pollution control, according to the MSRB website.

Now, I always saw most munis as green bonds, used to improve the environment in some fashion. The key term in that description in the paragraph above was "self-styled." States and local governments seemed eager enough to slap the green label on certain bond issues, and when you'd ask them about it, about who decided what was a green bond, it turned out that they did. It was a marketing tool, and if certain investors were willing to go out of their way to buy a municipal bond labeled "green," well, terrific! There was no standard to it, no independent verification. At least, not at the beginning, and even now, not uniformly.

As the MSRB's request makes clear, that may be about to change.

"Many investors and other market participants are seeking ESG-related information beyond what historically has been provided to the market. In response, private vendors are offering ESG certification services." And you can stop right there. Once there's a multiplicity of sources for information, there's the possibility that some investors will get more or better information than the legally required disclosures in offering documents. The MSRB request lists five private vendors who currently certify green bonds, including Build America Mutual, Kestrel Verifiers and Sustainalytics.

And then toward the end of the request, the MSRB asks bluntly whether the ESG indicator from IHS Markit that it has incorporated on its EMMA website's new-issue calendar enhances market transparency. And then it asks, "What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information?"

Best Practices

The Government Finance Officers Association in 2021 released best practices concerning ESG disclosure, and best practices aren't just concocted overnight, so I asked them about it. Keep in mind that the MSRB in a footnote in its request quotes the GFOA as citing the impracticality of developing uniform metrics to gauge risks.

"One thing that stood out to us is the RFI at times tends to blur the bright line that exists between two things: 1. ESG disclosures on everyday bonds issued and 2. Designated Bonds (i.e. green or social bonds) which are designed to be issued for specific purposes," wrote Emily Swenson Brock, director of the GFOA's Federal Liaison Center, in an email. "We will do our best to clarify that bright line (by pointing to our best practices here) and provide the MSRB ideas on how the municipal bond industry can work together to advance issuer awareness and practice in ESG."

And Dave Erdman, Wisconsin's capital finance director and a member of the GFOA Debt Committee, said in an email, "Yes some metrics or standardization of criteria and requirements that must be met to have designated bond (such as green, social, etc) would be beneficial to all, in other words, everyone is playing the same game and aiming for the same fences when designating a bond, but do we really want to open the regulatory and reality door on standardization of disclosure language?"

It's clear that the age-old fight between the analysts who want more and issuers who already feel beleaguered by their demands is about to enter a new phase.

Bloomberg Markets

By Joseph Mysak Jr

January 5, 2022, 9:45 AM PST

— With assistance by Danielle Moran

(Joe Mysak is a municipal market columnist who writes for Bloomberg. His opinions do not necessarily reflect those of Bloomberg LP and its owner, and his observations are not intended as investment advice.)

Muni Market Opens 2022 With Calls for Third Year of Record Sales.

- **2021 long-term issuance rose 1.2% to historic $460.6 billion Some analysts see even bigger 2022 amid delayed projects**

U.S. municipal bond issuance surged to an all-time high last year as issuers tackled financing needs amid the pandemic, and some Wall Street analysts predict an even bigger slate of sales in 2022.

Long-term municipal issuance rose about 1.2% from 2020, which was also a record, to a total of $460.6 billion in 2021, according to data compiled by Bloomberg. Borrowers have been taking advantage of long-term interest rates that remain low by historical standards and robust demand for tax-exempt debt as lawmakers debate higher income levies on the wealthy.

Although the Federal Reserve is expected to start lifting its benchmark rate in 2022, that may not be enough to deter states and local governments seeking to borrow for deferred infrastructure plans. For one thing, those projects are only getting more costly given the backdrop of elevated inflation, and municipalities also have added flexibility given the billions of dollars of federal pandemic aid they've received.

"Potholes aren't waiting for the end of the pandemic," said Pat Luby, senior municipal strategist at CreditSights. "Road repairs, airport expansions — they continue to need to be done, and deferring those costs only makes it more expensive."

The 2021 record, achieved in December, marked a surprising shift from earlier in the year, as demand for munis dimmed for a stretch amid the lack of clarity over new federal spending measures that could include tax increases on wealthy Americans. But the pace of issuance picked up into year-end as the debate in Washington dragged on.

Luby forecasts 2022 volume of about $480 billion, with increases in both taxable and tax-exempt borrowing.

"If you look at the size of the market, the pace of borrowing has not kept up with inflation, so there is tremendous unmet need," he said.

Citigroup Inc. analysts led by Vikram Rai said last month that they expect an all-time high of $520 billion of debt sales this year, driven by inflation and a positive economic outlook that will spur governments to take on delayed projects.

Bloomberg Markets

By Nic Querolo

January 3, 2022, 10:08 AM PST

[Sustainable Investing's Boom Is Here to Stay. What's In Store, According to an ESG Pioneer.]

Decades before Wall Street jumped on the ESG bandwagon, Amy Domini was an early and unwavering believer in the value of considering environmental, social, and governance issues in the investment process.

Her interest in sustainable investing took root when she was a stockbroker in the late 1970s. "I'd call clients with a stock tip and be startled when they would get mad and say, 'I'll never buy a company that makes weapons or does business with South Africa,' " says Domini, who started asking about such preferences on new client questionnaires.

In 1984, she co-authored the book Ethical Investing. In 1990, she co-founded KLD Research & Analytics with Peter Kinder and Steven Lydenberg, created the Domini 400 Social Index, and, soon after, launched a passive U.S. equity fund pegged to the index. They eventually sold the firm and its flagship index, which is now owned by MSCI, and converted the fund to an active strategy, the $1.1 billion Domini Impact Equity fund (ticker: DSEPX).

Continue reading.

Barron's

By Sarah Max

January 7, 2022

[Investment Impact of $1 Trillion Infrastructure Measure Seen as Mixed.]

The new law is likely to encourage telecommunications and broadband investment while leaving roads and bridges to governments

The recently enacted $1 trillion infrastructure measure is likely to create more investment opportunities for private-equity firms in areas they already favor, such as telecommunications, while doing little to expand their presence in the government-dominated transportation sector, industry lawyers and consultants said.

"I think on the margins the law is going to help private investors in sectors they were already interested in and it's probably going to hurt them a little bit in sectors they weren't that interested in to begin with," said Brent Burnett, co-head of real assets investments at Hamilton Lane Inc., a private-markets investment-management and advisory firm.

The Infrastructure Investment and Jobs Act, which President Biden signed in November, designates $550 billion for such things as roads and bridges, the power grid and broadband internet systems. The funding can enhance the attractiveness of investment opportunities that previously appeared uneconomical, said Mike Parker, Americas infrastructure leader at consulting firm Ernst & Young.

He cited as an example the expansion of broadband internet in low-income and rural areas.

"The bill is providing funding that allows for the last mile for certain households that would not otherwise be able to afford the service," Mr. Parker said. "This is going to create the opportunity both for private capital to serve them as customers and for broader investments in fiber and data centers."

Searchlight Capital Partners, which last year hired former Federal Communications Commission Chairman Ajit Pai as a partner, is one private-equity shop that is increasing its broadband bets. The New York-based firm last year backed internet services provider Virginia Everywhere LLC, which does business as All Points Broadband, citing plans to partner with governments at all levels to build out services.

"Telecom infrastructure has been a large and growing target for private infrastructure investors. They started to build platforms within rural broadband even ahead of this bill," Mr. Burnett said. "That's one area that I think you could see private infrastructure investors playing in at scale."

But the new law is less likely to create many more opportunities for private-equity firms in projects, such as building roads and bridges, that traditionally have been financed with public capital, said Kent Rowey, a partner at law firm Allen & Overy LLP who works in its global projects, energy, natural resources and infrastructure practice.

The absence of a model common to the U.S. telecommunications, power and energy sectors, where governments act more as regulators than financiers and operators, helps deter private-sector investment in things like highways and bridges, Mr. Rowey said. Government funding and the municipal bond market finance most of the country's transportation infrastructure.

That the new infrastructure law did little to encourage more private investment in government-heavy infrastructure sectors was one of its big disappointments, he said. Setting up an infrastructure bank in the mold of the Export-Import Bank of the U.S., as well as a mechanism to enable private operators to exit long-term leases of state infrastructure, were some of the things the bill "could have been more ambitious about," he said.

"Nothing transformational was done," Mr. Rowey said of the final version of the infrastructure measure.

"A lot of money was authorized and that will improve the country's infrastructure, create jobs and drive growth in the economy—all very good things—but the law didn't provide the opportunity for direct private investment in infrastructure assets that we in the industry had hoped for," he said.

Mr. Rowey added, however, that the measure will likely give a boost to private equity-backed providers of services to the infrastructure sector, as they could benefit from some of the added spending. He cited architectural and engineering firms, water-service companies and operators of port terminals as examples of businesses that stand to gain from a construction boom that the new law may foster.

"A lot of private-equity [portfolio] companies own container terminals, and there's a lot of money set aside in the bill for modernizing container terminals," Mr. Rowey said. One such company, Ports America Inc., recently changed hands as the Canada Pension Plan Investment Board bought the Jersey City, N.J.-based business from Oaktree Capital Management LP last year.

"I think there will be more opportunities for infrastructure and private-equity fund managers in purchasing services companies in the infrastructure space than investing directly in the capital expenditures for the assets themselves," Mr. Rowey said.

The Wall Street Journal

By Luis Garcia

Jan. 7, 2022

Munis' Worst Annual Start Since 2001 Imperils 'January Effect'

- **Market's 10-year average January return, 0.9%, trails only May**
- **Fed throws 'monkey wrench' into January dynamic: Lanouette**

The municipal-bond market's worst start to a year since at least 2001 is marking a major departure from what has historically been a period of strength for the securities.

State and local debt has sold off along with the rest of the bond market in the early days of 2022, losing 0.7% last week, according to Bloomberg indexes. That comes as traders are absorbing the possibility that the Federal Reserve will start hiking interest rates as soon as March amid elevated inflation.

While munis are down less than Treasuries to start the year, the weakness in state and local debt is imperiling munis' so-called January effect, when seasonal tailwinds usually support bond prices. The muni market's 10-year average return in January, of 0.9%, trails only May, Bloomberg index data show. At this time of year, muni issuance is typically light and an uptick of coupon and principal payments to investors fuels demand as they look to reinvest that cash.

"The Fed has thrown a monkey wrench into the whole January effect," said Christopher Lanouette, a managing director for CIBC Private Wealth Management. He said he's reducing exposure to the 8- and 10-year part of the muni curve to prepare for rising rates.

January's seasonal impact may still be shielding municipal debt. State and local debt extended its selloff on Monday, with yields on the 10-year AAA benchmark rising to 1.2%, the highest since November. However, 10-year Treasury yields have surged to levels last seen in January 2020.

Investor demand will be crucial to assess how municipal performance will hold up should the fixed-income pain continue. Analysts have warned that inflows into municipal-bond funds could slow, especially if interest rates keep rising.

So far, there's no major sign of demand ebbing. Investors added about $841 million to muni mutual funds during the week ended Wednesday, marking 44 straight weeks of gains, according to Refinitiv Lipper US Fund Flows data.

$1 Billion for Bid

Last week showed increasing signs of selling pressure, with investment managers putting $1 billion of securities out for bid on Jan. 6, the highest since February, according to data compiled by Bloomberg.

Kim Olsan, senior vice president of municipal bond trading at FHN Financial, said the volume of bids-wanted is higher than usual in January, when demand is typically high. The market's rich valuations relative to Treasuries have "put generic yields more on the defensive than is customary so early in the month," she said in a note Monday.

"It's been an unusual start to the year for municipals," she said.

Citigroup Inc. strategists led by Vikram Rai said in a note Monday that there could be "rocky times" ahead for the market, and that it could see outflows from muni funds.

"We may be nearing the cusp of a fund outflow cycle and if we witness another 20-25bp sell-off in Treasury yields before month-end, it might be enough to trigger it," they said.

Bloomberg Markets

By Amanda Albright

January 10, 2022

Muni Funds' Inflows Face 2022 Headwinds With Fed Shifting Course.

- **More than $96.8 billion went into muni funds and ETFs in 2021**
- **'Significantly lower' muni inflows likely in 2022: Parametric**

Municipal investors, who poured a record amount of cash into the $4 trillion market for state and local debt last year, aren't expected to push inflows to new heights in 2022.

Muni mutual funds and exchange-traded funds took in about $96.8 billion in 2021 through Dec. 29, the highest on record for the period, according to Refinitiv Lipper U.S. Fund Flows preliminary data. Investors seeking higher yield amid historically low interest rates were lured in by issuers' improving credit quality from a rebounding economy and billions in federal aid.

However, inflows could slow if rates begin to rise mid-year and the market experiences volatility it hasn't seen recently, said Jamie Iselin, head of muni fixed income for Neuberger Berman, which holds more than $12 billion in muni assets. The potential for weaker demand looms as a crucial factor for the performance of the muni market in 2022, with some analysts forecasting a third straight year of record issuance.

Even with unknowns about the pandemic and economy in 2021, investors had some assurance of accommodative monetary policy to help bolster muni inflows, Iselin said. That momentum of inflows could extend into early 2022, especially as investors seek some shelter from high taxes, a long-standing benefit of investing in the muni market. Money is expected to flow in, but likely at a slower pace later in the year.

"We don't see 2022 inflows matching 2021, which ended up being a record year," said Nisha Patel, a managing director for Parametric Portfolio Associates, which holds $43 billion in muni assets. "2022 inflows will likely be significantly lower."

The risk of an outflow cycle seems greater in 2022 if "any sustainable and sharp rise in rates" occurs, Patel said. The steady drip of muni demand, particularly from retail investors, usually doesn't stop without a notable disruption, and the gradual increase in Treasury rates during 2021 did not serve as that, said Vikram Rai, head of municipal strategy for Citigroup Inc.

"We have had a very long period of inflows in the muni market," Rai said. "We are very dependent on what happens in the Treasury market."

Through all of 2021, the yield for 10-year Treasuries ranged between 0.91% to 1.74% and the muni benchmark between 0.66% and 1.23%. However, a 45-basis-point move in the 10-year Treasury or

35-basis-point change in the 10-year AAA muni benchmark in one month could serve as a catalyst, Rai said.

Investor demand has been a supportive factor as muni market valuation got richer in 2021, said Mikhail Foux, head of municipal strategy at Barclays Plc. Volatility spilling over from the Treasury market and demand that's "relatively robust" — but not strong enough to match the record — could mean more difficulty in making calls in the market and less margin for error, Foux said.

The future of federal legislation such as the House of Representatives's version of the Build Back Better economic package, which includes an expansion of a state and local tax deduction, would also impact demand, Foux said. The signature bill from President Joe Biden has stalled in Congress amid a lack of support for its $2 trillion price tag, and whether the measure will make it into the final legislation is unclear.

Likewise, an adjustment in the so-called SALT cap could affect muni demand if the 2017 tax law change is revised. The cap — which limits state and local tax deductions to $10,000 — is unpopular with wealthier Americans who have since turned to tax-exempt bonds to ease the impact on their tax bill. The lack of a change so far has helped demand, said Dan Solender, director of tax-free fixed income investments for Lord, Abbett & Co., which holds $36 billion in muni assets.

"2022 should still be a strong year for demand but it's not likely to be the record one like 2021," Solender said.

Bloomberg Markets

By Shruti Singh

January 4, 2022

Pimco Sees Munis as Haven From Bond-Market Pain as Fed Hikes.

- **Munis tend to outperform during tightening cycles, Hammer says**
- **The debt's tax-free interest boosts its appeal, manager says**

Pacific Investment Management Co. expects municipal debt to offer a bond-market haven from rising interest rates, a view that's already bearing out amid an ugly start to the year for fixed income.

Ten-year Treasury yields climbed on Thursday to the highest since April 2021 as traders bet the Federal Reserve will hike its benchmark rate as soon as March to restrain inflation. U.S. government debt has lost 1.3% this week, on track for its worst stretch since 2020, while munis have only dropped 0.2%, Bloomberg index data show.

The municipal market has a history of outperforming during periods when the Fed hikes rates, according to David Hammer, head of municipal-bond portfolio management for the firm, which oversees more than $76 billion in state and local-government debt. That's because as yields rise, the tax-free interest that munis pay makes them more attractive, he said in an interview.

"It's this dynamic that historically has caused tax-exempt muni spreads to tighten relative to other taxable fixed-income investments as rates rise," he said. "The muni market has a long history of outperforming as interest rates rise."

It's a track record that will likely be put to the test in 2022. At their December meeting, Fed officials were anticipating three quarter-point hikes in 2022. The bond market got a jolt Wednesday after the minutes from that gathering showed policy makers considering earlier and faster rate increases than previously expected.

During the last Fed tightening cycle, which began in December 2015 and lasted until December 2018, investment-grade municipals returned over 7%, while U.S. Treasuries earned about 4%, Hammer said.

The muni market showed its haven potential in 2021, attracting a flood of cash and beating the rest of the bond market, thanks in part to demand fueled by debate over federal tax hikes.

Junk's Appeal

For Hammer, junk-rated munis have also outperformed when rates rise. That segment of the muni market is benefiting from improving credit conditions for issuers, which has kept defaults low. It also offers elevated yields compared to high-yield corporate bonds after accounting for taxes, he said.

"High-yield munis still look attractive," Hammer said. "We see this as a defensive position if the economy was to disappoint."

Hammer favors structures like floating-rate notes, a type of short-term debt with a coupon that is benchmarked off short-term indexes like the SIFMA Municipal Swap index.

When the Fed raises rates, it will cause the coupon that the securities pay to drift higher, while prices typically trade around par. He's avoiding longer-dated securities that are more sensitive to rising rates.

Bloomberg Markets

ByAmanda Albright

January 6, 2022

U.S. to Back Puerto Rico Law, Slowing Plan to Restructure Debt.

- **Federal intervention may delay island's exit from bankruptcy**
- **DOJ has until Feb. 7 to submit its brief on the case**

The U.S. Department of Justice said on Friday that it will intervene in Puerto Rico's four-year bankruptcy case to defend a federal law that gave the island the ability to cut its obligations through the courts.

The move, intended to stave off challenges that the bankruptcy is unconstitutional, may actually prolong the commonwealth's efforts to restructure its $33 billion of debt and exit court oversight. The bankruptcy is the largest ever in the $4 trillion municipal-bond market.

While a majority of Puerto Rico's creditors have endorsed the restructuring plan, an individual bondholder and two real estate companies allege that Promesa, as the federal bankruptcy law is known, violates the U.S. Constitution.

Their legal action is likely to amount to a technical hurdle that will merely delay the bankruptcy's resolution, unless U.S. District Court Judge Laura Taylor Swain agrees with the holdouts. That would upend Puerto Rico's bankruptcy, which has already been delayed by hurricanes, earthquakes and the coronavirus pandemic.

Puerto Rico's debt plan is the result of years of negotiations between various and sometimes conflicting bondholder classes, insurance companies and labor groups. Those creditors have agreed to the debt plan and haven't questioned Promesa's legality. Congress passed Promesa in 2016 to help resolve the island's financial crisis.

Defending Promesa

"The U.S. respectfully notifies the court and the parties that the U.S. will participate in the above-captioned proceeding for the purpose of defending the constitutionality of Promesa as it applies to the proposed approval of the plan of adjustment," Brian Boynton, acting assistant attorney general, wrote in the notice of participation filed to the court Friday.

DOJ's decision to intervene is expected to delay Swain's ruling on a restructuring plan that would include cutting $22 billion of bonds down to $7.4 billion. Confirmation hearings on that debt plan ended Nov. 23. Swain that month gave the federal government a Feb. 7 deadline to file a brief, if the DOJ chose to defend Promesa.

Puerto Rico has been in bankruptcy since May 2017 after years of borrowing to paper over budget deficits, economic decline and population loss.

Bondholders who support the plan may have the right to pull out of their deal if the reorganization plan is not consummated by Jan. 31, according to court records. This means bondholders will have to decide whether to terminate their agreement and possibly demand a termination fee.

Bloomberg Politics

By Michelle Kaske and Steven Church

January 7, 2022, 6:32 AM PST Updated on January 7, 2022, 8:50 AM PST

Puerto Rico's Economy Is Poised for a Double Boost in 2022.

An exit from bankruptcy, plus new funding in the Build Back Better package, would set the stage for growth on the island.

After more than four years, Puerto Rico is set to emerge from its record bankruptcy in the early part of 2022. While it slashes tens of billions of dollars in debt and shakes off the stigma of default, the U.S. territory could get a further boost: The "Build Back Better" spending package could increase its federal Medicaid funding permanently and, for the first time, extend Supplemental Security Income for the elderly and disabled to U.S. territories.

Antonio Weiss, a senior fellow at the Harvard Kennedy School who led the U.S. Treasury Department's work on Promesa, the 2016 federal law that allowed Puerto Rico to reduce debt through bankruptcy, says there's now reason for optimism and "to think more about investment and the future economy of Puerto Rico in a way that hasn't been possible for decades."

Continue reading.

Bloomberg Politics

By Michelle Kaske and Alexander Ruoff

January 6, 2022

Webinar: Investing in Muni Bonds in the Time of Infrastructure and Inflation

The U.S. municipal bond market has been one of the best-performing fixed-income asset classes in 2021, supported by strong investor demand and limited new-issue supply amidst ongoing negotiations over a Federal infrastructure aid package.

Can they maintain the momentum once the money starts flowing? Our experts will share their outlooks for the market in 2022, including viewpoints on volume, credit quality, and technical supply and demand factors.

Click here to watch the webinar.

municipalbonds.com

Jan 05, 2022

State of Illinois Expands Lobbyist Registration Requirements: Clients Lobbying Local Government Now Required to Register.

The turn of the new year brought sweeping new changes to the State of Illinois's lobbyist registration requirements. Effective January 1, 2022, the State of Illinois now requires lobbyists *and their clients* lobbying at the local level to register with the Illinois Secretary of State. (The changes exempt lobbying the City of Chicago, which is covered by its own local lobbying registration and reporting program.)

Clients who engage with local officials – including elected and appointed municipal, county and township officials and commissioners, whether directly or through hired consultants – are required to register under the changes. The registration deadline is January 31.

The changes also expand the definition of lobbying to include soliciting others to lobby and require registered entities to identify "consultants" who provide advice regarding lobbying strategies, even if they are not themselves engaging in lobbying activity. The new law additionally extends the prohibition on contingency fees to consultants, even if consultants are not directly lobbying.

DLA Piper – Mariah F. DiGrino

January 10 2022

Revisions to Ohio Statute Governing Centralized Municipal Business Tax Collections to Take Effect for Tax Year 2022.

The Ohio General Assembly passed House Bill 228, which will change the way municipal net profits taxes are collected beginning January 1, 2022. The provisions also include removal of a 0.5% administrative fee that the Ohio Department of Taxation had previously withheld from distributions to municipalities, which the Ohio Supreme Court found to be unconstitutional as a result of a lawsuit brought by nearly 200 Ohio cities and villages. See *City of Athens v. Ohio Tax Commissioner*, Ohio Supreme Court, Case No. 2019-0693, 2019-0696.

On November 5, 2020, the Court held 4 to 3 that it is constitutional to give taxpayers the option of centralized collection of municipal net profits tax, but it is unconstitutional for the state to skim off a fee of 0.5%. Justices Michael Donnelly, Maureen O'Connor, Patrick Fischer, Melody Stewart in the majority. Justice Sharon Kennedy would have held both issues unconstitutional. Justices Pat DeWine and French dissent.

The revised notification process gives the state tax commissioner, rather than taxpayers, the responsibility to notify municipalities of the taxpaying business' election to use the state's centralized collection system. Under prior law, the taxpayer had to notify each municipality in which it conducted business, creating additional work for taxpayers and municipalities. Under the new law, the taxpayer notifies the tax commissioner of its election and where it does business. The tax commissioner is also required to provide quarterly reports to municipalities, streamlining communications and reducing opportunities for error.

H.B. 228 also requires the state to develop a new web portal for the secure exchange of information between the state department of taxation and municipalities. This provision does not set a deadline for the development of this portal. Lastly, the clean-up provisions eliminate the 0.5% fee that the state could withhold from municipal tax distributions under previous law. The Ohio Supreme Court held that this fee was unconstitutional because it was not encompassed within the state's authority to limit the municipal power to levy taxes. Aside from the immediate effect of keeping those municipal tax dollars for municipalities, this holding also prevents the State from increasing the fee in the future.

Municipal tax professionals and other municipal leaders should continue to track legislative proposals for changes to Chapter 718 and the centralized collection system, which will now be reliant entirely on the General Assembly for funding.

Frost Brown Todd LLC – Frank J. Reed, Jr. and Thaddeus M. Boggs

January 7 2022

NFMA's Diversity, Equity & Inclusion Initiatives.

The DEI Committee began work in 2021 on initiatives to promote Diversity, Equity & Inclusion in the NFMA. The first priority was to propose a new mission statement to be incorporated into the NFMA constitution. Effective December 27, 2021, the NFMA's constitution was amended with the new mission statement. To read the current NFMA constitution, click here.

For a better understanding of the goals of the DEI Committee, watch this short report by Anne Ross, 2021 NFMA Chair, Neene Jenkins and Nicole Byrd, Co-Chairs of the DEI Committee. For more information about the NFMA's DEI initiatives click here.

Only State That Tapped Emergency Fed Program Pays Off $2B Loan.

The program was set up in the early days of the pandemic to help steady the then-rattled world of municipal finance. Now, just one government agency still has debt from it outstanding.

Illinois has paid off the remaining balance on a $2 billion loan it took under an emergency lending program for state and local governments set up by the Federal Reserve in the early days of the coronavirus pandemic, the state's comptroller said Wednesday.

Illinois Comptroller Susana Mendoza said the final payment totaled $302 million. The state was initially scheduled to pay the loan off by December 2023 in three installments, but Mendoza said doing so ahead of time saved Illinois an estimated $82 million in interest costs. The interest rate on the debt was 3.42%.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

JANUARY 5, 2022

- IRS and Treasury Guidance On the Transition From Interbank Offered Rates to Other Reference Rates.
- IRS and Treasury Release Final Guidance on Libor Transition.
- Protect Your Muni Bond Portfolio From A Tornado's Ravages.
- Cyber Vulnerabilities Could Impact Municipal Finance.
- And finally, Great Moments in Sputtering Similes is brought to us this week by *Kerr v. Polis*, in which the Tenth Circuit Court of Appeals began its opinion as follows, "After ten years of litigation, this case is stuck in neutral. Despite carving a well-worn path from the district court, to this court, to the Supreme Court, and back, we have yet to finally decide whether any of the Plaintiffs are entitled to have the merits of their claims considered." Wait, wait, wait. Got off to a nice start with the vehicular metaphor. (Simile?) Continued nicely by carving that well-worn path. Then just, just, uh, nothing. Fortunately, we're here to help. "Despite carving a well-worn path from the district court, to this court, to the Supreme Court, and back, this 1974 Ford Pinto was rear-ended by a 1972 AMC Gremlin. It has yet to be determined if the occupants will emerge relatively unscathed or will be immediately engulfed in flames." See? Easy!

IMMUNITY - ALABAMA

Ex parte Space Race, LLC

Supreme Court of Alabama - December 30, 2021 - So.3d - 2021 WL 6141625

Alabama Space Science Exhibit Commission (ASSEC) sought to vacate arbitration award that had been entered against it on breach-of-contract claim asserted by producer of space- and science-themed animated shows.

The Circuit Court denied producer's motion to dismiss. Producer petitioned for a writ of mandamus.

The Supreme Court held that the issue of whether ASSEC had interstate sovereign immunity from producer's breach-of-contract claim was fully and fairly litigated in the New York trial court that heard producer's action to confirm New York arbitration award in producer's favor, and thus the Full Faith and Credit Clause of the United States Constitution and res judicata precluded ASSEC's claim to vacate the arbitration award.

Issue of whether the Alabama Space Science Exhibit Commission (ASSEC) had interstate sovereign immunity from breach-of-contract claim asserted against it by producer of space- and science-themed animated shows was fully and fairly litigated in the New York trial court that heard producer's action to confirm New York arbitration award in producer's favor, and thus the Full Faith and Credit Clause of the United States Constitution and res judicata precluded ASSEC's later claim in Alabama state court that ASSEC's alleged sovereign immunity under the Alabama Constitution warranted vacating the arbitration award; New York trial court acknowledged that whether ASSEC was an agency of Alabama for purposes of State immunity under the Alabama Constitution was relevant to the interstate-sovereign-immunity analysis, New York trial court ultimately concluded that ASSEC was not a State agency for purposes of State immunity under the Alabama Constitution, and New York law provided that a judgment confirming an arbitration award was entitled to res judicata effect.

BUSINESS IMPROVEMENT DISTRICTS - CALIFORNIA

Hill RHF Housing Partners, L.P. v. City of Los Angeles

Supreme Court of California - December 20, 2021 - P.3d - 2021 WL 5997247 - 21 Cal. Daily Op. Serv. 12,501

Landowners in proposed business improvement districts (BID) filed petition for writ of mandate and complaint for declaratory and injunctive relief against city challenging establishment of BIDs under Property and Business Improvement District Law.

The Superior Court denied relief. Landowners appealed. The Court of Appeal affirmed. Landowners petitioned for review, which was granted.

The Supreme Court held that landowners were not required to present specific objections to BIDs at public hearings for objections to later be heard on the merits in court.

Landowners in proposed business improvement districts (BID) were not required to present specific objections to BIDs at city council's public hearings in order for objections to later be heard on the merits in court via landowners' petition for writ of mandate and complaint for declaratory and injunctive relief challenging establishment of BIDs under Property and Business Improvement District Law; opportunity to comment on a proposed BID did not involve a clearly defined machinery for submission, evaluation, and resolution of complaints by aggrieved parties, constitutional and statutory scheme did not implicitly convey an expectation that exhaustion was required to occur, and policy rationales for requiring issue exhaustion were not compelling.

IMMUNITY - INDIANA

Ladra v. State

Supreme Court of Indiana - December 9, 2021 - 177 N.E.3d 412

Motorist who was injured when her vehicle hydroplaned on interstate road and collided with concrete barrier wall brought action against the State and the Department of Transportation, alleging that she suffered injury due to Department's failure to post warnings of flooded roadway and failure to maintain proper drainage.

After a hearing, the Superior Court found defendants enjoyed governmental immunity under Indiana Tort Claim Act and granted defendants' motion for summary judgment. Motorist appealed. The Court of Appeals affirmed. Motorist petitioned for transfer, which was granted.

The Supreme Court held that fact issue as to whether condition of roadway resulted from Department's failure to rectify known problem that manifested during only during inclement weather precluded summary judgment on basis of immunity.

Genuine issue of material fact existed as to whether flooding condition on interstate roadway resulted from Department of Transportation's failure to rectify known problem with clogging of drains that manifested only during inclement weather, as would preclude summary judgment on basis of immunity under Indiana Tort Claims Act, in action by motorist who was injured when her vehicle hydroplaned on road and collided with concrete barrier wall.

PUBLIC UTILITIES - OHIO

Cleveland Electric Illuminating Co. v. Cleveland

Supreme Court of Ohio - December 21, 2021 - N.E.3d - 2021 WL 6016475 - 2021-Ohio-4463

Electric utility brought action against city and city's electric distribution company asserting claims for declaratory judgment, tortious interference with contract/business relations, and unfair competition arising from city's purchase and resale of electricity to inhabitants located outside its geographic limits.

The Court of Common Pleas granted summary judgment for city. Utility appealed. The Court of Appeals reversed and remanded. Utility appealed and city cross-appealed.

The Supreme Court held that:

- Constitutional limits on a municipal utility's sale of surplus product precluded city from purchasing electricity solely to resell entire amount extraterritorially;
- Questions of material fact existed as to whether city obtained surplus electricity for sole purpose of selling it to a neighboring city; and
- Constitutional limits on sale of surplus product did not require city to purchase exact amount of electricity to satisfy current needs of territorial customers.

State constitutional provision allowing a municipality that operates a municipal utility to sell surplus product precludes a municipality from purchasing electricity solely for the purpose of reselling entire amount of purchased electricity to an entity outside municipality's geographic limits.

Genuine issues of material fact existed as to whether city, through its electric distribution company, obtained surplus electricity for sole purpose of selling it to a neighboring city, precluding summary judgment in competing electric utility's action asserting claims for declaratory judgment, tortious interference with contract/business relations, and unfair competition premised on city's alleged violation of state constitutional limits on a municipal utility's sale of surplus product.

State constitutional provision allowing a municipality that operates a municipal utility to sell surplus product does not require a municipality to buy the exact amount of electricity required by its inhabitants at any given time, and there may be other reasons justifying the purchase of electricity beyond a municipality's immediate needs.

ZONING & PLANNING - PENNSYLVANIA

Metal Green Inc. v. City of Philadelphia

Supreme Court of Pennsylvania - December 22, 2021 - A.3d - 2021 WL 6065497

Property owner sought review of city zoning board of adjustment's denial of variance to allow conversion of unused industrial building into apartment building.

The Court of Common Pleas reversed decision. Opponents of variance appealed. The Commonwealth Court reversed. Owner sought allowance of appeal, which was granted.

The Supreme Court held that:

- Application for use variance was subject to city zoning code's minimum-variance requirement, and
- Board was required to make specific findings of fact, engage in credibility determinations, and offer sufficient rationale as to why criteria for use variance were not satisfied.

Application for use variance for building designated as "blighted" under Abandoned and Blighted Property Conservatorship Act was subject to city zoning code's requirement that variance be the "minimum variance that will afford relief and will represent the least modification possible of the use or dimensional regulation at issue"; nothing in code or in Act suggested that blighted or abandoned nature of a property was a factor when assessing minimum variance requirement, and considerations of blight or abandonment were to be addressed under code's "unnecessary hardship" requirement.

In order to allow for effective review, a zoning board's variance decision must provide sufficient findings of fact, including credibility and weight-of-evidence determinations, conclusions based on these facts, and the reasons for granting or denying the variance.

The Outlook for Public Finance in 2022 in 6 Themes.

Barring unknowable virus mutation scenarios, state and local fiscal managers have the opportunity to navigate trends and crosscurrents already underway to make better

decisions. One factor figures into almost everything: inflation.

Last year brought an unusual crop of surprises to the state and local government financial community. But even without 20/20 foresight, several macro trends now underway should make it easier in this new year for well-informed policymakers, professional staff and financial services providers to make better decisions that benefit the public sector at large. Here are six of the top themes to keep in mind, with the caveat that a global coronavirus mutation beyond pharma solutions — one requiring a new round of economic lockdowns — would be all-bets-off:

1. Inflation will remain a monetary fact of life. Most of the kinks in industrial and logistics supply chains should get worked out in the coming year, and red-hot commodity prices are cooling off, but that won't put an end to inflation.

Three factors almost guarantee an inflation rate that ends 2022 well above the Federal Reserve's long-term target of 2 percent: First, real estate prices and rental rates have not yet worked their way into the statistics, and that alone will drive employee wage demands and expectations higher; until interest rates move high enough to cool off the housing market, the costs of shelter will drive up cost-push inflation. Second, salaries, including those of public employees, will have to adjust upward to cover the recent surge in the CPI, and those costs of doing business will not be transitory. Finally, the elephant in the room is the massive increase in the money supply that the Fed's monetary policies of the last two years has left in our midst.

What macroeconomists call aggregate demand ultimately follows money supply when unemployment rates are low. Here's a chart showing the unprecedented surge of "M2″ — cash and demand deposits such as checking accounts, plus time deposits such as savings accounts, money market funds and CDs — in billions of dollars during the pandemic, notably in 2020.

But persistent inflation does not mean we have to return to the 1970s' stagflation debacle. If the U.S. can enter 2023 with annualized price increases receding to about 4 percent, our economy is capable of eventually reverting to a tolerable and somewhat lower long-term trend. The M2 "pig" depicted above will ultimately work itself through the Fed's COVID-19 quantitative-easing "python." Prices and eventually wages will likely reset yet another 10 percent higher by then, but thereafter we should then see offsetting disinflationary forces, including cost-saving technological innovations, the new frugality of a retiring fixed-income baby-boom generation, and an abundant supply of lower-cost labor overseas.

However, even an inflation rate as low as 4 percent next December would probably be enough to trigger an embryonic multiyear wage-price spiral, setting up a new trifecta of trends in the labor markets, the money market and the bond market, all of which will likely impact the finances of states and localities.

2. Payroll budgets will escalate. Every public employer has its own unique workforce characteristics, local labor markets and history, so it's unwise to generalize. But policymakers who think they can penny pinch on labor costs are putting their heads in the sand. Unless a new COVID-19 variant sweeps through the country and compels another lockdown, it's hard to predict an abundant and excess supply of labor in 2022; continued labor scarcity is far more likely.

Employee unions won't be gullible about inflation on the salary side, and in contract negotiations, their leaders would be derelict if they don't push for "COLA plus X" provisions. Where it could get particularly interesting in 2022 is in public employees' cost of housing. My newly hatched term for this is "COHAs" – cost of housing allowances. It seems almost inevitable that high-cost or housing-short municipalities will need to offer rent relief to help their newer employees afford to live locally or risk losing them.

3. Higher interest rates will present cash-management opportunities. Financial media have been focusing on the “taper” of central-bank bond purchases — the end of COVID-19 era quantitative easing. Less mention is made outside of business channels about the revised outlook for short-term interest rates, which shifted up notably as I heralded last October. Again barring a global COVID-19 mutant monster, the Fed now needs to “normalize” its short-term rates by cautiously and prudently lifting the overnight money market rates closer to 1 percent by year-end, and arguably even higher. Eventually, money market rates need to approximate the inflation rate.

For public treasurers and cash managers, the good news is that they will finally be able to report some positive earnings on their short-term investments. The bad news is that public portfolio managers who stick out their necks into longer maturities beyond 2023 will probably come to regret it — and somebody will, as happens in almost every rate cycle.

4. Higher muni bond yields are coming. Current bond yields now make no sense; I cannot reconcile the inflation elephant in the room with the lowest municipal bond interest rates in decades.

Public officials should be racing to the market to get their infrastructure and other funding done as soon as possible. The risk of higher bond yields now clearly outweighs the opportunity for lower costs any time before the next recession. Historically, most long-cycle expansions require an interest rate spike before settling into a lower but sustainable growth rate. For now at least — unless we hit an “exogenous” factor like war or a far-worse mutant virus — a recession seems most likely to be several expansion-cycle years away. That augers for higher muni bond yields in the next year or two.

5. Public pensions will face a COLA pinch. Pension fund trustees will inevitably devote agenda time to educational sessions with their actuaries over their long-term inflation assumptions, and it’s a safe bet that most pension actuaries and employee reps will do their best to brush off the inflation hawks on their boards. Pension boardroom jokes will abound over speakers’ ill-chosen references to “transitory” inflation; I anticipate growing use of the camouflaged substitute term “nonpersistent” to describe 2022 inflation rates in pension circles.

But the reality is that many plans that include cost-of-living increases in retirees’ pensions will experience an increase in their unfunded retiree liabilities as 2022’s COLAs exceed their actuarial assumptions. Of course, the payroll base will eventually grow to catch up, so pension contribution rates as a percentage of pay may remain stable.

6. Fiscal uncertainty will continue to prevail in Washington. The Senate impasse over the Democrats’ Build Back Better plan portends a year of political hurdles for any major fiscal measures that would materially benefit states and localities beyond those already enacted in the 2020 and 2021 COVID-19 relief packages.

If Sen. Joe Manchin’s objections to inflation-inducing federal spending were purely fiscal, that problem could be solved by the party’s progressives by introducing more-impactful “pay-for” revenue-raising planks in their platform, to pluck the richest geese. Those could include reforms of the estate tax step-up, a stiffer minimum tax rate on millionaire incomes, a cap on the pass-through private-business personal income deduction known as QBID , a sensible surtax on company stock buy-backs, reform of the carried-interest preference given to investment fund managers, and elimination of petroleum extraction depletion allowances.

The problem for state and local advocates is that they don’t want to make lifelong enemies of lobbyists for the one percenters who buy muni bonds, and the professional associations are keen to preserve their bipartisan reputation. Maybe the progressive camp in Congress will pivot and play a balanced-budget game with populist tax proposals that have broad voter support. Even so, public finance proponents operating behind the scenes will still be just the tail wagging the dog on any revised federal tax-and-spend package.

The bottom line for public finance: For most state and local officials, 2022 will hopefully be the most "normal" year they've experienced since 2019, so awareness and preparation will help navigate these macro crosscurrents.

GOVERNING

OPINION | Jan. 4, 2022 • Girard Miller

[Protect Your Muni Bond Portfolio From A Tornado's Ravages.]

I haven't written about natural disasters affecting municipal bonds since 2019. The recent Kentucky tornados jolted me to pen this. When disasters happen, the news feeds hit just the highlights. They skip the detail we bond investors need. They rarely list which specific schools, buildings, court houses, city or county facilities were obliterated.

The recent Kentucky tornados are an example of the lack of information. My clients own several Kentucky munis. Many were not in harm's way when the tornados struck. Bowling Green, Kentucky was not so lucky. We owned their Independent School Building Revenue bonds. The good news is that these bonds are backed by the Kentucky Sate Intercept Program. In simple terms, this is a credit enhancement program where the state pledges to pay bond holders in the event of default. This could occur if the municipality supporting the bonds suffered a catastrophe.

The detailed information for Bowling Green Independent School Building Revenue bond holders comes in the Official Statement:

> … the corporation reserves the right, upon 30 days' notice, to call the bonds in whole or in part on any date at par for redemption upon the total destruction by fire, lightning, windstorm, or other hazard of any building constituting the project…

If these bonds are called it would probably be at par. We bond holders would lose the market premium. The premium per bond at that time was around 107.786 or $1077.86 per $1000 face value. We didn't want to lose that premium so we sold our bonds, collected the profits and called it a day.

We weren't worried the State Aid Withholding of Kentucky wouldn't pay. We just didn't want to see our market premiums disappear if the bonds were called.

I've studied the State Intercept Programs, State Aid Withholding and State Guarantees for municipal bonds. The problem (if you can call it that) is, there have been so few investment grade municipal bond defaults I have no idea if the coupon and principal payments in a catastrophe would be prompt or if there would be a lag.

Certainly, if Kentucky or any other state with an Intercept or Aid program failed to honor their pledge of financial assistance, they would be taken to the municipal bond woodshed by the capital market.

As the weather patterns continue to be tumultuous, stay on top of your municipal bonds to ensure they are safe should an unthinkable event occur. Having a secondary source of repayment such as a credit enhancement provides a nice safety net. And knowing the call features in a disaster is imperative.

Forbes

by Marilyn Cohen

Jan 4, 2022

Cyber Vulnerabilities Could Impact Municipal Finance.

Municipal bond credit analysts consider governments unprepared for cyberattacks, a recent survey says.

While cybersecurity risk management has long been on the radar of government IT managers, it's also attracting the attention of municipal finance organizations.

In a Dec. 14 survey by Hilltop Securities, municipal bond credit analysts said they felt state and local governments were unprepared for cyberattacks. A full 63% said they thought governments were "hardly prepared" for cyberattacks, and 30% said they were "somewhat prepared." Only 6% considered state and local governments "on the way to being prepared, with none of the analysts considering municipalities "very prepared" or even "prepared."

The growing number of ransomware attacks state and local governments are facing has municipal bond issuers on alert. The ransomware attack on Atlanta was a "watershed moment," Omid Rahmani, associate director for U.S. public finance at Fitch Ratings, said in a Nov. 1 interview with Hilltop.

In March 2018, Atlanta was hit with SamSam ransomware that crippled the city's online systems and brought many city services to a grinding halt. The hackers demanded $51,000 worth of bitcoin, which the city refused to pay. Estimates of the ultimate recovery cost approached $17 million.

One of changes since the Atlanta attack, according to Rahmani, is that hackers are no longer using shotgun style attacks where they target a large number of entities and hope one or two of them engages the malware. Now, they are analyzing municipal disclosure documents to find not only potential cyber vulnerabilities but also determining a city's "actual appetite for payment," he said.

The recent breach of the Kronos Cloud Solution platform that many municipalities and health care organizations rely on for payroll and workforce tracking is another attack vector agencies must manage and that finance organizations take into consideration.

These vulnerabilities have driven up premiums for cyber insurance. While nearly 90% of local governments surveyed by Public Technology Institute said they have cyber insurance, up from 78% in 2020, policies are increasingly complex and require agencies to meet stringent cybersecurity controls.

Public sector entities with legacy systems and under-resourced IT departments may find it harder to find affordable coverage – especially as ransomware attackers demand larger payoffs. Those with inadequate coverage could face even “greater financial and reputational risks from cyberattacks, which could have negative credit implications, according to Fitch Ratings.

“The landscape is changing quite rapidly right now, from the cybersecurity insurance and the threat landscape side, which leaves local governments in the middle dealing with issues they traditionally haven’t had to deal with,” Rahmani told The Record.

gcn.com

By Susan Miller

JANUARY 3, 2022 03:54 PM ET

Bond Insurance Makes a Comeback - And It Might Be Worth the Cost

The COVID-19 pandemic has put a lot of pressure on municipal bonds. While general obligation bonds remain safe, revenue bonds backed by universities, senior housing, and convention centers are at risk. Fortunately, the resurgence of bond insurance has helped many investors gain peace of mind amid the evolving crisis.

Let’s examine the history of muni bond insurance and how it’s staging a comeback amid the COVID-19 pandemic.

A Brief History of Bond Insurance

Bond insurance guarantees the payment of principal and interest in the event of a default. In addition, bond insurance is also a form of “credit enhancement” that helps issuers reduce borrowing costs. Insurers essentially lend their high credit rating to issuers by guaranteeing the bonds, making them less risky for investors.

While bond insurance was commonplace before 2007, MBIA, Ambac and other large insurers were hard-hit by exposure to mortgage-backed securities and structured finance. Rating agencies promptly cut their credit ratings in response to their failure to make insured bondholders whole, resulting in less than 5% of bonds insured.

Then, in 2014, the City of Detroit defaulted on $18.5 billions’ worth of municipal debt. Bond insurers redeemed themselves during the crisis by keeping insured bondholders whole. And in 2015, Puerto Rico defaulted on its debt, and bond insurers again kept insured bondholders whole. These events helped restore investor confidence in bond insurance.

Why Bond Insurance Is Coming Back

The COVID-19 crisis further reignited demand for bond insurance. With the unpredictability of lockdowns, many investors sought insurance to protect them against default risks. Bond insurance has been particularly valuable for revenue bonds backed by COVID-19-hit assets, such as convention centers or amusement parks.

Bond insurance may also offer alpha to active investors. The spread between insured bonds and 10-

year Treasuries rose from 20 to 190 basis points during the height of the crisis. Since then, they've come down from their highs, but they remain above pre-crisis levels, suggesting that yields could fall and prices could rise over time.

As of December 2020, insured munis represented about 10% of all muni bond issues, with more high-quality issuers offering insurance as a way to reassure investors concerned about ratings downgrades and defaults. And, the insurance costs just an average of just 20 basis points, making it an extremely affordable way to achieve peace of mind.

The Bottom Line

Bond insurance may not be as popular as before the 2008 financial crisis, but the COVID-19 pandemic is increasing demand for safety. Given the unpredictability of the pandemic and the low cost of insurance, many high-quality issuers are offering insurance to reassure investors and draw in capital at the lowest possible rates.

dividend.com

by Justin Kuepper

Dec 28, 2021

[JPMorgan Sees Muni Housing Bonds Besting Other Sectors Next Year.]

- **Muni housing bonds outperform during rising-rate environment**
- **Debt offers higher yields, less volatility, says strategist**

Municipal-bond investors seeking shelter from rising rates in 2022 should look to housing bonds, according to JPMorgan Chase & Co.'s lead muni strategist.

Debt issued by states to finance low-interest loans for first-time home-buyers or build affordable housing carry higher yields and are less volatile, so they typically perform better than other muni sectors when rates rise, said Peter DeGroot, head of municipal research and strategy at the biggest U.S. bank.

Housing bonds rated AA and A provide an average extra yield of 11 to 35 basis points over similarly rated revenue bonds to compensate for uncertainty about how quickly homeowners will pay off their mortgages and because investors demand a premium for liquidity, according to JPMorgan. The relatively higher yields of housing bonds and their propensity to trade less frequently reduces the securities' volatility.

Planned Amortization Class bonds, debt with structural features that reduce the likelihood of early principal payments and price like shorter-dated securities, are the best candidates to outperform, DeGroot said.

"Housing bonds have performed extraordinarily well in rising rate environments," he said.

To cool the hottest inflation in a generation, Federal Reserve officials could raise interest three times next year, and many investors are anticipating the first hike around midyear. The rapid spread of the omicron variant and the risk that sustained inflation could bring faster-than-expected interest rate hikes could make the new year volatile.

DeGroot's research found that housing bonds outperformed the overall market during four cycles when investors pulled cash out of bonds: the pandemic shock of March 2020; a protected period of rising long-term Treasury yields in 2018; the "Taper Tantrum" in 2013; and Meredith Whitney's prediction of "hundreds of billions of dollars" of municipal bond defaults in 2010.

From May 22, 2013, when former Fed Chair Ben Bernanke jarred bond buyers by saying the Fed would start scaling back asset purchases — to when yields peaked on Sept. 6, investment grade municipal bonds lost 6.2%, according to the Bloomberg Municipal Bond Index. By contrast, muni housing bonds lost 4.6% over that period.

Bloomberg Markets

By Martin Z Braun

December 27, 2021, 6:47 AM PST

[Why More Public Pension Funds Are Investing in Cryptocurrencies.]()

The barriers for state and local institutional investors entering the crypto market are come down, including a clearer regulatory framework and more industry scrutiny.

Cryptocurrency has been around for more than a decade, although it has yet to become the financial industry disrupter that tech enthusiasts were predicting. But one big signal that cryptocurrency is on its way to becoming more mainstream is that some public pension funds are investing in the industry.

At least two pension funds in the past three years—California Public Employees' Retirement System and New Jersey's Common Pension Fund—have invested in companies that make money by mining for Bitcoin, a digital currency created and exchanged independent of banks or governments. Late this summer, Fairfax County, Virginia's employee fund and its police officers pension both invested in a fund that tracks blockchain, the technology that underpins Bitcoin. And this past fall, the Houston Firefighters' Relief and Retirement Fund became the first public pension fund to invest directly in Bitcoin and Ethereum, another platform powered by blockchain technology.

Continue reading.

ROUTE FIFTY

by LIZ FARMER

DECEMBER 30, 2021

Cash Floods Municipal-Bond Market.

Tax breaks and stimulus help investors leave behind worries about Covid-19-related defaults

Investors poured more money into municipal bond funds through mid-December last year than they had in decades, providing the fuel for borrowing by states and cities to fund new bridges, sewers and other state and local projects to a second-straight 10-year high.

Municipal bond funds now hold an unprecedented 24% of outstanding debt compared with 16% five years ago, according to Federal Reserve data. The move marks the latest step in a fundamental shift away from a buy-and-hold market in which individual investors quietly collect interest year after year.

The record levels of borrowing and investing in 2021 are evidence that investors have moved well past their early worries the pandemic would drive a wave of municipal defaults and bankruptcies. Buoyed by stimulus funds, state and local governments issued $302.3 billion of debt for new projects as of Dec. 29, the most in at least a decade.

Meanwhile, investors plowed $64 billion into muni mutual and exchange-traded funds through Dec. 15, according to data from Refinitiv Lipper, more than they ever have during that period since tracking began in 1992. That includes $22 billion into high-yield funds that hemorrhaged cash in 2020.

“Generally there’s a better credit environment, you have lower supply [and] more demand, and then you just have investors who are willing to take on more risk to replace the yield that they previously got on their high-grade bonds,” said Eric Friedland, director of municipal-bond research at asset manager Lord Abbett.

Bonds issued by state and local governments are particularly precious to investors because they carry interest payments usually free from federal, and often state, taxes. Expectations for possible tax increases under a Democratic administration likely stoked investors’ appetites, Mr. Friedland said.

The S&P Municipal Bond Index had a total 2021 return of 1.76%, including price changes and interest payments through Dec. 30. That compares with minus 2.13% for the S&P U.S. Treasury Bond Index and minus 1.79% for the S&P U.S. Investment Grade Corporate Bond A Index.

High-yield municipal bonds racked up more-substantial gains as investors abandoned their fears of default, with the S&P Municipal Bond High Yield Index returning 6.77% through Dec. 30.

The government and nonprofit borrowers that issue bonds in the nearly $4 trillion municipal market are generally in better financial shape than they were in 2020, according to analysts and financial reports. Tax collections and stimulus funds have buoyed municipal balance sheets. The federal infrastructure package recently signed into law could lead to additional money for capital projects.

The median number of days worth of cash on hand was up 11% in 2021 for 173 nonprofit hospitals that have filed their 2021 financial statements, according to Merritt Research Services. For airports that have filed statements, median days cash on hand increased by 22% and for private colleges and universities, a similar cash metric increased 12%.

“These sectors have built up significant cash and reserves that they didn’t have at the onset of the virus in 2020,” said Richard Ciccarone, Merritt’s president and chief executive. Still, he said, “Not everybody’s coming back in good shape.”

Defaults, a rarity in the muni market, remain higher than during the pre-pandemic period, though they have fallen from 2020, according to Municipal Market Analytics. Some borrowers have fared particularly badly. There were 33 defaults in 2021 among assisted-living and other senior-housing borrowers, the most since the firm’s record-keeping began in 2009.

Some state and local governments also remain on shaky ground, using bond money to plug budget gaps or relying on stimulus funds to paper over financial problems. Towns across the U.S. in 2021 resorted to pension-obligation borrowing, using a record-breaking amount of debt to top up retirement funds in the hopes that market returns will outpace interest costs.

Even with borrowing for new projects at a 10-year record, total debt issuance fell short of some expectations. Citigroup twice revised its forecast for total 2021 issuance downward, after Congress declined to include two bond programs in the infrastructure bill. “We could not convince our policy makers,” said Vikram Rai, Citigroup’s head of municipal strategy.

Including refinancing deals, municipal borrowers had sold a total of $454 billion as of Dec. 21, also at least a 10-year record.

Cities and states could probably sell roughly $100 billion more of bonds without driving down prices, according to an analysis of lending capacity by Municipal Market Analytics. The mismatch between supply and demand grew after the 2017 tax overhaul prohibited the use of tax-exempt borrowing for early refinancing while simultaneously making tax-free yield more precious to some investors by capping the state and local tax deduction.

The Wall Street Journal

By Heather Gillers

Updated Jan. 2, 2022 10:57 am ET

The $1.2T Infrastructure Bill is 'A Positive for the Municipal Market,' Analyst Says.

Jennifer Johnson, Senior Vice President and Director of Municipal Bond Research at Franklin Templeton, joins Yahoo Finance Live to discuss the impact the President Biden-backed infrastructure bill will have on the municipal bonds market, the 2022 outlook for bonds, and the rising prominence of ETF in the market.

Watch video.

Yahoo Finance Video

Wed, December 29

Congress Provides Substantial Funding for Variety of Water Projects in Infrastructure Law With Emphasis on Low Income Communities.

The Infrastructure Investment and Jobs Act (IIJA) contains significant water-related provisions, amounting to $82.5 billion in spending.[1] Areas addressed by these provisions include drinking water safety, clean water more generally, access to water, and research.

Background

America faces many serious problems involving water. People in rural areas remain dependent on often unreliable wells, and the water infrastructure of many U.S. cities has deteriorated as many existing pipes remain contaminated by lead. Meanwhile, from 1996 to 2018, the cost of water and wastewater has increased at annual rates of 5.09% and 5.64%, respectively, compared to an annual increase in the Consumer Price Index of only 2.1%.[2]

In Flint, Michigan, the city's drinking water was contaminated with lead in 2014, beginning a crisis that lasted until at least 2019. Between 6,000 and 12,000 children were exposed to high levels of lead.[3] The Flint disaster provides examples of many of the problems the water provisions of the IIJA seek to confront: environmental injustice, the continued use of lead service pipes, and failures of local, state, and federal governments.

Threats to clean drinking water go beyond lead, however, and in many ways, regulation has failed to keep up with new risks. For example, the Environmental Protection Agency has not issued National Primary Drinking Water Regulations for new contaminants since 1996, although it announced its final determination to regulate perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) in March 2021.[4] PFOS, PFOA, and other per- and polyfluoroalkyl substances (PFAS) have contaminated water supplies in many places across the country, and because they remain in the environment for a long time and do not easily degrade, pose particular problems to remediate.

These water-related problems were part of a broader set of infrastructure-related problems the IIJA sought to address. The law grew out of the $2.3 trillion American Jobs Plan announced by President Biden on March 31, 2021, amounting to $4 trillion in combination with the American Families Plan announced in April.[5] The plans' "human infrastructure" provisions were split off into the still-unpassed Build Back Better Act to seek bipartisan support for the IIJA, and the IIJA itself was cut considerably. The final version of the IIJA authorizes a total of $1.2 trillion in spending over several years. The bill finally became law on November 15, 2021.

Safe Drinking Water

The largest category of water-related investments in the Act involves improvements in drinking water safety and sanitation, including around $24 billion in grants to states over five years under the existing Safe Drinking Water Act and Federal Water Pollution Control Act. The Infrastructure Investment and Jobs Act also provides $15 billion for projects to replace lead water pipes and service lines, and $9 billion for addressing PFAS and other "emerging contaminants."[6] Section 50101's amendments to the Safe Drinking Water Act, in addition to authorizing new spending, clarify that SDWA grants "to assist in responding to and alleviating any emergency situation" can include responses to cybersecurity events and heightened lead exposure. (Section 50113 also concerns cybersecurity support for public water systems.) These amendments also provide that "State-based nonprofit organizations that are governed by community water systems" are eligible for technical assistance under Section 1442(e).

Section 50102 reauthorizes the Safe Drinking Water Act's Drinking Water State Revolving Loan Funds and appropriations for their capitalization grants. It also amends SDWA Section 1452(d) to give states more ways of subsidizing projects serving disadvantaged communities: "grants, negative interest loans, other loan forgiveness, and through buying, refinancing, or restructuring debt."

Section 50103 authorizes appropriations for the SDWA's source water quality protection partnership petition program and allows counties to form such partnerships on behalf of unincorporated areas.

Section 50104 expands the projects eligible for grants to small and disadvantaged communities under the Safe Drinking Water Act to include "the purchase of point-of-entry or point-of-use filters and filtration systems that are certified by a third party using science-based test methods for the removal of contaminants of concern." (This is the only reference to point-of-use systems in the IIJA.) It also requires the EPA to "establish a competitive grant program" through which eligible entities would "assist eligible individuals in covering the costs incurred by the eligible individual in connecting the household of the eligible individual to a public water system."

Section 50105 includes several measures to reduce lead in drinking water. It increases and extends appropriations for lead reduction grants, and allows them to be used to replace privately-owned lead service lines, "with priority for disadvantaged communities based on the affordability criteria established by the applicable State under [SDWA] section 1452(d)(3), low-income homeowners, and landlords or property owners providing housing to low-income renters." It also requires water systems to replace privately-owned lead service lines without cost to low-income customers, and to notify state governments of planned lead service line replacements.

Section 50110 requires the EPA to "establish a voluntary school and child care program lead testing, compliance monitoring, and lead reduction grant program" and to publish school lead testing guidance for public water systems. It also reauthorizes appropriations for SDWA Section 1464(d)'s existing Voluntary School and Child Care Program Lead Testing Grant Program.

Another grant program, for state responses to contaminants, authorized by SDWA section 1459A(j), is expanded by IIJA section 50114 beyond its previous definition of "underserved communities" to include, for example, communities "with a population of less than 10,000 individuals that the Administrator determines does not have the capacity to incur debt sufficient to finance a project or activity."[7]

Water Systems

Section 50106 requires the EPA to establish a grant program for "Operational Sustainability of Small Public Water Systems," while section 50107 requires it to establish a "Midsize and Large Drinking Water System Infrastructure Resilience and Sustainability Program." Section 50109 requires the EPA to establish another grant program "to assist qualifying households with need in maintaining access to drinking water and wastewater treatment," based on the results on a study required by Section 50108. The Indian Reservation Drinking Water Grant Program will be expanded under section 50111 to include wastewater system improvements as well as drinking water system improvements.

Research

The law funds water-related research by several entities – both scientific research into new technologies and studies of social problems. Section 50201 provides $75 million annually through fiscal year 2026 for research, investigations, training, and information grants, including to state water pollution control agencies and nonprofit organizations. Section 50222 revises the Federal Water Pollution Control Act to provide "funding to carry out groundwater research on enhanced aquifer use and recharge in support of sole-source aquifers" to state, local, and tribal governments jointly with research institutions. Section 50115 requires the EPA to conduct annual studies on the prevalence of boil water advisories, while section 50112 requires it to report on advanced drinking-water-related technologies. Section 50108 requires it to conduct a "Needs assessment for nationwide rural and urban low-income community water assistance," while 50216 requires it to "identify historical distributions of funds to small and disadvantaged communities and new opportunities and methods to improve on the distribution of funds under" the Clean Water State Revolving Funds and Drinking Water State Revolving Funds.

Section 50213 requires the EPA to establish a competitive grant pilot program for the sharing of water data. The EPA is directed by section 50217 to establish "centers of excellence for stormwater control infrastructure technologies" at universities, other research institutions, and nonprofit organizations (as well as grants to state, local, and tribal governments for stormwater infrastructure projects involving new technologies). Under section 50218, the EPA must establish a Water Reuse Interagency Working Group "to develop and coordinate actions, tools, and resources to advance water reuse across the United States, including through the implementation of the February 2020 National Water Reuse Action Plan."

Sections 50219 and 50220 require studies by the EPA of advanced clean water technologies and capital improvement needs for Clean Water State Revolving Fund-eligible projects, respectively. Section 50221 funds the Water Resource Research Act's Water Resource Research Institutes but puts tighter controls on the funding, such as Department of the Interior evaluations of each Institute every five years. Finally, section 50222 directs the EPA to "provide funding to carry out groundwater research on enhanced aquifer use and recharge in support of sole-source aquifers."

Clean Water

Beyond drinking water provisions, other provisions of the IIJA concern wastewater and other clean water issues. Section 50202 establishes the Wastewater Efficiency Grant Pilot Program for publicly-owned treatment works, while Section 50203 funds the Clean Water Act's Pilot Program for Alternative Water Source Projects and makes stormwater projects eligible for it. Similarly, section 50204 funds Sewer Overflow and Stormwater Reuse Municipal Grants and expands their scope to include "notification systems to inform the public of combined sewer or sanitary overflows that result in sewage being released into rivers and other waters." Sections 50205 through 50209 create new grant programs: the Clean Water Infrastructure Resiliency and Sustainability Program; the Small and Medium Publicly Owned Treatment Works Circuit Rider Program; the Small Publicly Owned Treatment Works Efficiency Grant Program; Grants for Construction and Refurbishing of Individual Household Decentralized Wastewater Systems for Individuals with Low or Moderate Income; and, finally, a program of grants to publicly-owned water treatment works (POTWs) and nonprofit entities, to cover the cost of connecting low-income individuals to POTWs.

The next few sections revise and fund existing programs. Section 50210 funds the Clean Water State Revolving Funds at a rate of $2.40 billion for FY2020, $2.75 billion for FY2023, $3.00 billion for FY2024, and $3.25 billion for each of FY2025 and FY2026. Section 50211 funds the Innovative Water Infrastructure Workforce Development program and expands the use of grants under the program. Section 50212 funds grants to Alaska to improve sanitation in rural and native villages. Section 50215 reauthorizes Water Infrastructure Finance and Innovation Act (WIFIA) funding, while section 50214 requires WIFIA loan applicants to submit only one final rating option letter instead of two.

Water Rights

Section 70101 establishes the $2.5 billion Indian Water Rights Settlement Completion Fund to pay for "obligations identified by the Secretary of the Interior, under an Indian water settlement approved and authorized by an Act of Congress before the date of enactment of this Act."

Conclusion

The IIJA greatly expands funding for, and revises rules regarding, such areas as lead pipe replacement, filtration systems, and general water and sewer infrastructure. It remains to be seen whether even this additional spending is sufficient for the nation's water problems.

Sullivan & Worcester LLP – Jeffrey M. Karp

December 27 2021

---

[1] https://pacinst.org/wp-content/uploads/2021/11/US_Infrastructure_Brief.pdf.

[2] https://www.awwa.org/AWWA-Articles/awwas-2019-water-and-wastewater-rate-survey-reveals-increasing-utility-costs-boosting-rates.

[3] https://web.archive.org/web/20160203004456/http://www.wnem.com/story/30995770/united-way-estimates-cost-of-helping-children-100m.

[4] 86 FR 12272.

[5] https://www.politico.com/news/2021/05/24/infrastructure-talks-near-collapse-490637.

[6] https://pacinst.org/wp-content/uploads/2021/11/US_Infrastructure_Brief.pdf.

[7] SDWA § 1459A(c)(2) (42 U.S.C. 300j-19a).

Retirement Communities Lose Residents, Attract Muni Investors.

Senior-living developments weakened by the Covid-19 pandemic hold appeal for bondholders in search of yield

Investors are snapping up municipal debt sold by senior-living facilities despite record default rates, pandemic-related revenue losses and costly labor shortages.

Covid-19's rapid spread through eldercare facilities, along with the pandemic's lockdowns, deterred many older Americans from moving into senior communities. Nearly 8% of the $41 billion in outstanding senior-living bonds are in default as of December, according to Municipal Market Analytics, the most since tracking began in 2009. The sector now accounts for almost one-quarter of defaulted debt in the muni market, not including bonds caught up in Puerto Rico's bankruptcy.

Yet investors remain bullish. After a fall in debt issuance in 2020, senior-living facilities sold $7.4 billion in new bonds in 2021 through Dec. 13, 21% more than they did in 2019, according to an analysis by ICE Data Services.

"The operations have not yet fully recovered, even though, in some places, bond prices have," said David Hammer, head of municipal-bond portfolio management at Pacific Investment Management Co. He said he has reduced his exposure to senior-living facilities.

The robust appetite for senior-living bonds is a window into investors' willingness to put aside worries about Covid-19-related financial weakness as the pandemic grinds on into its third year. Retirement communities are among the municipal borrowers hardest hit financially, with Covid-19 driving away prospective residents and adding costs for protective equipment. But with rock-bottom yields, demand for new bonds outstripping supply and the potential for tax increases, the pickings are slim for investors in search of tax-exempt income.

Yields on risky municipal bonds fell in 2021, with investors plowing a record $22 billion into high-yield municipal-bond funds through Dec. 15, according to Refinitiv Lipper. Borrowers rated BAA were paying 2.12% on 30-year bonds as of Dec. 31, according to data from Refinitiv, down 14% from a year earlier.

Meanwhile, 10-year senior-living bonds sold over the past six months yielded 6.6% for taxable debt financing the purchase of retirement facilities in Texas and Oklahoma and 4.4% for tax-exempt debt to buy and refinance a retirement facility in Kentucky, bond documents show. For an investor in the top tax bracket, a 4.4% tax-free yield equates to roughly 7.6%, according to data from Nuveen.

Several senior-living borrowers that considered issuing debt in 2020 and then opted against it, moved forward with selling bonds in 2021 after finding the market more receptive, said Seth Brumby of Reorg, a credit-research firm. The risky debt is a welcome addition for many high-yield funds trying to put investor cash to work.

“Senior-living deals were well-received with strong investor interest,” said Jon Barasch, director of municipal evaluations at ICE Data Services.

Senior-living facilities include nursing homes as well as assisted-living and continuing-care retirement communities, whose offerings range from independent living to medical care and assistance with daily activities. These facilities are permitted by federal law to sell tax-exempt debt the same way that state and local governments do because they are perceived to have a public benefit.

Any individual facility’s default or drop in bond prices would have limited impact on high-yield mutual funds, which mix senior-living bonds with those of other low-rated borrowers such as charter schools and college dormitories. And some recent trends have benefited senior-living facilities, including the graying of the baby boomers and a hot housing market for prospective residents looking to sell their homes.

Still several indicators point to more trouble ahead for the sector. Much of the revenue to pay back bondholders comes from entrance fees residents pay when they move into senior communities. But move-ins remain well below pre-Covid-19 levels. Nonprofit continuing-care retirement communities had an 87% occupancy rate in the third quarter of 2021, down from 93% in the first quarter of 2020, according to the NIC MAP Data Service.

Median net operating margins, including entrance fees, at 151 facilities tracked by Fitch Ratings fell to 18% in 2020 from 23% in 2019 for investment-grade borrowers and to 14% from 18% for those below investment-grade.

A tight labor market is also pressuring expenses, analysts said.

In addition to the $3.2 billion in senior-living muni debt currently in default, borrowers of a further $3.7 billion have reported impairments, such as having to dip into reserves, according to Municipal Market Analytics. MMA partner Matt Fabian said high investor demand has helped prop up struggling facilities by providing access to rescue cash.

“So the record default number understates the amount of disruption the pandemic has created,” Mr. Fabian said.

The Wall Street Journal

By Heather Gillers

Jan. 4, 2022 7:00 am ET

Municipal Sector Market Review.

Summary

- The municipal sector continues to benefit from a strengthening credit environment and a supportive technical backdrop.
- We discuss some of the key themes of the sector such as the impact of rising short-term rates on leverage costs, a low level of underlying yields and more.
- We discuss the performance of the sector across different credit sub-sectors, investment vehicles and fund houses.
- And highlight our stance in this sector via our Municipal Income Portfolio.

Continue reading.

Seeking Alpha

Jan. 03, 2022

How Private Capital Strangled Our Cities.

By following the money, a new history of urban inequality turns our attention away from federal malfeasance and toward capital markets and financial instruments.

Credit and debt, two sides of the same proverbial coin, place a bet on time. Credit makes money mobile and funds the future. Soon enough, however, it becomes debt, with the lender demanding from the borrower returns with interest that threaten to constrict the possibility of further credit. Personal debt masquerades as moral obligation, a contract freely chosen, yet at the heart of the promise debt creates is not social reciprocity, as the late David Graeber wrote in *Debt: The First 5000 Years*, but a "simple, cold, and impersonal" market transaction. As nothing more than a "matter of impersonal arithmetic," debt requires shame and ultimately the threat of force to fulfill its terms and realize the returns for creditors it promises. It lodges coercion at the heart of the supposedly "free" market.

The squeeze is only intensified in the seemingly impersonal world of institutional finance. If debt ensures stability and solvency for some, the economic growth it propels fuels dependency and inequality for others, not only between creditor and debtor but also further down the line, as the borrower passes on the costs of debt to those with less power to control the terms of the deal. This devil's bargain is particularly true when it comes to municipal debt, argues the Stanford University historian Destin Jenkins in *The Bonds of Inequality*, his new book on the power the bond market has leveraged over San Francisco and other US cities. The debt-financed spending that cities have long used to spur growth, Jenkins contends, has also underwritten the racial and income inequality of the post–World War II metropolis, while funneling profits to bankers and reinforcing city dependency on finance capitalism. This unequal compact hid in plain sight until the 1970s, when the urban fiscal crises of the era revealed that cities were deeply in hock to financial institutions. But debt was just the way business was done, and banks and other lenders saw no reason to ease the terms of this deal, preferring instead to underwrite the continued hollowing-out of the American metropolitan landscape.

Continue reading.

The Nation

By Samuel Zipp

Jan 4, 2022

Over $60 Billion Flowed Into Municipal Bond Funds in 2021.

Infrastructure focus and investors looking to curb higher taxes have helped municipal bonds see over $60 billion in fund flows during 2021.

Municipal bonds offer a way for investors to help stymie the effects of higher taxes. That's certainly the case heading into 2022 after the trillion-dollar infrastructure package got signed into law by President Biden.

"Investors have poured more money into municipal bond funds so far this year than they have in decades, providing the fuel for borrowing by states and cities to fund new bridges, sewers and other state and local projects to a second-straight 10-year high," Wall Street Journal reports.

That influx of funds is translating into municipal bonds capturing a larger share of the debt market. Investor habits are also changing with more investors looking to hold munis temporarily as opposed to holding for the long-term horizon.

"Municipal bond funds now hold an unprecedented 24% of outstanding debt compared with 16% five years ago, according to Federal Reserve data," WSJ adds further. "The move marks the latest step in a fundamental shift away from a buy-and-hold market where individual investors quietly collect interest year after year."

Additionally, the fundamentals of supply and demand are also affecting the municipal bond market. More demand for munis is happening at a time when supply is slow, pushing bond prices higher as investors swap yield for the quality that munis can offer.

"Generally there's a better credit environment, you have lower supply [and] more demand, and then you just have investors who are willing to take on more risk to replace the yield that they previously got on their high-grade bonds," said Eric Friedland, director of municipal-bond research at asset manager Lord Abbett.

ETF TRENDS

by BEN HERNANDEZ

JANUARY 3, 2022

Looking Back at 2021 in State and Local Government.

States and localities demonstrated their resilience as they navigated a second year marked by the pandemic. There are plenty of pressing issues on the horizon heading into 2022.

It's been another eventful and challenging year for states and localities across the U.S., as Covid-19 and the fallout it is causing for public health systems and the nation's economy continue to dominate government affairs at all levels. There was a glimmer of hope heading into the summer that the pandemic might finally be waning as vaccines became widely available and case counts fell. But that moment gave way to the rise of the delta variant and, now, omicron and another wave of infections. The new variant and skyrocketing case counts amid the winter holiday season mean that America will face more pandemic-driven sickness and disruption as 2022 begins and that state and local governments will continue to be occupied with responding to the crisis.

This year has also been a notable one for federal legislation with major implications for states and localities. First, there was the American Rescue Plan Act, which provided $350 billion in direct aid to states and local governments—a historic amount of funding. Then, in November, President Biden signed a bipartisan infrastructure law that boosted the amount of federal funding for public works by about $550 billion. For many state, city and county leaders, getting infrastructure legislation like this passed has been a longstanding priority. In the coming year, how states and localities are beginning to use their ARPA funds and the added infrastructure dollars will be a major storyline to watch.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

DECEMBER 29, 2021

IRS and Treasury Guidance On the Transition From Interbank Offered Rates to Other Reference Rates.

Read the guidance from the IRS and Treasury.

IRS and Treasury Release Final Guidance on Libor Transition.

The Internal Revenue Service and Department of the Treasury have released final guidance on the transition away from Libor, setting Secured Overnight Financing Rate as an alternative and creating noncovered modification in the place of fair-value.

The cessation of Libor matters to the muni market because existing debt and contracts may reference it, potentially impacting variable-rate debt, swaps and contracts, among other things.

The final regulations hope to swap out the Libor rate that is no longer being published as of Dec. 31, 2021, but will be around until June 2023, with a new formula that won't change the economics of the deal or cause reissuance of the particular debt.

"It seems to follow pretty closely the recommendations of the Alternative Reference Rates Committee, the New York Fed group that's overseeing the Libor transition and it seems to provide needed flexibility for municipal issuers who may need to change the terms of outstanding deals in order to accommodate the loss of Libor without having to undergo a reissue," said Michael Decker, senior vice president of federal policy and research at the Bond Dealers of America.

"I think that's the main thing that the community was looking for and I think it's something that generally the community will be supportive of."

The proposed regulations, released on Oct. 9, 2019, leaned on fair market value to ensure the value of the debt stayed the same.

"How do you differentiate changes that are just swapping out the old formula for the new formula?," said Johnny Hutchinson, partner at Squire Patton Boggs and member of the National Association of Bond Lawyers' board of directors. "The way that the Proposed Regulations tried to do that was to say, the fair market value of your debt has to be the same, both before and after the change."

"But people get very skittish when you hand them a certificate signed that says these bonds are being sold at fair market value," he said.

Muni market participants often say that calculating marked-to-market fair-value poses challenges for municipal bonds because they don't often trade every day as stocks do. SOFR was another safe harbor outlined in the Proposed Regulations but has been somewhat controversial due to the short history of the formula being published, Hutchinson said.

With the final regulations, set to be published in the Federal Register on Jan. 4, the SOFR rate is mentioned as a qualified rate.

"A qualified rate is a SOFR-based rate or other qualified replacement rate, so long as it is in the same currency as the discounted IBOR or is otherwise reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds in that currency," law firm Cadwalader Wickersham & Taft said.

But satisfying the requirements with a constant fair market value has been changed.

"That requirement has been completely scrapped, it looks like from an initial read," Hutchinson said. "Instead, the way that the Final Regulations are going to test whether the parties are really making changes beyond just swapping in a new formula for the old formula, is there are a list of what are called noncovered modifications and they all relate to changes in the timing or amounts of the cash flows on the debt."

The shift in approach basically says as long as you don't make these specific noncovered modifications, the IRS or Treasury won't inquire as to whether the fair market value is the same.

But some modifications to existing agreements may include both covered and noncovered components, which should be tested on a standalone basis, the regulation says. In a way, this makes things a bit more definitive for bond counsel as when a modification event occurs, they're able to pull up the list of noncovered modifications and see whether the specific event falls under it.

But still some uncertainty exists as bond counsel familiarize themselves with the long list of noncovered modifications. “If that’s how the regulations work, I think that’s a good thing,” Hutchinson said. “It’s helpful and it allows us to apply the rules with, a little bit more certainty than we had before.”

For issuers, this may result in additional time and money spent with bond counsel. “That’s what the attorneys do, they have to test whether or not they can be qualified,” Emily Swenson Brock, director of the federal liaison program at Government Finance Officers Association. “It’s hard because that adds a lot of cost and it adds a lot of time.”

There is currently legislation passing through Congress that could affect that would allow for non-penalized modifications to outstanding contracts when LIBOR ceases to exist in June 2023. It passed the House in December in a 415-9.

It follows New York State legislation that hopes to minimize disruptions by allowing “tough legacy” contracts or those that expire after June 2023 and do not have fallback language specifying an alternative to use SOFR.

In a letter to Speaker of the House Nancy Pelosi and Republican Leader Kevin McCarthy GFOA and many other industry groups hoped to tip the scale in the industry’s favor. “Without federal legislation to address these contracts, investors, consumers, and issuers of securities may face years of uncertainty, litigation, and a change in value,” the letter said. “This would thereby create ambiguity that would lead to a reduction in liquidity and an increase in volatility.”

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 02:58 PM EST

2021: The Year in Bond Funds

Credit risk prevails in a rocky year for bond markets.

Bond markets had to contend with a rocky 2021 characterized by rising inflation, a bumpier economic recovery, and the start of tighter monetary policy. The threat of inflation gathered pace over the year, unnerving government-bond markets in the process and culminating in the Federal Reserve’s hawkish pivot in the fourth quarter. Meanwhile, the stretch for yield that began in 2020 continued, with lower-quality credit surging for much of the year.

As a result, performance across fixed-income Morningstar Categories was mixed as more-credi--sensitive strategies outpaced most of the pack, while interest-rate-sensitive and non-U.S. dollar-denominated bond funds posted losses. High-yield municipal funds led the way, with an average return of 5.7%, while emerging-markets local-currency bond funds plunged 7.3% on average. The Morningstar U.S. Core Bond Index, a proxy for typical U.S. bond exposure, fell 1.6% for the year, posting its worst calendar-year return since the taper tantrum roiled fixed-income markets in 2013.

Fed Tightens Policy Amid Rising Inflation
Driven by a first-quarter spike, interest rates rose in 2021, causing notable volatility at times as investors got to grips with rising inflation, a changing economic outlook, and new coronavirus variants. The year began with a significant steepening of the yield curve as the market reacted to the potential for both higher economic growth and inflation. The 10-year U.S. Treasury yield spiked 81 basis points over the first quarter to end the period at 1.74%. However, as the economic recovery

became bumpier and inflation continued to rise, the yield curve partly retraced the first quarter's steepening over the remainder of the year. Short-term yields modestly rose, while the 10-year yield declined to 1.52% by the end of 2021.

The Fed characterized inflation as transitory for much of the year but abandoned that tag in November as core price inflation prints continued to rise. At the most recent reading, CPI rose 6.8% over the trailing 12 months through November 2021. In response to the growing threat of inflation and an improved job market, the Fed pivoted to a more hawkish stance in the fourth quarter. The Fed began tapering asset purchases in November, aiming to complete the wind-down by mid-2022. However, in December, the Fed doubled the pace of the tapering, speeding up the timeline to an expected finish in March 2022. Fed officials also increased their expectations for rate hikes in recent meetings, with the latest projections now indicating three rake hikes in 2022.

As inflation expectations rose, U.S. Treasury Inflation-Protected Securities outperformed nominal Treasuries; the Morningstar U.S. TIPS Index returned 5.7% for 2021, while the Morningstar U.S. Treasury Bond Index posted a 2.3% loss. Within the inflation-protected bond category, strategies that added credit exposure alongside TIPS led the way. One such offering was Lord Abbett Inflation Focused (LIFIX), which rallied 10.4% and bested all but one of its peers. Meanwhile, short-term Treasuries fared better than longer-term issues given the first-quarter yield-curve steepening. Tracking one- to three-year maturity issues resulted in a modest 0.7% fall for Vanguard Short-Term Treasury Index (VSBSX).

Within the intermediate core and core-plus bond categories, strategies that held elevated allocations to securitized sectors and/or high-yield debt, both of which have less interest-rate sensitivity than Treasuries and investment-grade corporates, were among the top performers, though gains were modest. Pioneer Bond (PICYX) posted a 0.7% return, which outpaced its typical core-plus category peer by 140 basis points thanks to its elevated allocations to securitized and junk-rated credits.

Credit Investors Hunt for Yield
Alongside rising inflation, credit-sensitive assets continued to outperform. Within corporate credit, junk-rated bonds outperformed investment-grade issues over 2021 as investors stretched for yield, though there was a brief period of risk-off sentiment in the fourth quarter driven by the emergence of the omicron coronavirus variant and the Fed's more hawkish stance. The Morningstar U.S. High Yield Bond Index rose 5.2%, while the Morningstar U.S Corporate Bond Index (which tracks investment-grade issues) posted a 1.1% loss. Energy credits gained a significant boost from a surge in the price of oil due to robust demand. Crude Oil (WTI) began the year just under $50 dollars a barrel and ended it at $75, having pared back some of its substantial gains in the fourth quarter.

The U.S. high-yield default rate fell below 1% in 2021, and positive credit trends helped the lowest-rated credits outperform. The Bloomberg index for credits rated CC to D rocketed 12.5%, with the highest returns at the lower end of the credit-quality spectrum. The best performers in the high-yield category were typically funds that tilted toward lower-quality bonds and/or had a hefty allocation to equities. Fidelity Capital & Income (FAGIX) held roughly one fifth of assets in equities for most of the year and profited from the continued rally in stocks to return 11.7% for the year, besting nearly all comers in the category.

Convertible bonds, hybrid securities that combine debt and equity characteristics, also benefited from the continued upswing in equities. MainStay MacKay Convertible (MCNVX) returned 10.1% and landed in the convertibles category's best decile over the period. Meanwhile, bank loans were back in vogue. The S&P/LSTA Leveraged Loan Index added 5.2% for the year as investors eyed the sector's floating-rate coupons, which increase as interest rates rise. Similar to the theme across corporate bonds, lower-rated loans outperformed. Invesco Senior Floating Rate (OOSYX) gained

9.1% and beat all bank-loan category peers thanks to its sizable stake in loans rated below B.

Strong Dollar Weighs Down Global Returns
Alongside the Fed, central banks across the globe began to tighten monetary policy in late 2021, though they did so to varying degrees. The Bank of England unexpectedly hiked rates to 0.25% in December 2021, becoming the first G7 central bank to raise rates since the onset of the coronavirus pandemic. The European Central Bank took a more gradual approach, electing to taper its bond purchases but to continue them for at least the first 10 months of 2022. Meanwhile, the Bank of Japan remained among the most dovish central banks by dialing back some emergency funding while pledging to keep monetary policy ultra-loose.

The U.S. dollar enjoyed a strong 2021, gaining 6.7% for the year against a basket of developed-markets currencies, driven by the American economy's relative strength and the Fed's tighter policy outlook. That backdrop helped the U.S.-dollar-hedged version of the Morningstar Global Core Bond Index limit its slide to 1.7%, while the unhedged version dropped 5.7%. Across world bond funds, those that ventured further outside of sovereign debt into corporate and securitized credit fared better in 2021. AB Global Bond (ANAIX) did just that, which helped limit its slide to 0.8% and placed it among the world bond USD hedged category's top performers.

Emerging markets were also weighed down by the strength of the U.S. dollar along with a weaker outlook for growth. Local-currency-denominated emerging-markets debt materially lagged hard-currency fare, with the J.P. Morgan Index for the former plunging 8.8%, while the latter slid 1.8% for the year. Here, too, corporates outperformed; the J.P. Morgan CEMBI Diversified Index gained 0.5%. Avoiding local-currency debt and adding a dose of corporate credit helped limit Fidelity New Markets Income's (FNMIX) fall to 1.8%, while its typical emerging-markets bond category peer declined 2.4%.

Demand for Munis Continues
Municipal debt continued to see robust demand in 2021 as further fiscal stimulus, particularly March 2021's $1.9 trillion American Rescue Plan, along with the potential for higher income taxes, helped fuel investor appetite. Long-term muni sales exceeded $450 billion in 2021, roughly in line with 2020's record-breaking numbers. That backdrop helped the Bloomberg Municipal Bond Index gain 1.5% for the year, outpacing U.S. Treasuries by over 3 percentage points in the process.

The general fixed-income theme of lower-quality credit outperforming over the year also extended to the muni market. The Bloomberg High Yield Municipal Bond Index surged 7.8% as the hunt for yield and munis' lower default rate compared with corporates helped drive demand. BlackRock High Yield Municipal (MAYHX) was one of the strongest performers over the year in the high-yield muni category, rocketing 9.2% in part because of its overweighting in lower-rated bonds.

morningstar.com

Sam Kulahan, CFA

Jan 3, 2022

TAX - COLORADO

Kerr v. Polis

United States Court of Appeals, Tenth Circuit - December 13, 2021 - F.4th - 2021 WL 5873156

Political subdivisions, elected officials, educators, and citizens brought action against governor challenging constitutionality of Taxpayer's Bill of Rights (TABOR), which limited revenue-raising power of state and local governments by requiring voter approval in advance for any new tax.

The United States District Court denied governor's motion to dismiss for lack of standing and certified its order for interlocutory appeal. The Court of Appeals accepted jurisdiction and affirmed. The United States Supreme Court granted petition for writ of certiorari, vacated, and remanded. The Court of Appeals vacated and remanded. On remand, the District Court dismissed complaint, and plaintiffs appealed. Rehearing en banc was granted.

The Court of Appeals held that:

- Subdivisions had standing to bring action;
- Guarantee Clause did not confer right on political subdivisions that they could enforce against their parent state; and
- Colorado's Enabling Act did not create cause of action permitting political subdivisions to challenge TABOR.

Political subdivisions had standing to bring action challenging constitutionality of Colorado's Taxpayer's Bill of Rights (TABOR), which limited revenue-raising power of state and local governments by requiring voter approval in advance for any new tax; subdivisions incurred costs and expenses necessary to present matters to voters for their decision, those costs were fairly traceable to TABOR's requirements, and, if TABOR were struck down, their injury would be redressed.

Colorado's Enabling Act did not create cause of action permitting political subdivisions to challenge Colorado's Taxpayer's Bill of Rights (TABOR) on ground that it violated Act's guarantee of "constitution republican in form"; clause promising constitution republican in form had no clear beneficiary, and, aside from references to common schools, references to other subordinate political entities were nowhere to be found in Act.

TAX - WISCONSIN

State ex rel. City of Waukesha v. City of Waukesha Board of Review

Supreme Court of Wisconsin - December 21, 2021 - N.W.2d - 2021 WL 6014968 - 2021 WI 89

City sought certiorari review of city board of review's determination of taxable value of particular piece of private property.

The Circuit Court granted writ and denied board's subsequent motion to quash. Board appealed. The Court of Appeals reversed and remanded. City petitioned for review.

The Supreme Court held that statute allowing certiorari review of board of review decision does not allow municipality to seek certiorari review of municipality's board of review.

Municipal Bond ETFs Have Enjoyed a Stellar Year.

Municipal bond exchange traded funds are attracting huge inflows as investors diversify their fixed income portfolios with tax-exempt muni offerings.

Municipal bond funds now make up an unprecedented 24% of outstanding total debt circulating in the markets, compared to just 16% five years ago, marking a shift in investor habits away from buy-and-hold individual securities until maturity, the Wall Street Journal reports.

The record levels of borrowing and investing in 2021 also reflect investors' improving risk outlook as we move pass the pandemic-era uncertainty as many previously feared that the downturn would trigger a wave of municipal defaults and bankruptcies.

However, after finding support from stimulus funds, state and local governments have issued $301.9 billion in debt for new projects as of December 21, the most amount of new debt in at least a decade.

Meanwhile, investors have funneled $64 billion into municipal bond-related mutual funds and ETFs through December 15, according Refinitiv Lipper data, marking the largest inflows for that that period since tracking began in 1992. The figure also includes $22 million into high-yield muni funds that bled cash last year.

"Generally there's a better credit environment, you have lower supply [and] more demand, and then you just have investors who are willing to take on more risk to replace the yield that they previously got on their high-grade bonds," Eric Friedland, director of municipal bond research at asset manager Lord Abbett, told the WSJ.

Many have also turned to debts issued by state and local governments because they carry interest payments free from federal, and often state, taxes. This preferential tax treatment has seen greater demand on increased expectations for potential tax hikes under a Democratic administration to make up for tremendous fiscal spending measures.

ETF TRENDS

by MAX CHEN

DECEMBER 29, 2021

Puerto Rico's Retirement-Plan Woes Persist as Bankruptcy Nears End.

A proposed restructuring would end defined-benefit retirement programs for active teachers and judges

Puerto Rico's long history of failing to pay its pension obligations is expected to haunt the U.S. territory even after its bankruptcy ends.

A proposed bankruptcy restructuring under consideration by a federal judge would end defined-benefit retirement programs covering tens of thousands of active teachers and judges in Puerto Rico. The pension benefits public employees have already earned would be honored when they retire, although current workers can't accrue anything more.

Those measures would help close a roughly $55 billion gap between the retirement benefits owed to public servants in Puerto Rico and the funding set aside to pay them. Active teachers and judges are being shifted under the bankruptcy plan into defined-contribution retirement products akin to 401(k)s, ending the defined-benefit formulas in place when many of their careers began. Retirement ages would be increased, delaying when pensions can be tapped.

Continue reading.

The Wall Street Journal

By Andrew Scurria, Sebastian Pellejero and Soma Biswas

Jan. 1, 2022 9:00 am ET

In Case You Missed It: Last Week in Allyn Tax News

Arkansas: Use Tax Refund Claim for Computer Hardware Denied

A taxpayer requested a refund claim on use tax paid on purchases of computer hardware maintenance on services rendered outside of Arkansas. The Arkansas Department of Finance & Administration did not dispute the taxability of the services instead, the Department denied the request because the taxpayer failed to provide substantial documentation demonstrating that these were out-of-state services. It is the taxpayer’s responsibility in this case to establish clear evidence for entitlement to a refund.

A reverse (tax) audit, sometimes called an overpayment review, is an optional review of a company’s use tax accrued and/or sales tax paid on purchases for the purpose of identifying over-accruals or overpayments to states in the form of use tax or vendors in the form of sales tax. Ultimately, the goal is to obtain a tax refund from the state or locality of the sales or use tax it has overpaid. The review can be performed by a company itself or by a third-party tax professional skilled in the nuances of US state and local taxes.

Use Tax Due on Free Meal Provided to Employees in Illinois

Effective December 3, 2021, the Illinois Department of Revenue has increased the presumed average cost of free meals provided to employees for purposes of establishing employers’ use tax liability from $.75 to $3.50. The amendments to Ill. Admin. Code §130.2050 requires that the use tax is to be paid at the rate that would have been imposed when the employer acquired the goods from the supplier.

Kentucky Sales and Use Tax Disaster Relief Refund Guidance

Kentucky Department of Revenue has released frequently asked questions about the sales and use tax disaster relief refund. Refunds on the sales and use tax paid on the purchase of building materials for restoration of an existing building or for construction to replace a destroyed building in a federally declared disaster area may be issued for legal building owners with damaged property from a disaster. For counties affected by severe storms, tornados, and flooding from December 10 to December 11, 2021, a disaster declaration has been issued. These counties have been determined as Caldwell, Fulton, Graves, Hopkins, Marshall, Muhlenberg, Taylor, and Warren. The refund consists of 100% of Kentucky sales and use tax paid for building materials, not including vendor’s compensation, up to $6,000 for each building. The building materials must have been purchased on or after December 12, 2021, and the owner must file appropriate documentation within three years from the date the disaster area is declared. Separate refund applications must be submitted for each building. The appropriate documentation consists of an application for the Kentucky disaster relief sales and use tax refund (Form 51A600), all information providing agreements with contractors, vendors and other related parties (Form 51A601), an expenditure report with details of sales receipts and invoices (Form 51A602), any photographs or other documents evidencing the need for a refund, and either documentation that the legal building owner is eligible for assistance from the Federal Emergency Management Agency or a copy of the insurance claim filed for the damage or destruction of the building in the disaster area.

Sales of Security and Alarm Services in Arkansas: Taxable or Exempt?

In Arkansas, sales of security and alarm monitoring systems are included within taxable services. This resulted in a sales tax assessment against a taxpayer who provides security services to be sustained. While an exemption does exist for security services performed by permanent employees, temporary employees, or leased employees of the buyer, the taxpayer did not prove that he met the requirements for this exemption.

The taxpayer did not maintain adequate records to show sales of invoices. Therefore, the assessor used the taxpayer’s income tax returns and 1099-misc. forms to approximate the sales of security services, which were deemed taxable.

Car Sharing in Florida Subject to a Rental Car Surcharge

Beginning January 1, 2022, when a motor vehicle is rented through a peer-to-peer car sharing program, the peer-to-peer car-sharing program must collect and remit the applicable tax and rental car surcharge due in connection with the rental. A peer-to-peer car-sharing program is a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration.

A peer-to-peer car sharing program is required to register to collect sales tax, discretionary sales surtax and the rental car surcharge applicable to motor vehicles rented through the peer-to-peer car sharing program. Peer-to-peer car-sharing programs are required to submit a registration application for each county in which business is located. A $1.00 per day rental car surcharge applies to the first 30 days of the agreement involving shared vehicles through peer-to-peer car-sharing programs. If the car-sharing period is less than 24 hours, the surcharge is $1.00 per use. The rental car surcharge should be separately stated on the sales invoice and is subject to sales tax and discretionary sales surtax. The surcharge applies to vehicles designed to carry fewer than nine passengers.

U.S. Supreme Court has ruled Ohio Billboard Tax is Unconstitutional

The U.S. Supreme Court was asked to review a case regarding the city of Cincinnati’s excise tax on billboard signs on grounds of it being unconstitutional. The city requires an “advertising host,” meaning the billboard company, to pay the greater of either 7% of gross receipts generated from a billboard, or an annual minimum amount. A selective tax like this is subject to analysis and will only continue to be enforced if the government defends the tax by demonstrating that it promotes a compelling government interest and is customized to achieve that interest. The issue of this tax is that it is imposed only on a small number of billboard companies, so it was thought of as violating the rights to freedom of speech and a free press which is protected by the First Amendment to the U.S. Constitution. Through definitions and exemptions with the City’s municipal code, the burden falls mainly on only two billboard companies. These companies may not be singled out or targeted, since they are speakers and publishers of speech engaging in an act protected by the First

Amendment. Even though the City has interest in raising money to support the local government, there are other sources of revenue it can pursue. Consequently, the tax was ruled unconstitutional.

Allyn International

December 28 2021

Buckhead City Opponent Criticizes Reporting of Atlanta Bond Sale by SaportaReport.

A founder of an organization opposed to Buckhead cityhood has criticized a story that appeared in SaportaReport concerning Atlanta's sale of bonds this month with terms that contain a poison pill for the cityhood movement.

Michael Handelman, executive director of Neighbors for a United Atlanta, Inc. indicates in a column the Dec. 20 story errs by comparing interest rates levied on bonds sold by Atlanta and by Bexar County, Texas, home of San Antonio.

"This comparison, however, is absurd. Comparing two bond sales in different states (with correspondingly dissimilar statutes governing municipal debt) is like comparing the quality of a single apple at Publix with a randomly selected banana at Kroger," Handelman wrote. "Not only are the technical details of bonds between the two governments different, cherry-picking a single data point of another bond issuance within a $4 trillion US bond market is meaningless."

Neighbors for a United Atlanta was incorporated on Dec. 3 as a non-profit corporation. It provides a Roswell address and names as incorporators Caren Solomon Bharwani, Handelman and William Haney, according to records of Georgia's Secretary of State.

The SaportaReport story Handelman cites appeared under the headline, "Buckhead cityhood effort doesn't seem to cause hike in Atlanta's borrowing costs." The report included this observation:

"A side-by-side comparison of the bond issuances isn't appropriate. No issuers and no deals are alike. However, the two governments share similarities," the story reads. "Both are at the top-tier of credit ratings issued by Moody's Investors Service. Bexar County is at the very top of the scale for its planned sale, while Atlanta is one step lower in the credit ratings for its package. In addition, both governments are the center of burgeoning metroplexes in the South. Both are competing for high-tech jobs."

This Atlanta bond sale illuminates one argument raised for months by cityhood opponents.

The contention is that Buckhead's deannexation likely would result in higher borrowing costs for taxpayers in Atlanta and all cities in Georgia. Investors would recognize the potential for deannexations statewide and with them a reduction in cities' ability to repay loans as their property tax revenues shrink. Investors would offset the risk of non-payment by raising interest rates, according to this argument.

The story reported that this scenario does not appear to be the case in this bond issuance. Terms of Atlanta's bonds include a poison pill: If Buckhead deannexes, it must pay its entire share of the debt, in one lump sum, within a year of the vote to deannex. The measure provides some assurance to investors that they will be repaid regardless of the outcome of the Buckhead cityhood movement.

For a real-time comparison to another city bond issuance, the story reported interest rates investors will pay Atlanta with the rates investors will pay Bexar County.

Both are Sunbelt governments and both have top-tier credit ratings from Moody's Investors Service, with Bexar County one notch higher on Moody's scale. Atlanta sold about $188 million and Bexar County about $411 million.

Rates for Atlanta's bonds range from 0.509 percent to 2.388 percent. Rates for Bexar's bonds range from 0.651 percent to 2.621 percent, according to information provided by an affiliate of the Municipal Securities Rulemaking Board. The Atlanta deal closed on Dec. 23 and Bexar County's closed on Dec. 30.

Handelman's letter cites issues including various aspects of credit ratings, Atlanta's debt and Atlanta's spending before ending with comments that include this look to the future:

> What happens when the current low-interest-rate environment, high investor demand for municipal debt, and a well-performing and stable property tax base flips? For Atlanta, as the cost of new debt increases from higher credit risk, it means that the finely tuned balance of property taxes funding debt service and essential services starts to unravel. This situation inevitably leads to tough decisions to decrease essential services or increase property taxes… The consequences for Atlanta, a hypothetical Buckhead City, and other municipalities in Georgia, may not be immediately apparent in market data, but when clouds, wind and rain appear on the economic horizon, all of us in Georgia will be shivering.

Note to readers: To read Michael Handelman's column, click here. To read the SaportaReport piece that triggered Handelman's column, click here.

SaportaReport

David Pendered

December 31, 2021 4:22 pm

NFMA's New Mission Statement Approved.

Effective December 27, 2021, the NFMA's constitution was amended to incorporate a new mission statement. To read the current NFMA constitution, click here.

- **Ed. Note:** Welcome to our year-end Not With A Bang, But A Whimper edition. [Which is our typically insufferable way of saying that not much of anything happened this week in the world of public finance.]
- **BCB Year In Review:** Certain things transpired. Certain other things failed to transpire.
- S&P Cyber Threat Brief: A Log (4j) Has Been Added To The Fire
- Infrastructure Investment and Jobs Act: Orrick

- RBC Paying $1M FINRA Settlement for Years of Junk Bond Oversight.
- Which Bank Will Dare to Finance Alabama's Prisons?
- And finally, I Know It When I (Don't) See It is brought to us this week by *Greenville Bistro, LLC v. Greenville County*, in which the Supreme Court of South Carolina was tasked with defining, "scantily clad." In the spirit of holiday giving, we decided to pitch in and undertake our own investigation, primarily via field studies. We do not yet have a definitive definition for you, but we can assure you that we're getting to the bottom of it.

ANNEXATION - CALIFORNIA

Award Homes, Inc. v. County of San Benito

Court of Appeal, Sixth District, California - November 1, 2021 - Cal.Rptr.3d - 72 Cal.App.5th 290 - 2021 WL 5631443

Residential developer brought action against city and county seeking a declaration that developer was not obligated under development and annexation agreements with city to pay city annexation-related fees for which city was responsible under city-county tax sharing agreements concerning new single-family construction on land that city annexed from county.

After bench trials, the Superior Court entered judgment against developer. Developer appealed.

The Court of Appeal held that:

- Developer's action was timely as to whether it was required to pay fees;
- Developer had standing;
- Statute providing for property tax transfer agreements between a county and a local agency authorized fees under tax sharing agreements;
- Tax sharing agreement required city to pay fees to county; and
- Development and annexation agreements required developer to pay fees to city.

Developer's action for declaratory relief was timely as to whether development and annexation agreements compelled developer to pay a fixed fee set forth in city-county tax sharing agreements for each residential unit constructed on land that was annexed into city from county, where developer promptly sought a declaration of its rights and duties under development and annexation agreements after learning that city would attempt to collect annexation-related fees for those projects.

Developer had standing to seek a declaration of its rights and duties under development and annexation agreements as to whether developer was required to pay a fixed fee set forth in city-county tax sharing agreements for each residential unit constructed on land that was annexed into city from county, where developer was a party to development and annexation agreements.

Residential developer's action for declaratory relief against city and county, seeking to invalidate annexation-related fees under city-county tax sharing agreement as not having been legally established when agreements were signed, was untimely under even the most generous statute of limitations, that being the four-year limitations period for actions on a contract, that arguably might have governed a challenge to amount of fees, which city sought to pass on to developer pursuant to city's development and annexations agreement with developer, where first tax sharing agreement was signed more than ten years earlier and second agreement also fall outside the four-year period.

Fixed fee that city was to pay county under tax sharing agreements for each residential unit constructed on land that was annexed into city from county was within county's authority under tax statute authorizing county to develop and adopt a master property tax transfer agreement with a local agency like city; there was nothing so fatally defective in fee obligations under tax sharing agreements to render their very creation void.

City's obligation under tax sharing agreements to pay county annexation-related fees, which city sought to impose on residential developer pursuant to development agreement, did not cease to exist merely because developer did not seek building permits until after expiration of tax sharing agreement, which was in effect at time property was annexed by city; nothing in tax sharing agreement suggested that obligations created by it would cease to exist merely because a project annexed during its effective period was not constructed until after agreement expired, and fiscal neutrality goal of agreement would not have been served by such an interpretation.

Phrase "developer's obligations" in residential development agreement included obligation on part of developer to pay city the fixed fee, for which city was responsible to pay county under city-county tax sharing agreement, for each residential unit constructed on land that was annexed into city from county, despite argument that tax sharing agreement only required city to impose capital improvement and drainage impact fees on developers; tax sharing agreement required all three fees to be imposed on new development, development agreement did not provide explicit language excluding annexation-related fees from developer's obligations, and developer agreed as a condition of tentative map approval that fees required under tax sharing agreement were to be paid with each building permit.

Failure of city-county tax sharing agreement to use explicit term "fee" in referring to fixed fee that city was required to pay county for each single family dwelling unit constructed on land that was annexed into city from county did not preclude the annexation-related fee from being treated the same as capital improvement and drainage fees under development agreement with city, to allow city to require developer to pay city the amount of annexation-related fee pursuant to terms of development agreement, where development agreement also did not use the term "fees" and instead required developer to satisfy "developer's obligations."

County's status as non-party to residential development agreement between city and developer did not absolve developer of its obligation under agreement to pay city the amount of annexation-related fees for which city was responsible under city-county tax sharing agreement concerning new single-family construction on land that city annexed from county; any lack of obligation of developer to pay fees directly to county did not absolve developer of obligation to pay fees to city.

Residential developer's annexation agreement with city, requiring developer to hold and use the property in compliance with all "applicable provisions" of city-county tax sharing agreement, included provisions of tax sharing agreement relating to annexation-related fees that city was required to pay county and not just capital improvement and drainage impact fees to be imposed on new development, and thus city could require developer to pay city the amount of annexation-related fees, where all three fees were similar, and developer promised in annexation agreement to ensure that the proposed development paid its own way and eliminated or minimized the financial burden on city.

PUBLIC UTILITIES - GEORGIA

Cazier v. Georgia Power Company

Court of Appeals of Georgia - December 1, 2021 - S.E.2d - 2021 WL 5626887

Customers brought putative class action against electric utility, alleging that utility had improperly collected certain sales taxes and fees.

The Superior Court denied utility's motion to dismiss, and utility appealed. The Court of Appeals affirmed in part and reversed in part. On remand, the Superior Court dismissed the action based on customers' failure to exhaust administrative remedies before the Public Service Commission (PSC), and customers appealed. The Court of Appeals vacated. After issuing writ of certiorari, the Supreme Court affirmed and remanded. In turn, the Superior Court remanded to PSC for determination as to whether utility had properly charged franchise fee to customers. The Superior Court adopted PSC's determination, certified class, and granted summary judgment to utility. Customers appealed and utility cross-appealed.

The Court of Appeals held that:

- Trial court properly remanded to PSC for initial determination as to meaning of terms in PSC's ratemaking orders, and
- Sufficient evidence supported PSC's finding that its orders used terms "usage revenue" and "total revenue" interchangeably.

Trial court properly invoked primary jurisdiction of Public Service Commission (PSC) for initial determination as to whether terms "usage revenue" and "total revenue" were used synonymously in PSC ratemaking orders concerning calculation of sales tax on municipal franchise fee (MFF), rather than interpreting terms itself; PSC's use of two different terms raised question as to whether two categories described by those apparently different terms were the same, and question was best answered by PSC itself as agency that authored orders and that had specialized competence in ratemaking proceedings.

Sufficient evidence supported finding by Public Service Commission (PSC) that its orders governing calculation of sales tax on municipal franchise fee (MFF) used terms "usage revenue" and "total revenue" interchangeably, such that electric utility properly applied MFF by calculating charge based on percentage of each consumer's total charge, where utility's rates were approved by PSC to recover all "usage" from customers, PSC noted exclusion of cost recovery items from MFF calculation by treating terms differently would be unreasonable, particularly given that minimum monthly bill included certain costs even if customer had no kilowatt-hour usage, and PSC previously approved utility's compliance filings which applied MFF to total revenue from each bill, including that from cost recovery items.

POLITICAL SUBDIVISIONS - INDIANA

Lowe v. Northern Indiana Commuter Transportation District

Supreme Court of Indiana - December 16, 2021 - N.E.3d - 2021 WL 5961638

Employee of commuter transportation district, who sustained injuries to his shoulders while working on a portion of train track, sued the district under the Federal Employers' Liability Act (FELA).

Transportation district moved for summary judgment, alleging that employee failed to provide timely notice of tort claim, as required by Indiana Tort Claims Act (TCA). The Superior Court granted motion. Employee appealed. The Court of Appeals affirmed and employee petitioned to transfer decision.

The Supreme Court held that:

- The Tort Claims Act applied to FELA suits against state entities;
- As a matter of first impression, the commuter transportation district was a political subdivision, not a state agency, under the Tort Claims Act; and
- Employee who provided notice of his work place injury to attorney general 263 days after the alleged injury did not substantially comply with Tort Claims Act.

The Tort Claims Act applied to FELA suits against state entities; Congress does not have the power to subject nonconsenting states to private suits for damages in state courts, the mere fact that FELA is a federal statute did not automatically exclude from consideration the procedural constraints of the Tort Claims Act, the Act applies to "a claim or suit in tort" against governmental entities and their employees, and FELA applies to causes of action for negligence.

The commuter transportation district was a political subdivision, not a state agency, under the Tort Claims Act, and thus employee was required to provide notice within 180-days of his injury; a political subdivision included a "separate municipal corporation," and a commuter transportation district is defined as a municipal corporation under enabling statute.

PUBLIC UTILITIES - MASSACHUSETTS

[Fore River Residents Against Compressor Station v. Office of Coastal Zone Management]

Appeals Court of Massachusetts, Norfolk - December 16, 2021 - N.E.3d - 2021 WL 5969793

City mayor sought judicial review of decision by Massachusetts Office of Coastal Zone Management (MCZM) that construction of natural gas compressor station would be consistent with enforceable policies of Massachusetts' coastal zone management program. Community advocacy organization intervened on plaintiff's side.

The Superior Court Department dismissed action. Organization appealed.

The Appeals Court held that:

- Determination was not subject to review under statute authorizing judicial review to a person aggrieved by a final agency decision;
- Determination was not subject to certiorari review; and
- Organization lacked standing to seek judicial review of determination by claim for declaratory judgment.

Judicial review of determination by Massachusetts Office of Coastal Zone Management (MCZM) that construction of natural gas compressor station would be consistent with enforceable policies of Massachusetts' coastal zone management program was not available under statute authorizing judicial review to a person aggrieved by a final agency decision in an adjudicatory proceeding; an adjudicatory proceeding was one in which someone had right to agency hearing, community advocacy organization did not have right to any agency hearing, and any discretion on part of MCZM to hold a hearing did not render proceeding an adjudicatory proceeding.

Proceeding before Massachusetts Office of Coastal Zone Management (MCZM) to determine whether construction of natural gas compressor station would be consistent with enforceable policies of Massachusetts' coastal zone management program was not judicial or quasi-judicial, and thus, MCZM's consistency determination was not subject to certiorari review on such basis;

regulatory scheme required MCZM to provide opportunity for public participation only through public notice and comment, proceeding was not preceded by any specific charges, MCZM was not required to hold a hearing, much less hear sworn testimony, it was federal government, not MCZM, that ultimately decided whether station could be constructed, and MCZM's determination contained no formal findings of fact.

Community advocacy organization lacked standing to seek judicial review of determination by Massachusetts Office of Coastal Zone Management (MCZM) that construction of natural gas compressor station would be consistent with enforceable policies of Massachusetts' coastal zone management program by claim for declaratory judgment invalidating determination; while an applicant had right to appeal to federal Secretary of Commerce from a determination that a project would be inconsistent with enforceable policies of a State's coastal zone management program, no similar right was given to the public under the CZMA or state statute establishing MCZM, if standing were recognized, it would have adverse effect in form of unnecessary delays, and there were other remedies available.

PUBLIC UTILITIES - MISSISSIPPI

Pearl River Valley Water Supply District v. Khalaf

Supreme Court of Mississippi - December 9, 2021 - So.3d - 2021 WL 5832307

After a sinkhole formed on lessee's leasehold, water supply district filed a complaint against lessee to recoup the costs of repairing the sinkhole and for other relief.

The Chancery Court granted lessee's motion to dismiss, and water supply district appealed.

The Supreme Court held that:

- It was proper for water supply district to attach leases to its complaint against lessee;
- It was proper for lessee, who leased land in subdivision, to attach declaration of covenants for subdivision to his motion to dismiss;
- Lessee's recorded lease was the operative document when determining if lessee was responsible for repairing sinkhole; and
- Lessee was not responsible for repairing sinkhole on leasehold pursuant to his lease of land in subdivision.

Lessee was not responsible for repairing sinkhole on leasehold pursuant to his lease of land in subdivision; lessee's lease was recorded, terms of lease were binding on lessee, lessor, and water supply district that entered into development lease with lessor, lessee's property was subject to declaration of covenants for subdivision which reserved to homeowners' association and the district blanket easements for repairing, replacing, and maintaining storm drainage on all property subject to covenants, storm drain pipe's function, as asserted by district, was not to drain surface water from lessee's property, but to drain the entire subdivision through lessee's property into reservoir, and because lessee took the leasehold subject to the covenants reserving storm drainage easements to homeowners' association and district, lessee was not responsible for repairing storm drain pipe installed by developer long before he had entered into the lease.

ZONING & PLANNING - SOUTH CAROLINA

Greenville Bistro, LLC v. Greenville County

Supreme Court of South Carolina - December 8, 2021 - S.E.2d - 2021 WL 5823888

Restaurant operator brought action against county for declaratory and injunctive relief, raising First Amendment free speech challenge to county's attempts to enforce its sexually oriented business code to prevent restaurant from operating with scantily-clad exotic dancers.

The Circuit Court granted operator's motion for temporary injunction, after which the county appealed and the Circuit Court denied county's motion for temporary injunctive relief during pendency of appeal. County appealed.

The Supreme Court held that:

- Zoning ordinance redefining "adult cabaret" and adding "semi-nude" definition was a valid time, place, and manner regulation;
- County was not bound by order releasing restrictions obtained in prior nuisance action to which county was not a party;
- Operator was not likely to succeed on merits of claim that county inequitably adopted ordinance due to its suspect timing;
- Trial court had jurisdiction to rule on county's motion for temporary injunctive relief; and
- County was entitled to temporary injunctive relief.

How States and Localities Can Use Data to Spend Federal Funds Wisely.

Applying an evidence-based approach to funding new infrastructure problems can ensure communities get the biggest bang for each federal buck.

The $1.2 trillion Infrastructure Investment and Jobs Act will deliver the nation's largest investment in roads, bridges, clean water, broadband, electric vehicles and rail in more than half a century. Now, state, city and county policymakers will have to decide how to prioritize, allocate and monitor the effectiveness of these infrastructure investments.

The challenges that state and local leaders face in managing this influx of federal funds are considerable and elicit many questions like: How will lawmakers allocate the record $1.2 trillion investment? What guidelines and requirements will accompany these new resources? How do states make sure that these funds are directed in equitable and inclusive ways? And how can states approach these decisions in ways that deliver long-term fiscal responsibility and benefits—even when the money runs out?

For many years, The Pew Charitable Trusts has worked with state leaders on developing best practices for spending taxpayer dollars prudently, maintaining balanced budgets, investing in evidence-based policies, and planning for and mitigating other fiscal risks. Through our experience, we've learned a great deal about how states can use data and evidence to spend funds wisely. These experiences offer valuable and replicable lessons for state policymakers as they make decisions about the incoming infrastructure funds.

Continue reading.

Route Fifty

By Michael Caudell-Feagan,
Executive Vice President & Chief Program Officer, The Pew Charitable Trusts

DEC 22, 2021

[Infrastructure Investment and Jobs Act: Orrick]

In November, the bipartisan Infrastructure Investment and Jobs Act (the “Act”) was enacted into law. In addition to reauthorizing existing programs, the Act adds $550 billion in funding for new infrastructure investments, including for transportation, water, power, renewable energy and broadband.

This summary discusses provisions of the Act of particular interest to the municipal finance industry, organized into two parts. First, a summary of provisions related to tax-exempt financing by state and local governments. The Act authorizes two new categories of tax-exempt bonds for broadband projects and carbon capture facilities, and also increases the national volume cap available for tax-exempt bonds issued for certain transportation projects, which are often used for projects involving public-private partnerships (“P3”). And second, a highlight of various provisions that provide funding to state, local and tribal governments for particular types of infrastructure. Since many of these provisions relate to new programs, federal agencies will be working through the rulemaking process to implement these new programs over the coming months.

Tax-Exempt Financing Provisions
The Act adds two new types of “exempt facility” bonds, and increases the federal volume cap for a third type. Most tax-exempt bonds are issued as “governmental” bonds subject to the private activity limitations imposed by Section 141 of the Code, which generally limit the amount of involvement of a private entity in the financed projects (i.e., limitations on private business use of the projects). Exempt facility bonds are a separate category of tax-exempt bonds, which are generally not subject to private business use or other private activity limitations, but can only be used to finance qualifying facilities, such as airports, solid waste, and multifamily housing, and are subject to additional requirements and restrictions, such as TEFRA approval and costs of issuance limitations. Several types of exempt facility bonds, including the new types authorized by the Act, may be issued to finance projects owned by a private entity.

Qualified Broadband Projects. The Act adds a new type of exempt facility bonds for qualified broadband projects. A qualified project must provide access to residential and/or commercial locations at speeds of not less than 100 megabits per second (“mbps”) downstream and 20 mbps upstream, and must provide access to locations that are currently underserved by broadband service. The project must be designed to provide service to one or more census block groups where more than 50% of residential households do not currently have access to fixed terrestrial broadband service delivering at least 25 mbps downstream and at least 3 mbps upstream, and at least 90% of the locations (residential or commercial) at which access will be provided are locations where a broadband service provider did not previously provide service of at least 25 mbps downstream and at least 3mbps upstream. In addition, before bonds are issued, the issuer must (i) notify all broadband service providers in the area of the planned project, (ii) request information from them on their ability to provide gigabit capable Internet access (1,000 mbps), and (iii) allow each provider at least 90 days to respond to the notice and request. These requirements have some interpretive questions that may require guidance from Treasury, but in advance of any guidance, it appears that these bonds would work well to finance land-based broadband infrastructure in geographic areas in which no broadband service is currently available.

Exempt facility bonds are usually subject to state volume cap limitations, but the Act provides for a 75% exemption from volume cap for privately owned broadband projects, such that only 25% of the volume cap is required, and a 100% exemption for governmentally owned projects, such that no volume cap is required.

Qualified Carbon Dioxide Capture Facilities. The Act adds a second new type of exempt facility bonds for qualified carbon dioxide capture facilities. Qualifying facilities can either be (i) components of an industrial carbon dioxide facility, or (ii) a direct air capture facility. The Act has a number of detailed requirements for qualifying facilities, some of which may require guidance from the Treasury Department to interpret.

An industrial carbon dioxide facility means a facility that emits carbon dioxide as a result of combustion, gasification, bioindustrial processes, fermentation, or certain types of manufacturing processes (but not including natural gas extraction and transportation). Eligible components for financing with these bonds include equipment used for the capture, treatment, purification, compression, transportation or storage of produced carbon dioxide, or certain components that are used to convert solid or liquid products made from coal, petroleum residue, biomass or other materials into a synthesis gas composed of primarily carbon dioxide and hydrogen for direct use or a subsequent chemical or physical conversion. The Act generally requires that eligible components of an industrial carbon dioxide facility must be at least 65% efficient in capturing and storing carbon dioxide, and for this purpose, storing carbon dioxide means injection into a facility for geologic storage, or injection into an enhanced oil or gas recovery well followed by geologic storage. To the extent the efficiency is less than 65%, only the corresponding percentage of the costs are eligible for financing (i.e., components that are 40% efficient can only have 40% of the costs financed with these exempt facility bonds).

Direct air capture facilities are defined by reference to Section 45Q(e)(1) of the Internal Revenue Code of 1986, which currently provides for a business income tax credit for certain of such facilities. A direct air capture facility for this purpose is a facility that captures carbon dioxide from the ambient air—not including capturing carbon dioxide deliberately released from subsurface springs and not including facilities that use natural photosynthesis to capture carbon dioxide. To the extent that a facility receives tax-exempt financing for a portion of the eligible costs and is also eligible for the Section 45Q tax credit, the eligible tax credit will be reduced by the proportional amount of tax-exempt financing, but with a cap of a 50% reduction.

Exempt facility bonds for qualified carbon dioxide capture facilities are subject to a 75% exemption from volume cap, such that only 25% of the volume cap amount is required.

Qualified Highway and Surface Freight National Volume Cap Increase. Existing law allowed the issuance of exempt facility bonds for certain transportation projects that receive federal funding, but only with an allocation of volume cap from the Secretary of Transportation. These types of exempt facility bonds were often used for P3 transportation projects, as these bonds are not subject to the private business use or other private activity limitations. The national volume cap limit for these bonds was set at $15 billion in 2005, and as of November 2021, approximately $13.8 billion had been used, and another $934 million has been allocated to projects but not yet issued. The Act increases the national volume cap limitation to $30 billion, providing a significant increase for potential financing of additional P3 transportation projects.

New and Notable Infrastructure Programs

The Act provides an enormous amount of funding for a broad range of infrastructure projects. Below is a summary of particular provisions, focused by sector, that may be of interest to state and local governments, tribal governments, and other participants in particular infrastructure sectors. This is not comprehensive, but focuses on some of the larger programs that relate to capital infrastructure projects. Numerous other provisions of the Act may be of interest to particular participants in the municipal finance industry, including grant funding for cybersecurity initiatives, brownfield development, energy efficiency assessments, and job training and technical assistance related to climate resilience or infrastructure projects.

Airports. The Act provides $15 billion over the next five years in formula-based grants to airports for the Airport Improvement Program, which generally allows flexibility in funding improvements to runways, taxiways, terminals and other projects. There is also $5 billion available in the Airport Terminal Program for discretionary grants for terminal improvements and other landside projects.

The Act also makes airport-related projects eligible for loans and other credit support pursuant to the Transportation Infrastructure Finance and Innovation Act ("TIFIA"). TIFIA loans have been used as a source of low-interest, long-term funding for various highway and surface transportation projects. In addition to expanding the eligibility to include airport-related projects, the Act further extends the repayment terms on TIFIA loans for up to 75 years for certain infrastructure projects.

Broadband Projects. The Act authorizes a total of $65 billion in funding for broadband infrastructure. This includes $42.45 billion in grant programs for states, territories, and the District of Columbia to develop broadband projects, as well as $2 billion in grant and loan programs to provide broadband service in rural areas. The Act also provides $2.75 billion in new grant programs to promote digital inclusion and equity. An additional $1 billion is available for grants to various entities, including electrical utilities and cooperatives, for "middle mile" infrastructure to expand broadband to unserved areas.

Energy Infrastructure. The Act includes $65 billion for a range of energy infrastructure programs, including $5 billion for a new grant program to make electrical grids more resilient to weather, wildfire and natural disasters, $5 billion for federal assistance for innovative approaches to making transmission, storage, and distribution infrastructure more resilient (plus another $1 billion for remote or rural areas), and $3 billion for a matching grant program for smart grid investments.

The Act creates a $2.5 billion revolving loan fund program for new or upgraded transmission lines, and allows the Department of Energy to acquire a portion of the capacity of the line in order to serve as an "anchor-tenant" for the line to promote economic viability. The Act also authorizes more than $500 million in incentive payments to owners of hydroelectric facilities for capital improvements that improve grid resiliency, improve dam safety, or are environmental improvements.

Ports, Waterways and Ferries. The Act expands the scope of eligible projects for the Department of Transportation's Port Infrastructure Development Program, and provides $2.25 billion over the next five years in funding for competitive grants pursuant to that program. In addition to the types of projects previously authorized, the Act authorizes projects that improve resilience to climate change or reduce greenhouse gas emissions at ports, such as electrification, vehicle charging infrastructure, and equipment replacements or retrofits. The Act also provides additional funding for grants pursuant to the Marine Highways Program, and for grants to reduce truck emissions at ports.

The Act provides $1.25 billion in grants for passenger ferries, and establishes a $1 billion program for ferry service in rural areas, which also allows use of these funds for operating costs.

Public Schools. Although not often thought of as an infrastructure sector, the Act provides $500 million in competitive grants to public schools for energy efficiency improvements, renewable energy, or alternative fuel infrastructure for vehicles. The Act also provides $5 billion in funding for the replacement of school buses with zero emission or alternative fuel buses, and $200 million in funding for grants to address lead contamination in school drinking water.

Public Transit and Rail. Numerous provisions of the Act provide funding for public transit and rail projects, including $8 billion in grants for new and expanded bus and rail service, $4.75 billion in grants for maintenance, replacement and rehabilitation of buses and rail assets, $5.25 billion in grants for low- and no-emission buses, including supporting facilities and workforce training, and $2 billion in certain grant programs to help make public transit systems more accessible to seniors and persons with disabilities. The Act also includes several programs addressing maintenance backlogs for passenger and freight rail, as well as capital projects that improve intercity passenger rail.

The Act also expands eligibility for TIFIA loans to (i) public infrastructure projects located within walking distance of, and accessible to certain public transit facilities, (ii) economic development projects that incorporate private investment and are physically or functionally related to passenger rail.

Roads and Bridges. The largest area of new spending in the Act is directed towards highways, roads, and bridges. In addition to reauthorizing existing highway programs, the Act provides more than $36 billion in competitive and formula grants for bridge repairs and replacement, as well as $7.5 billion in grants for surface transportation projects of local and/or regional significance, $5 billion for multi-modal, multi-jurisdictional projects of national or regional significance, and a $3.2 billion increase in grant funding for highway and rail projects of national and regional significance. The Act also provides funding for certain specific highway transportation projects, creates a grant program for both formula and competitive grants for transportation resiliency projects, and another grant program for replacing culverts under roads, bridges, railroad tracks, and trails.

Tribal Governments. Indian tribes are eligible recipients for many of the new programs in the Act that are otherwise described in this summary, such as the grants for vehicle charging and alternative fuel infrastructure and grants for electric grid resiliency projects. The Act also expands the eligibility for certain existing programs to include Indian tribes, such as for grants for certain rail projects, and sets aside funds for tribes, such as a 5% set aside in rural public transportation formula grants for public transportation projects on Indian reservations.

Vehicle Charging and Alternative Fuel Infrastructure. This is not exclusive to a particular infrastructure sector, but instead a particular category of projects that affects multiple sectors. The Act provides $7.5 billion in grants to states, local governments, tribes, and territories for publicly accessible electric vehicle charging infrastructure, as well as infrastructure for hydrogen, propane, or natural gas fueled vehicles. The goal of these grants is to create alternative fuel corridors, which can either be corridors designated by the Department of Transportation, or by a state or group of states in certain cases. These grants will be prioritized for rural areas, low and moderate income neighborhoods, and areas with low amounts of private parking or with high-density housing. These funds will be available for up to 80% of the costs of projects, with a maximum grant amount of $15 million, and in order to require private participation, the grants are to be used to contract with a private entity for acquisition and installation of the infrastructure, and the private entity must agree to pay the portion of the project costs not funded with federal grants.

In addition to that particular grant program, there are multiple other provisions in the Act providing funding for electric vehicle or alternative fuel infrastructure, either by expanding the eligibility of such infrastructure for funding from existing programs (e.g., the Surface Transportation Block Grant Program), or as part of new programs targeted at particular sectors as discussed elsewhere in this summary (e.g., schools and ports).

Water and Wastewater. The Act provides $55 billion in new funding for water and wastewater projects, primarily through programs pursuant to the existing Drinking Water and Clean Water State Revolving Loan Funds ("SRFs"). $15 billion will be made available through the Drinking Water SRF for grants, loans, and forgivable loans for lead pipe replacement in service lines, without any state cost-share requirement. $10 billion is being made available through both SRF programs as grants to states and water/wastewater utilities to treat perfluoroalkyl or polyfluoroalkyl substances or other identified contaminants of emerging concern.

by John Stanley

December 27, 2021

Orrick, Herrington & Sutcliffe LLP

[Cyber Threat Brief: A Log (4j) Has Been Added To The Fire]

Key Takeaways

- The recently discovered vulnerability in the widely used software library Apache Log4j highlights the increasing risk that cyber events pose to credit.
- We think cyber governance will play a central role in determining the magnitude of the impact on entities from this security flaw over the coming weeks and months.
- Entities that are badly prepared, handle the event poorly, have weaker balance sheets, and lack adequate cyber insurance or other means to address the potential financial impact will be most exposed.

[Continue reading.] [Free registration required.]

17 Dec, 2021

[9 Big Public Finance Surprises in 2021.]

This year taught us to humbly expect the unexpected, from hundreds of billions in federal "helicopter money" to $35,000 bonuses to lure back retired transit workers. And how is your public pension fund doing on something called ESG?

Americans entered this year with hopes that COVID-19 would be vanquished and life would return to normal, but that didn't happen. Plenty of unexpected things did happen, as they always do of course, and much of it was felt by government, from insurrectionists storming the U.S. Capitol in January to some surprise upsets (and near-upsets) in last month's state and local elections. The world of public finance experienced its own twists and turns: Congress finally funded infrastructure, for example, but then stalled on tax provisions favorable to municipalities. Here's where the year brought results that few had predicted:

1. Budget surpluses. Economists almost universally expected that states and local governments would suffer revenue shortfalls as a result of the pandemic. Congress approved megabillion-dollar aid packages to bail them out from a pandemic recession that nobody had ever experienced. But a “fiscal trifecta” materialized: The federal helicopter money sent directly to households provided billions for spending that supported sales taxes. The stock market surged, which brought record income-tax receipts from investors’ capital gains. And real estate prices zoomed, boosting property tax rolls. Most states ended fiscal 2021 with a budget surplus, not a deficit. One exception: Petroleum-producing states saw lower extraction revenues until oil prices rebounded late in the year.

2. A property tax bonanza. There is much ado in professional circles these days about “reimagining local government revenues.” Some of the targets for reform are fines and fees, which tend to burden lower-income residents disproportionately, and sales taxes are deemed regressive as well. But the big money driver across the municipal sector is in the property tax, which is also disliked by advocates of progressive taxation. Nevertheless, whether reformers like it or not, the stability and reliability of the property tax is now buttressed by surging home prices, which make it an unheralded growth engine in the local government revenue base. Although there will be some jurisdictions that now face property tax backlash if they don’t cut tax rates to compensate for surging parcel assessments, reform advocates will face an uphill battle if they seek to displace reliance on today’s power train in municipal budgets.

3. The return of inflation. Despite midyear assurances from federal officials and central bankers that inflation would be transitory, rising costs have persisted and worsened. November’s consumer price index (CPI) readout of 6.8 percent was the highest in 39 years. Government purchasing departments have strained all year to outwit the pressures of sticker shock: The costs of everything from police cars to highway de-icing supplies went up and stayed up. A surging CPI also triggers higher salaries and pension costs. Even when supply chain snags are worked out, the costs of housing and rents continue skyward, and that will keep pressuring the inflation indexes in coming months because of lag effects in those data series. November’s producer prices jumped 9 percent over last year, which will likewise pressure consumer prices early in 2022. Right now, inflation looks to be the top issue and biggest unknown in state and local finance next year.

4. Resignation nation. Pundits predicted that the workforce would change forever with remote work and hybrid office/home employment patterns becoming more prevalent, but nobody expected to see the level of job-jumping and “time out” workforce departures that are now driving human resources departments and municipal managers batty. Although some public services professions continue to draw new recruits, and have been more stable than the fickle hospitality industry workforce, the ground has shifted. Governments are no longer employers of last resort as the unemployment rate shrinks. Employee retention has become a nationwide challenge, and government employers are hardly immune. Inducements like child care and flexible work schedules must be accompanied by top-down efforts to make public agencies a happier place to work, because that is what more employees are demanding. Psychic income from public service alone is not a sufficient motivator anymore, unless it’s backed up by team engagement — and higher pay. New York has been paying $35,000 rehiring bonuses for retired transit workers who fill vacancies, and the Big Apple is not alone. Some public employers are even using federal COVID-19 aid, directly or indirectly, to pay bonuses.

5. Labor in the catbird seat. With inflation and tight employment markets now the prevailing environment for labor negotiations, public-sector unions have more clout than they have seen since before the Great Recession. On the fiscal side, budgeters must now expect to see contract demands for “CPI plus X percent” and catch-up salary increases to compensate for a decade of frugality. As services-sector employers, state and local governments will now face mounting cost pressures. With all that (nonrecurring) federal fiscal assistance sloshing and swishing around, some of it will be expected to take the form of permanent wage increases. Next year looks to be a contentious one for public-sector labor negotiators and their budgeting sidekicks who run the numbers. Expect more compensation dispute arbitration in jurisdictions where rocks hit hard places.

6. The muni bond market that Dems left at the altar. Almost everybody in the public finance community who works in Washington, D.C., had high hopes that Congress' tortured budget reconciliation bill would ultimately include goodies for the municipal bond market. Build America Bonds revival, advance refunding and enhanced bank eligibility for muni investments were all included in earlier drafts in the House, but they got scuttled when Senate centrists took the upper hand and sliced the size of the package, which in turn forced the tax committees to cut them out as revenue-losers. Like Detroit Lions and Seattle Mariners fans, it now looks like we'll just have to wait for next year unless Christmas magic arrives on the Senate floor in coming days. In retrospect, the sad and inexplicable surprise here was that these low-cost muni bond market incentives were not embedded in the bipartisan infrastructure bill, to leverage and optimize federal outlays.

7. Jerry-rigged SALT relief. Rather than wait for Congress, 20 states crafted workaround schemes for business owners to get credits for their state and local taxes at the state level. However, such Rube Goldberg schemes don't help working middle-class households. Congressional SALT relief remains in "placeholder" status. Until and unless President Biden's Build Back Better taxing-an--spending package clears the Senate, we won't know for sure which, if any, federal taxpayers will see higher SALT deduction caps, and who gets left with coal in their stockings. (At this writing the SALT elves were still nagging Santa, but Beltway insiders now doubt a breakthrough this month.)

8. Pensions: big wins for ESG. Public pension plan trustees and advocacy groups had been increasingly focused on environmental, social and governance (ESG) considerations in their investment policies, but 2021 overshot most proponents' expectations. European leaders, shareholders and courts successfully pressured Big Oil companies like Shell to migrate to a lower-carbon business model, and American activists won board seats at Exxon. Even the New York Stock Exchange now has a high-priority ESG initiative. As the tide turned, U.S. portfolio managers quickly gussied up their profiles and marketing pitches: ESG has become a hot strategy for mutual fund and pension managers as younger investors increasingly demand that their investments align with their values. Proof of the pudding is that "zero-carbon offsets" are now trading on global financial exchanges and Big Money is buying them at scale. Expect to see ESG become a recurring agenda topic in pension-land as ESG mutual funds now quickly creep into 457, 403(b) and 401(a) retirement plan menus as the products du jour.

9. And a leveraged CalPERS. It's still just top of their first inning in this new game, but a summary of surprises in 2021 cannot overlook the recent decision by the nation's largest public pension fund to leverage its assets by borrowing about $25 billion for investments aimed at increasing the portfolio's returns. Critics say the California Public Employees' Retirement System's 6.8 percent target for compounding annual investment returns with this leveraging initiative is wishful and that trustees would rather play with fire than raise contribution rates. Although supporters claim it's "diversification," others would say this strategy is even more risky than issuing pension funding bonds. Would you take out a home equity loan to fund your IRA, in a year when stocks gained 20 percent and now trade near peak levels with lofty valuations? Or is this really just a savvy CalPERS shortcut to bigger positions in high-yielding asset categories like private lending as interest rates increase? Time will tell.

governing.com

Dec. 21, 2021 • Girard Miller

What the Stalled Infrastructure Bill Means for Munis.

In this edition of “Muni Moment,” Fitch Ratings Senior Director Eric Kim discusses what the stalled infrastructure legislation could mean for the municipal bond market. He speaks with Bloomberg’s Taylor Riggs on “Bloomberg Markets: The Close.”

Watch video.

Bloomberg Markets: The Close

December 22nd, 2021, 12:18 PM PST

Congress Provides Substantial Funding for Variety of Water Projects in Infrastructure Law With Emphasis on Low Income Communities.

The Infrastructure Investment and Jobs Act (IIJA) contains significant water-related provisions, amounting to $82.5 billion in spending.[1] Areas addressed by these provisions include drinking water safety, clean water more generally, access to water, and research.

Background

America faces many serious problems involving water. People in rural areas remain dependent on often unreliable wells, and the water infrastructure of many U.S. cities has deteriorated as many existing pipes remain contaminated by lead. Meanwhile, from 1996 to 2018, the cost of water and wastewater has increased at annual rates of 5.09% and 5.64%, respectively, compared to an annual increase in the Consumer Price Index of only 2.1%.[2]

In Flint, Michigan, the city’s drinking water was contaminated with lead in 2014, beginning a crisis that lasted until at least 2019. Between 6,000 and 12,000 children were exposed to high levels of lead.[3] The Flint disaster provides examples of many of the problems the water provisions of the IIJA seek to confront: environmental injustice, the continued use of lead service pipes, and failures of local, state, and federal governments.

Threats to clean drinking water go beyond lead, however, and in many ways, regulation has failed to keep up with new risks. For example, the Environmental Protection Agency has not issued National Primary Drinking Water Regulations for new contaminants since 1996, although it announced its final determination to regulate perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) in March 2021.[4] PFOS, PFOA, and other per- and polyfluoroalkyl substances (PFAS) have contaminated water supplies in many places across the country, and because they remain in the environment for a long time and do not easily degrade, pose particular problems to remediate.

These water-related problems were part of a broader set of infrastructure-related problems the IIJA sought to address. The law grew out of the $2.3 trillion American Jobs Plan announced by President Biden on March 31, 2021, amounting to $4 trillion in combination with the American Families Plan announced in April.[5] The plans’ “human infrastructure” provisions were split off into the still-unpassed Build Back Better Act to seek bipartisan support for the IIJA, and the IIJA itself was cut considerably. The final version of the IIJA authorizes a total of $1.2 trillion in spending over several years. The bill finally became law on November 15, 2021.

Safe Drinking Water

The largest category of water-related investments in the Act involves improvements in drinking water safety and sanitation, including around $24 billion in grants to states over five years under the existing Safe Drinking Water Act and Federal Water Pollution Control Act. The Infrastructure Investment and Jobs Act also provides $15 billion for projects to replace lead water pipes and service lines, and $9 billion for addressing PFAS and other "emerging contaminants."[6] Section 50101's amendments to the Safe Drinking Water Act, in addition to authorizing new spending, clarify that SDWA grants "to assist in responding to and alleviating any emergency situation" can include responses to cybersecurity events and heightened lead exposure. (Section 50113 also concerns cybersecurity support for public water systems.) These amendments also provide that "State-based nonprofit organizations that are governed by community water systems" are eligible for technical assistance under Section 1442(e).

Section 50102 reauthorizes the Safe Drinking Water Act's Drinking Water State Revolving Loan Funds and appropriations for their capitalization grants. It also amends SDWA Section 1452(d) to give states more ways of subsidizing projects serving disadvantaged communities: "grants, negative interest loans, other loan forgiveness, and through buying, refinancing, or restructuring debt."

Section 50103 authorizes appropriations for the SDWA's source water quality protection partnership petition program and allows counties to form such partnerships on behalf of unincorporated areas.

Section 50104 expands the projects eligible for grants to small and disadvantaged communities under the Safe Drinking Water Act to include "the purchase of point-of-entry or point-of-use filters and filtration systems that are certified by a third party using science-based test methods for the removal of contaminants of concern." (This is the only reference to point-of-use systems in the IIJA.) It also requires the EPA to "establish a competitive grant program" through which eligible entities would "assist eligible individuals in covering the costs incurred by the eligible individual in connecting the household of the eligible individual to a public water system."

Section 50105 includes several measures to reduce lead in drinking water. It increases and extends appropriations for lead reduction grants, and allows them to be used to replace privately-owned lead service lines, "with priority for disadvantaged communities based on the affordability criteria established by the applicable State under [SDWA] section 1452(d)(3), low-income homeowners, and landlords or property owners providing housing to low-income renters." It also requires water systems to replace privately-owned lead service lines without cost to low-income customers, and to notify state governments of planned lead service line replacements.

Section 50110 requires the EPA to "establish a voluntary school and child care program lead testing, compliance monitoring, and lead reduction grant program" and to publish school lead testing guidance for public water systems. It also reauthorizes appropriations for SDWA Section 1464(d)'s existing Voluntary School and Child Care Program Lead Testing Grant Program.

Another grant program, for state responses to contaminants, authorized by SDWA section 1459A(j), is expanded by IIJA section 50114 beyond its previous definition of "underserved communities" to include, for example, communities "with a population of less than 10,000 individuals that the Administrator determines does not have the capacity to incur debt sufficient to finance a project or activity."[7]

Water Systems

Section 50106 requires the EPA to establish a grant program for "Operational Sustainability of Small

Public Water Systems," while section 50107 requires it to establish a "Midsize and Large Drinking Water System Infrastructure Resilience and Sustainability Program." Section 50109 requires the EPA to establish another grant program "to assist qualifying households with need in maintaining access to drinking water and wastewater treatment," based on the results on a study required by Section 50108. The Indian Reservation Drinking Water Grant Program will be expanded under section 50111 to include wastewater system improvements as well as drinking water system improvements.

Research

The law funds water-related research by several entities – both scientific research into new technologies and studies of social problems. Section 50201 provides $75 million annually through fiscal year 2026 for research, investigations, training, and information grants, including to state water pollution control agencies and nonprofit organizations. Section 50222 revises the Federal Water Pollution Control Act to provide "funding to carry out groundwater research on enhanced aquifer use and recharge in support of sole-source aquifers" to state, local, and tribal governments jointly with research institutions. Section 50115 requires the EPA to conduct annual studies on the prevalence of boil water advisories, while section 50112 requires it to report on advanced drinking-water-related technologies. Section 50108 requires it to conduct a "Needs assessment for nationwide rural and urban low-income community water assistance," while 50216 requires it to "identify historical distributions of funds to small and disadvantaged communities and new opportunities and methods to improve on the distribution of funds under" the Clean Water State Revolving Funds and Drinking Water State Revolving Funds.

Section 50213 requires the EPA to establish a competitive grant pilot program for the sharing of water data. The EPA is directed by section 50217 to establish "centers of excellence for stormwater control infrastructure technologies" at universities, other research institutions, and nonprofit organizations (as well as grants to state, local, and tribal governments for stormwater infrastructure projects involving new technologies). Under section 50218, the EPA must establish a Water Reuse Interagency Working Group "to develop and coordinate actions, tools, and resources to advance water reuse across the United States, including through the implementation of the February 2020 National Water Reuse Action Plan."

Sections 50219 and 50220 require studies by the EPA of advanced clean water technologies and capital improvement needs for Clean Water State Revolving Fund-eligible projects, respectively. Section 50221 funds the Water Resource Research Act's Water Resource Research Institutes but puts tighter controls on the funding, such as Department of the Interior evaluations of each Institute every five years. Finally, section 50222 directs the EPA to "provide funding to carry out groundwater research on enhanced aquifer use and recharge in support of sole-source aquifers."

Clean Water

Beyond drinking water provisions, other provisions of the IIJA concern wastewater and other clean water issues. Section 50202 establishes the Wastewater Efficiency Grant Pilot Program for publicly-owned treatment works, while Section 50203 funds the Clean Water Act's Pilot Program for Alternative Water Source Projects and makes stormwater projects eligible for it. Similarly, section 50204 funds Sewer Overflow and Stormwater Reuse Municipal Grants and expands their scope to include "notification systems to inform the public of combined sewer or sanitary overflows that result in sewage being released into rivers and other waters." Sections 50205 through 50209 create new grant programs: the Clean Water Infrastructure Resiliency and Sustainability Program; the Small and Medium Publicly Owned Treatment Works Circuit Rider Program; the Small Publicly Owned Treatment Works Efficiency Grant Program; Grants for Construction and Refurbishing of

Individual Household Decentralized Wastewater Systems for Individuals with Low or Moderate Income; and, finally, a program of grants to publicly-owned water treatment works (POTWs) and nonprofit entities, to cover the cost of connecting low-income individuals to POTWs.

The next few sections revise and fund existing programs. Section 50210 funds the Clean Water State Revolving Funds at a rate of $2.40 billion for FY2020, $2.75 billion for FY2023, $3.00 billion for FY2024, and $3.25 billion for each of FY2025 and FY2026. Section 50211 funds the Innovative Water Infrastructure Workforce Development program and expands the use of grants under the program. Section 50212 funds grants to Alaska to improve sanitation in rural and native villages. Section 50215 reauthorizes Water Infrastructure Finance and Innovation Act (WIFIA) funding, while section 50214 requires WIFIA loan applicants to submit only one final rating option letter instead of two.

Water Rights

Section 70101 establishes the $2.5 billion Indian Water Rights Settlement Completion Fund to pay for "obligations identified by the Secretary of the Interior, under an Indian water settlement approved and authorized by an Act of Congress before the date of enactment of this Act."

Conclusion

The IIJA greatly expands funding for, and revises rules regarding, such areas as lead pipe replacement, filtration systems, and general water and sewer infrastructure. It remains to be seen whether even this additional spending is sufficient for the nation's water problems.

---

[1] https://pacinst.org/wp-content/uploads/2021/11/US_Infrastructure_Brief.pdf.

[2] https://www.awwa.org/AWWA-Articles/awwas-2019-water-and-wastewater-rate-survey-reveals-increasing-utility-costs-boosting-rates.

[3] https://web.archive.org/web/20160203004456/http://www.wnem.com/story/30995770/united-way-estimates-cost-of-helping-children-100m.

[4] 86 FR 12272.

[5] https://www.politico.com/news/2021/05/24/infrastructure-talks-near-collapse-490637.

[6] https://pacinst.org/wp-content/uploads/2021/11/US_Infrastructure_Brief.pdf.

[7] SDWA § 1459A(c)(2) (42 U.S.C. 300j-19a).

Sullivan & Worcester LLP

Jeffrey M. Karp

December 27 2021

S&P U.S. Public Finance Rating Activity, November 2021

View the S&P Report.

21 Dec, 2021

Recyclers Are Lining Up for the Municipal Market’s Cash.

- **Turning plastic into petrochemicals, sugarcane waste into fuel**
- **Debt for wood-chip-to-insulation plant sells at 8% in 2051**

In Washington state, municipal bonds are financing a project to convert plastic waste into petrochemical ingredients. In Louisiana, municipal debt is paying for a biorefinery to turn sugarcane waste into fuel pellets and soil additives.

These are only two of what promises to be another robust calendar of borrowers in the recycling field in 2022, assuming this next stage of the pandemic doesn’t completely quash investors’ risk appetite. I base that expectation on several things: the apparent momentum behind such projects nationwide; the pace of deals I’ve observed this year, with at least three this month alone; and the unrelenting appetite for speculative offerings with long-term yields still historically low.

This is the high-risk, high-reward part of the municipal market. As we’ve seen time and again, it’s hard to take one thing and turn it into something else, which is why $1 billion in recycler bonds are in the Bloomberg Default/Distress Report.

We only got a glimpse into the plans of these latest entrants — from Washington and Louisiana — because they each sold bonds whose proceeds will be held in escrow and invested in securities backed by the U.S. government. The newly sold debt earned top ratings, with the companies planning a mandatory tender and remarketing in 2022. Companies typically do this to avoid losing their allocation of private activity bonds.

Offering documents gave no indication of a likely rating for the next round of borrowing. But the typical recycling deal is most often unrated or speculative grade.

Coming Attractions

Prospective buyers for these two issues got preliminary limited offering memoranda that were more like coming attractions.

The Washington Economic Development Finance Authority sold $50.8 million in environmental facilities revenue bonds for the Mura Cascade ELP LLC project in late November. The project aims to convert 130,000 tons of plastic waste into about 100,000 tons of petrochemical ingredients.

The accompanying document was 56 pages, with an appendix on the company that was only five pages, but was promising: “Mura is seeking to change the way that society views end-of-life plastics, in that it should be looked at as a valuable resource and not as a waste product.”

And this: “It is Mura’s ambition to be the largest producer of renewable petrochemicals globally with a production capacity of one million tons per annum by 2025.”

Last week, the Louisiana Local Government Environmental Facilities and Community Development Authority sold $60 million in revenue bonds for the American Biocarbon CT, LLC project, to be located at the Cora Texas Sugar Mill in White Castle, Louisiana.

The preliminary official statement is a mere 80 pages, the description of the project a few sentences.

This included the statement that the company already operates a "demonstration scale plant with similar equipment configuration, but less product quantities. This demonstration scale plant is capable of producing approximately 10,000 tons per year of pellets and up to 5,000 tons per year of biochar, consuming 30,000 tons per year of bagasse when at full operation."

Sugarcane Waste

This is at least the second plant contemplated or under construction to recycle bagasse, which is what they call sugarcane waste. In 2019, I wrote about Southeast Renewable Fuels LLC, which wanted to sell $190 million in bonds to finance a mill to turn bagasse into pulp. The company's website says it has obtained approval from the state of Florida to sell industrial revenue bonds, but it doesn't seem to have done so yet, so we may see two bagasse recyclers financed in the muni market in 2022.

A previous bagasse recycler came to grief. Back in the early 1990s, Flo-Sun Inc., one of Florida's largest sugar companies, borrowed almost $300 million to build two power plants to burn bagasse and, after sugarcane-grinding season, wood. This was to produce steam and electricity.

The plants eventually went bust and the debt defaulted. But the recycling sector's unpromising history hasn't deterred new entrants, and buyers continue to line up if the price is right.

Just last week the Finance Authority of Maine sold $85 million in unrated bonds for a company that wants to recycle wood chips into insulation material. The bonds, sold in minimum denominations of $100,000, were priced at par to yield 8% to their 2051 maturity, or 651 basis points over the benchmark.

Bloomberg Markets

By Joseph Mysak Jr

December 21, 2021, 10:16 AM PST

— With assistance by Marisa Gertz

Muni Housing Bonds Set to Outperform in 2022 Amid Rising Rates, Analyst Says.

- Municipal housing bonds will perform better than other muni sectors next year as interest rates are set to rise amid the Federal Reserve's tapering of its asset purchases, JPMorgan Head of Municipal Research and Strategy Peter DeGroot told Bloomberg.
- Keep in mind the 10-year U.S. Treasury yield is up more than 50% on a Y/Y basis, now changing hands at sub 1.48%.
- Meanwhile, the iShares Trust National Muni exchange-traded fund (NYSEARCA:MUB) is off nearly 1% in the past year.
- DeGroot highlights that debt issued by states to finance low-interest loans for first-time homebuyers or develop affordable housing carry higher yields and are less volatile.
- "Housing bonds have performed extraordinarily well in rising rate environments," DeGroot told Bloomberg.
- Specifically, planned amortization class bonds, which is a way to protect investors from prepayment risk, are the best candidates to outperform, DeGroot added.

- Towards the end of November, muni bonds were about to snap a three-month losing streak.

Seeking Alpha

Dec. 27, 2021

[How Waterfront States and Cities are Harnessing Their Blue Economies.]

Communities are becoming strategic about planning the use of their shorelines rather than relying solely on tourism and recreation to generate water-related revenue.

A growing handful of coastal states, cities and counties are focusing their economic development efforts on industries that rely on the ocean.

Participants in the so-called "blue economy," shoreside communities contributed $385 billion to the gross domestic product in 2019 and supported 3 million jobs in more than 20 marine industries, including fishing, tourism, off-shore oil drilling and boat building, according to the [Center for the Blue Economy] in Monterey, California.

Although 30 states and 1,000 counties abut an ocean or another major body of water, some states, including Massachusetts, Rhode Island, Washington and Alaska, along with coastal cities like Gulfport, Mississippi and San Diego, have, over the past few years, become strategic about planning the use of their shorelines rather than relying solely on tourism and recreation to generate water-related revenue.

[Continue reading.]

Route Fifty

By Sharon O'Malley

DEC 24, 2021

[Fitch: Media Contracts Limit Impact of Postponed Games on Sports Ratings]

Fitch Ratings-Chicago/New York-22 December 2021: National media contracts will limit the near-term ratings impact on sports leagues of the recent postponement of North American professional sports games following the sharp uptick in Covid-19 infections caused by the delta and omicron variants among players, says Fitch Ratings. The credit profiles of sports facilities with a high proportion of attendance-driven revenues could be more impacted by the postponement of games in the near term, compared with facilities with a high mix of contractual revenue such as that associated with premium seating and sponsorships, whose credit profiles are expected to be more stable.

The NBA, NHL and NFL have all observed a sudden increase in positive coronavirus tests afflicting players since mid-December. This has led, in some cases, to roster shortages and teams' inability to compete. Earlier this week, the NHL and NHL Players' Association announced that five additional games will be postponed this week, bringing the total number of games postponed this season to 50.

Meanwhile, the NBA postponed five games this week, resulting in a total of seven games postponed this season so far, and the NFL announced its first three schedule changes for the season last week.

League-level debt is secured by national media contracts, with payment in full linked to a league's ability to deliver a full schedule of games under the terms of the contracts. US sports leagues were able to reschedule a significant number of regular season games in 2020 and still hold playoffs, enabling most of them to realize the full value of their national media contracts.

Leagues are taking extraordinary measures to continue operations amid the recent outbreak of cases and retain the flexibility to reschedule games, including potentially extending the season beyond the normal timeframe. The return to a bubble format is viewed as unlikely at this stage, given the high costs associated with operating under such conditions. An entire suspension of the season is also viewed as unlikely, unless there is a continued surge in infections among players.

A material disruption to the flow of national media contract revenue that could negatively affect league ratings is viewed as unlikely at this time. However, if leagues are unable to complete the season in order to deliver the full value of these contracts to their media partners, broadcasters may look to receive credits for lost content in current or future years.

Future contractual broadcast revenues could also be reduced or spread across future years as a form of credit for lost value. In 2020, amid greater uncertainty around the successful completion of their seasons, the leagues' full delivery on national media contracts illustrated the ability of leagues to navigate through a challenging environment and mitigate the impact to credit profiles.

For facilities, rescheduled games, particularly to nonprime hours or "off-days," could have a negative impact on attendance and per-cap spending trends during the season. Government mandated capacity restrictions or the inability of marquee players to play due to league health and safety protocols could also adversely impact attendance and the cash flows that service facilities' debt.

Fitch is closely monitoring developments related to the coronavirus pandemic and its impact on professional sports. There are a wide range of potential outcomes on the length of the disruption, depending on the severity of this Covid-19 wave. Player salaries, the largest expense item for leagues, may have flexibility through existing collective bargaining agreements or future negotiations with player unions to adjust for changing revenues if leagues and franchises face further financial pressures

Contacts:
Henry Flynn
Director, Global Infrastructure & Project Finance
+1 646 582-4580
Fitch Ratings, Inc.
300 West 57th Street
New York, NY 10019

Scott Zuchorski
Managing Director, Global Infrastructure Ratings
+1 212 908-0659

Aysha Seedat
Analyst, Global Infrastructure & Project Finance
+1 646 582-4278

Carla Norfleet Taylor, CFA
Senior Director, Credit Policy Group Fitch Wire
+ 1 312 368-3195
Fitch Ratings, Inc.
One North Wacker Drive
Chicago, IL 60602

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email:
sandro.scenga@thefitchgroup.com

The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

TAX - WISCONSIN

State ex rel. City of Waukesha v. City of Waukesha Board of Review

Supreme Court of Wisconsin - December 21, 2021 - N.W.2d - 2021 WL 6014968 - 2021 WI 89

City sought certiorari review of city board of review's determination of taxable value of particular piece of private property.

The Circuit Court granted writ and denied board's subsequent motion to quash. Board appealed. The Court of Appeals reversed and remanded. City petitioned for review.

The Supreme Court held that statute allowing certiorari review of board of review decision does not allow municipality to seek certiorari review of municipality's board of review.

Taxable Municipal Supply Has Staying Power: 2022 Outlook

Summary

- We believe taxable muni supply could exceed $100 billion again in 2022 and total 25% of expected new issue supply.
- New money supply is expected to be higher, whereas debt used to "advance refund" tax-exempt munis by issuing taxable munis may decline slightly year over year.
- However, it appears that infrastructure legislation will be neutral for the muni market. The bill passed by the House of Representatives in November excludes municipal bond-friendly provisions. It's unlikely that Senate Democrats will include these provisions in their version of the bill.

Continue reading.

Seeking Alpha

Dec. 22, 2021

[What Does Fed's Recent Indication on Rate Hikes Mean for Fixed Income Markets?]

During the recently held Federal Open Market Committee (FOMC) meeting on December 15, the Federal Reserve Chair provided multiple indications toward taking some aggressive actions to address the historic high inflation in the United States that included reducing the Fed's bond purchases and the possibility of three interest rate hikes in 2022.

These actions come at a time when the prices of goods and services are rising at historic rates, primarily due to the relatively relaxed monetary policy, to combat the effects of the COVID-19 pandemic, along with supply chain imbalances, which have contributed to the elevated levels of inflation. In the recent FOMC meeting, the committee increased its inflation outlook for 2021 from 4.2% to 5.3% for all items. In addition to tapering its bond purchase program, the Fed chairman also indicated increasing the interest rate three times in 2022, which will be an aggressive yet warranted move to address economic forces.

In this article, we will take a closer look at the recent indications from the FOMC and how these decisions will likely impact the capital markets and, more importantly, fixed income portfolios.

Continue reading.

municipalbonds.com

by Jayden Sangha

Dec 22, 2021

2022 Is Gearing Up to Be a Record Year for Municipal Bonds.

2021 was already a strong year, and it's going to be another busy year in 2022 for municipal bonds with record issuance in the already $4 trillion dollar market.

According to a Bloomberg article, sales predictions based on data "collected from almost a dozen firms range from about $420 billion to $495 billion. A notable outlier is the projection from researchers at Bank of America, the market's largest underwriter, who expect a record year of sales totaling $550 billion."

Those projections come after the trillion-dollar infrastructure package was signed into law this year. The expectation is that local governments will issue a record number of bonds to help fund a wide swathe of infrastructure packages.

Continue reading.

ETF TRENDS

by BEN HERNANDEZ

DECEMBER 27, 2021

ETFs Claim More of Muni Market.

Low costs lure bond investors, but using the funds to navigate market turmoil can be tricky

Municipal bond investors are piling into exchange-traded funds, attracted by low costs and the ability to trade quickly.

Muni ETFs held $80 billion as of the end of the third quarter, up from less than $50 billion two years ago, Federal Reserve data shows. Citigroup projects they will hold $125 billion by December 2022.

Investors this year spent record amounts of cash buying shares in all types of ETFs, baskets of securities that trade as easily as stocks and typically track indexes. They are drawn to muni ETFs for their easy access to tax-exempt yield at low cost under flexible trading conditions, especially with concerns about new taxes under a Democratic administration. ETF sponsors such as BlackRock Inc. report that muni ETFs have helped bring in client cash and fee revenue.

But trying to track prices in real time can be tricky in a market where about 50,000 state and local governments sell debt and some bonds go years without changing hands.

The proliferation of ETFs is part of a continuing shift in the nearly $4 trillion municipal market, where the typical investor once bought individual bonds and clipped coupons until maturity. For decades, retail investors have been moving to mutual funds, which they can trade once a day at the closing price.

ETFs allow investors to watch prices move in real time and trade whenever they want as often as they want, an appealing feature for work-from-home investors accustomed to watching meme-stock dramas in the corner of their screens.

“Newer investors tend to be more comfortable with the ETF structure,” said Steve Laipply, U.S. head of Bond ETFs at BlackRock Inc., which controls $36 billion in muni bond ETFs. “It’s this desire for transparency and nimbleness in trading.”

As a group, muni ETFs charge about a quarter of a percentage point less—as a share of assets—than open-ended muni bond mutual funds, according to a weighted average calculated by Morningstar Direct. For passive funds that track indexes, that difference is 0.03 percentage points. After-fee yields on investment-grade muni ETFs and mutual funds in 2021 through November were almost exactly the same.

Investment adviser Paul Winter of Five Seasons Financial Planning in Salt Lake City, Utah, keeps most of the roughly $3 million in municipal debt he manages in passive ETFs, after shifting his clients from mutual funds over the past decade. He said he appreciates not having to worry after making a trade that a late breaking headline will impact the share price.

“When you enter the order you know exactly what the price is going to be,” Mr. Winter said, adding that the speed helps him jump on bargains in equities or commodities.

Advisers aren’t the only fans. “There certainly has been a good adoption by the individual do-i--yourself-ers on our platform,” said Rich Powers, Head of ETF and Index Product Management at Vanguard Group.

But while muni ETFs trade like stocks, the underlying bonds don’t, a reality that can contribute to losses during market turmoil.

Since many munis trade infrequently, valuation services parse through trade data and estimate bond values. In normal times, ETF share prices and the estimated values of the underlying bonds move in lockstep in part because financial firms take advantage of any mismatch by buying up falling shares, exchanging them with the ETF sponsor for the underlying bonds and selling those bonds.

But during the March 2020 liquidity crisis triggered by the Covid-19 pandemic, many firms opted not sell the underlying bonds. That led to fewer data points available to help calculate the valuation, according to a study by the Municipal Securities Rulemaking Board, the muni bond industry’s self-regulatory organization.

For more than a week, share prices of investment grade municipal bond ETFs run by BlackRock and Vanguard trailed the estimated value of the underlying bonds, according to Refinitiv data. At a VanEck ETF that tracks the even less liquid high-yield municipal market, the gap lasted more than two months.

“If you bought (during that period) I guess that’s good,” said MSRB Chief Economist Simon Wu. “If you sold l guess that’s not good.” In contrast, investors who bought or sold muni mutual fund shares during that time got a higher price based on valuation service estimates.

Mr. Powers said the episode showed ETFs could recover quickly even under intense strain. “Fixed-income ETFs stood up to the test,” he said. Jim Colby, senior portfolio manager at Van Eck noted that the high-yield ETF has generally tracked the estimated value since last summer.

Still the episode helped convince Erin Hadary, a financial adviser with Denver-based Moneta Group, to guide clients interested in munis into mutual funds.

“I think bond ETFs for governments or investment grade corporate bonds are fine,” Ms. Hadary said. “I worry in the municipal space if there is enough liquidity.”

The Wall Street Journal

By Heather Gillers

Dec. 23, 2021 5:30 am ET

Local Assessors Seek Federal Help to Make Property Taxes Fairer.

Municipal officials want information from Fannie and Freddie’s appraisal database.

A group of municipal property-valuation officials from across the U.S. has asked President Joe Biden’s administration for help in tapping national data about the condition and quality of millions of homes to address widespread unfairness in local property taxes.

The effort follows a series of Bloomberg News reports this year about how residential property taxes, which raise roughly $500 billion a year nationwide, are plagued by systemic flaws: Official assessments tend to overstate the taxable value of inexpensive homes while understating the value of expensive ones. As a result, working-class homeowners pay higher effective property tax rates than the wealthy do.

In Chicago, the problem is most acute “in the bottom third of prices,” said Cook County Assessor Fritz Kaegi. “And we think this is due to things that we are not measuring” with available data, he said: “quality and condition of homes.”

Kaegi has suggested that the Uniform Appraisal Database maintained by the federally chartered mortgage buyers Fannie Mae and Freddie Mac might help plug the gap. The UAD contains information on the condition and quality of millions of U.S. homes that were appraised for mortgages. Kaegi recruited 15 other tax officials from major urban areas — including Seattle, Miami, Philadelphia and Dallas — to join him in asking for access to that information.

Federal officials haven’t committed to granting the request; one primary concern centers on the need to filter out private information, such as names of owners and lenders, while preserving useful data on homes’ quality. But the local officials’ group is scheduled to meet with representatives of the Federal Housing Financial Agency in January to discuss the proposal.

Residential property taxes are generally based on the fair market value of a home, as determined by local officials. Most assessments are based on recent sales. Generally, assessors use sales data to estimate values for all the homes in a jurisdiction. That process, known as mass appraisal, relies on computer models that calculate the average value of individual attributes, such as square footage of living space and number of bathrooms, and applies them to each residence.

But local assessors are barred from entering homes without permission, so they have no real data on each one’s relative quality, including individual improvements or maintenance issues that might affect value. It’s generally accepted that affluent homeowners are less likely to put off repairs, making high-priced housing stock more uniform and therefore easier to value. Experts say assessed values at the low end of the scale tend to vary more, contributing to inflated values.

Kaegi, who took office in 2018, says the UAD can provide the information assessors currently lack. He argues that because Fannie and Freddie are under federal conservatorship, administration officials can release the data to local assessors.

A former portfolio manager and neophyte politician, Kaegi won office by promising to bring fairness and accuracy to a deeply regressive system in Chicago. One study showed that inaccurate assessments in the area had shifted more than $2.2 billion in taxes from the highest-priced homes to the lowest over five years’ time. Now three years into his four-year term and seeking re-election, Kaegi has upgraded the agency’s valuation models — the new ones use machine learning — and expanded the data sources used to value properties. He boosted transparency by posting detailed statistical reports on assessments online, with explanations of the agency’s methods. But while his staff has narrowed disparities in the county’s valuations, Kaegi says, gaps remain, especially among the least valuable properties.

Moreover, his efforts to correct valuations that were inaccurate and unfair for years have drawn opposition from business groups and some homeowners, illustrating the political difficulty of overhauling property tax systems.

Critics complain that Kaegi used sketchy data to justify a roughly 10% Covid reduction for residential assessments in early 2020, just as most office buildings and some small businesses saw dramatic increases as assessors addressed chronic inaccuracies. Then, during the pandemic, residential property values boomed while downtown office buildings and businesses reeled, and Cook County saw just the kind of unwarranted tax shift Kaegi had said he’d end. Opponents say he was currying favor with homeowners. Kaegi says he used the best data sources he had at the time, primarily unemployment figures and information about the impact of Covid on real estate investment trusts.

“It was the opposite of fair and accurate,” said Farzin Parang, executive director of the Building Owners and Managers Association of Chicago, an office building trade group, and staunch critic of Kaegi. “From our perspective, the entire thing was completely political.”

Now Kaegi’s trying to foster nationwide improvements.

Last March, after Bloomberg published a story that highlighted a new, nationwide study about widespread regressivity in property taxes, the University of Chicago professor who led the research met with White House staff members. Christopher Berry, a professor of public policy, walked the officials through his data analysis, which found unfair valuations in roughly nine out of every 10 U.S. counties it examined. Kaegi joined a follow-up meeting in April, where he pitched his request to use the UAD to gain insights about the condition and quality of homes.

In an interview, Berry said he thinks tapping the UAD is a good idea that would involve few costs for the federal government — but said it may lead to only marginal improvements. “That’s the only way this thing is going to get better, small continuous improvements,” he said.

Kaegi’s analysts have estimated that missing information about a home’s condition and quality could swing a valuation estimate up or down by tens of thousands of dollars. For homes at the lower end of the price scale — $100,000 or less in Chicago — that could result in highly unfair valuations.

In August, Kaegi and his 15 counterparts from across the country wrote to the White House for help in accessing the relevant UAD data. A senior administration official said a presidential task force that’s examining racial equity in home-loan appraisals is also committed to exploring property-tax fairness, though federal officials have little authority over local taxes.

Sharing appraisal data from the UAD would be a good start, said King County Assessor John Wilson in Seattle. “The information is well worthwhile,” he said. “It would help us on some of the questions we’ve all had about whether there are some things inherently discriminatory in our assessments.”

Bloomberg Business

By Jason Grotto

December 23, 2021

Jefferies Emerges as Winner as Texas Gun Law Rattles the Muni Market.

- **Firm leads Texas underwriting ranks since law took effect**
- **Standing since Sept. 1 compares with 12th place a year earlier**

Jefferies Financial Group is emerging as a clear winner of a faltering effort by Texas Republicans to punish Wall Street banks for their restrictive gun policies.

The lucrative Texas municipal-bond market, second only to California in terms of issuance, has been turned on its head since a law took effect Sept. 1 that bars state entities and local governments from working with firms if they “discriminate” against firearms companies.

With some of Wall Street’s largest banks having halted public-finance transactions in Texas because of the legislation, Jefferies is leading firms that have seen their business surge. It was the top municipal underwriter in the fast-growing state for the past four months, whereas in the same period last year it was 12th, data compiled by Bloomberg show.

Continue reading.

Bloomberg Markets

By Amanda Albright and Danielle Moran

December 22, 2021, 7:40 AM PST

Which Bank Will Dare to Finance Alabama's Prisons?

After Barclays dropped out, the state wants assurances that its next bond underwriter won't do the same. That leaves few options.

Alabama just won't give up on selling bonds to finance prison projects.

In April, Barclays Plc backed out as lead underwriter of a large municipal-bond deal for two Alabama prisons owned by CoreCivic Inc., a giant in the private-prison industry. It really had no excuse for the drama: The bank had previously pledged to no longer provide new financing to such companies and seemed to try to use the state's role as a workaround. Soon afterward, Stifel Financial Corp. said it was no longer involved. By September, the state's corrections department terminated its 30-year lease with CoreCivic, and lawmakers advanced a plan to use federal aid to build the new facilities.

The state and the Alabama Corrections Institution Finance Authority are still hoping to sell up to $785 million in bonds as well. The only snag: They need to find an underwriter that won't cave to potential pressure from activists. So Alabama is asking for unusual assurances from banks' senior management.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

December 22, 2021, 3:00 AM PST

California Community Economic Resilience Fund Update On Final Region Maps, Planning Guidelines Public Comment Period.

The Community Economic Resilience Fund (CERF) program continues to move forward, with three CERF updates recently released.

First, the final map of 13 regions that will receive up to $5 million planning grants under phase I of the program was published. This map is based on the public comment period that closed in mid-

November. Included along with the region map are FAQs that arose during the public comment process. To view the final 13 regions and FAQs, click here.

Continue reading.

CALIFORNIA FORWARD

by SARAH WALSH

DECEMBER 20, 2021

Orrick Webinar: Innovative Infrastructure Delivery under the Infrastructure & Investment Act - Replay Available

December.15.2021 | 12pm – 1pm (Eastern Standard Time)

Webinar – Recording Available

The bipartisan infrastructure legislation will provide $973 billion over the next five years, including $550 billion in new investments for all modes of transportation, water, power and energy and broadband.

Please join Orrick and the Bond Buyer as we discuss the legislation and how the Infrastructure & Investment Act (the "Act") will impact the municipal finance industry.

Topics to be covered include:

- How will the Act impact federal credit programs?
- How does the Act encourage innovative infrastructure delivery, including public-private partnerships and design-build?
- What should municipal clients be doing now to prepare for the Act's implementation?

Panelists:

- Matthew Neuringer, Senior Associate Orrick
- Helen Pennock, Senior Associate Orrick
- Chris Elmore, Vice President Goldman Sachs, Inc.
- Caitlin Devitt, The Bond Buyer

U.S. Supreme Court Has Ruled Ohio Billboard Tax is Unconstitutional.

The U.S. Supreme Court was asked to review a case regarding the city of Cincinnati's excise tax on billboard signs on grounds of it being unconstitutional. The city requires an "advertising host," meaning the billboard company, to pay the greater of either 7% of gross receipts generated from a billboard, or an annual minimum amount. A selective tax like this is subject to analysis and will only continue to be enforced if the government defends the tax by demonstrating that it promotes a compelling government interest and is customized to achieve that interest. The issue of this tax is that it is imposed only on a small number of billboard companies, so it was thought of as violating the rights to freedom of speech and a free press which is protected by the First Amendment to the U.S. Constitution. Through definitions and exemptions with the City's municipal code, the burden falls mainly on only two billboard companies. These companies may not be singled out or targeted, since they are speakers and publishers of speech engaging in an act protected by the First Amendment. Even though the City has interest in raising money to support the local government, there are other sources of revenue it can pursue. Consequently, the tax was ruled unconstitutional.

Allyn International

December 23 2021

Ohio Department of Development Issues Brownfield Remediation and Building Demolition Funding Guidelines - Local Governments Need to Act Fast

View the Vorys brief.

Vorys Sater Seymour and Pease LLP

by Ryan D.Elliott, Christopher J. Knezevic and David M. Edelstein

December 22 2021

NFMA Municipal Analysts Bulletin - December 2021

Volume 31, No. 3 of the NFMA newsletter is available by clicking here. Also, please click here to read the special edition of the NFMA Municipal Analysts Bulletin, dated October 26, 2021. This special edition was published to provide NFMA members notification that the NFMA Board of Governors have approved a change to the NFMA mission statement, which represents an amendment to the NFMA Constitution. The proposed amendment is subject to a 60-day comment period by NFMA Regular Members.

RBC Paying $1M FINRA Settlement for Years of Junk Bond Oversight.

A brokerage firm accused of failing to track "junk bond" overconcentration in customer accounts for years has agreed to pay $1 million to settle with FINRA.

The regulator has sanctioned RBC Capital Markets, a New York-based broker-dealer with 2,400 registered representatives in its 275 branch offices, in a case involving potentially unsuitable concentration levels of high-yield bonds in customer accounts between July 2013 and June 2016.

During that period, RBC did not implement a supervisory system to comply with FINRA and Municipal Securities Rulemaking Board rules related to recommendations of high-yield corporate and municipal bonds, according to a letter of acceptance, waiver and consent from FINRA.

As a result, the firm failed to flag more than 100 customer accounts with conservative profiles for this kind of activity.

Additionally, FINRA officials said they have repeatedly reminded member firms of their sales practice obligations in connection with high-yield or “junk” bonds because of the increased risks. These bonds receive lower credit ratings, indicating a higher risk of default.

In settling the case without admitting or denying the charges, RBC agreed to a censure, $456,155 plus interest in restitution and a $550,000 fine. The case originated from a FINRA cycle examination of RBC.

According to the FINRA letter, RBC changed the tax coding of municipal bonds in its system in July 2013. This coding change inadvertently disabled alerts to identify potential concentration issues for further assessment.

RBC did not detect that the alerts were not working, in part, because the firm did not test its alerts during the relevant period, the FINRA letter alleges.

The defective alerts were discovered in September 2015, but the firm allegedly did not address the issue until July 2016. RBC is accused of failing to adopt alternate measures to identify potentially unsuitable concentrations in high-yield bonds and failing to tell supervisors that the alerts were not working as intended.

John Gebauer, president of the compliance firm National Regulatory Services, said this case highlights the importance of thoroughly testing written supervisory policies and procedures as part of the annual 3120 review.

“It appears that RBC thoughtfully designed a supervisory control system and implemented automated controls to ensure that the policies were followed,” Gebauer said. “However, when firms implement a technology-based solution, that does not eliminate the need to regularly test the systems to be certain that they are operating as intended. Whether by bug or changing requirements.

“This unquestioning deference to the results of technology is, unfortunately, an increasingly common occurrence.”

In a number of the impacted accounts, the holdings in high-yield bonds were more than six times the thresholds set by the firm, according to the FINRA letter.

“For example, Customer M, who was over 100 years old, was a trustee for two trust accounts, both of which had the most conservative investment objectives. By June 2015, 86% of one trust account and 100% of the second trust account consisted of high-yield municipal bonds,” said the FINRA letter.

The regulator then described another customer who was more than 70 years old and had a joint account with a conservative investment objective that, at times, consisted of as much as 92% in high-yield bonds.

Financial Planning has reached out to RBC Capital Markets for comment.

Financial Planning

By Justin L. Mack

December 21, 2021

Municipal Bond ETFs Are Turning Heads.

Fixed income investors are jumping into municipal bond exchange traded funds to capitalize on the nifty investment tool's easy use and low costs.

Muni ETFs held $80 billion in assets under management as of the end of the third quarter, compared to some $50 billion two years ago, the Wall Street Journal reports. Looking ahead, Citigroup predicts that muni ETFs will accumulate $125 billion by December of 2022.

Investors have funneled record amounts of cash into all types of ETFs in 2021. Many have been drawn to muni ETFs for their easy access to broad swaths of tax-exempt yield at low costs under flexible trading conditions throughout the day, similar to regular stocks. Many have also favored the tax-exempt status of the fixed income category, especially with concerns over potential new tax laws.

The proliferation of ETFs has helped contribute to the ongoing shift in the nearly $4 trillion municipal market. For decades, retail investors have been shifting to mutual funds, which trade once per day at the closing price, to access a broad, diverse portfolio of municipal bonds exposure. On the other hand, ETFs trade in real time through normal trading hours, which has generally been more appealing to investors who have been stuck at home during the pandemic.

"Newer investors tend to be more comfortable with the ETF structure," Steve Laipply, U.S. head of bond ETFs at BlackRock Inc., which controls $36 billion in muni bond ETFs, told the WSJ. "It's this desire for transparency and nimbleness in trading."

Furthermore, the ETF structure is taking a bigger slice from the traditional mutual fund space due to cheaper costs. Muni ETFs charge about a quarter of a percentage point less as a share of assets than their open-ended muni bond mutual funds counterparts, according to Morningstar Direct data. Among passive funds that try to reflect a benchmark index, the difference is 0.03%.

ETF investors who are interested in the munis space can also consider targeted ETF strategies, such as the popular iShares National Muni Bond ETF (NYSEArca: MUB), the Vanguard Tax-Exempt Bond ETF (NYSEArca: VTEB), and the SPDR Nuveen Bloomberg Municipal Bond ETF (NYSEArca: TFI).

ETF TRENDS

by MAX CHEN

DECEMBER 23, 202

Investors Flock To Muni Bond ETFs On Fundamentals

Morningstar gives Vanguard Tax-Exempt Bond ETF, the second biggest muni ETF, a gold rating, the research firm's highest.

Money is pouring into municipal bond exchange-traded funds, as the improved financial condition of municipalities, sparked by monetary and fiscal stimulus, has investors enthusiastic.

Muni ETF assets totaled $80 billion as of Sept. 30, up from less than $50 billion two years ago, according to Federal Reserve. Citigroup forecasts that total will grow more than 50%, to $125 billion by the end of next year, the Wall Street Journal reports.

iShares National Muni Bond ETF (MUB) – Get iShares National Muni Bond ETF Report is the largest muni bond ETF, with $24.9 billion in assets, according to ETF Data Base. Morningstar analyst Neal Kosciulek gives the fund a silver rating, the research firm's second highest after gold.

"iShares National Muni Bond ETF is a good choice for low-cost exposure to the investment-grade, tax-exempt bond market," he wrote.

"The fund provides broad, market-value weighted exposure to the municipal-bond market. It tracks the S&P National AMT-Free Municipal Bond Index, which includes investment-grade municipal bonds with at least one month until maturity and $25 million in face value … The strategy's best feature is its modest fee. At 0.07% the fund's expense ratio is 49 basis points lower than the category average."

Vanguard Tax-Exempt Bond ETF (VTEB) – Get Vanguard Tax-Exempt Bond ETF Report is the second largest muni bond ETF, with $14.9 billion in assets. Kosciulek rates it gold.

"Vanguard Tax-Exempt Bond is a great option for low-cost exposure to the investment-grade, tax-exempt bond market," he wrote.

"The fund provides broad, market-value-weighted exposure to the municipal-bond market. It tracks the S&P National AMT-Free Municipal Bond Index, which includes investment-grade municipal bonds with at least one month until maturity and $25 million in face value."

Its fee is only 0.06%.

etftrends.com

by Dan Weil

DEC 23, 2021

- MSRB Opens Second Comment Period on Regulation of Solicitor Municipal Advisors: Cadwalader
- MSRB EMMA Update to CUSIP Groups Feature.
- 2022 State Bond Caps and Deadlines: Novogradac
- No Deed, No Taxes, No Problem With These Dirt Bonds.
- Kronos Ransomware Attack Will Challenge Public Finance Issuers.
- Note Disclosures and RSI for Pensions and Other Postemployment Benefits (OPEB): GFOA Webinar
- Orrick Webinar: Financing Affordable Housing with 501(c)(3) Bonds – Replay Available
- And finally, Parent Of The Year is brought to us this week by *Davison v. Rose*, in which Brian C. Davison sued after being banned from school property following a pattern/practice of worrying behavior, including forcing his children to distribute defamatory flyers to their classmates. (Therapists everywhere thank you.) This type of disruptive behavior struck us as part/parcel of this point in time until we realized that these incidents took place in 2014. Not to worry, surely the current QAnon anti-vax madness has gentled his condition. Surely.

IMMUNITY - CALIFORNIA

Foley Investments, L.P. v. Alisal Water Corporation

Court of Appeal, Fourth District, Division 1, California - November 16, 2021 - Cal.Rptr.3d - 2021 WL 5833275

Apartment complex owner brought action against water company, asserting inverse condemnation and tort claims of nuisance, trespass, and negligence after water main running through complex repeatedly ruptured.

Following bifurcation, the Superior Court determined that water main was not a public use and that water company had fire protection immunity from tort claims. Apartment complex owner appealed.

The Court of Appeal held that:

- Water main served a private use such that eminent domain principles did not apply, and
- As a matter of first impression, fire protection was a substantial or significant factor in water company constructing and maintaining water main such that it had fire protection immunity.

Water main running through apartment complex served a private use, and thus inverse condemnation principles did not apply in apartment complex owner's action against water company following pipe ruptures, where water company installed main pursuant to a contract with a private developer, water company constructed and maintained the main directly on the apartment property specifically to meet the flow requirements of the fire hydrants which benefited only the property, and water main did not provide service to the public at large and gate vale at the end of the main, which had not been opened in 32 years, functioned as a cap.

Fire protection was a substantial or significant factor in water company constructing and maintaining water main on apartment complex property, and thus fire protection immunity barred apartment complex owner's nuisance, trespass, and negligence claims against water company after water main ruptured multiple times; while water main provided domestic water to the apartment complex, it also supplied water to fire hydrants on the apartment property, and but for the apartment property's specific fire protection needs, including two fire hydrants, the main would not exist, as water company would have delivered water to the property's boundary, from which point the developer of the complex would have been responsible for installing and maintaining onsite infrastructure.

PUBLIC PENSIONS - NEBRASKA

Abbott v. City of Bellevue

Supreme Court of Nebraska - December 3, 2021 - N.W.2d - 310 Neb. 496 - 2021 WL 5751275

Police officers and their union brought § 1983 action against city challenging its decision to increase amount it regularly deducted from officers' paychecks to fund their retirement plan, alleging violations of federal and state constitutions.

The District Court found that, with respect to some officers, city unconstitutionally impaired its contractual obligations, and ordered city to insert certain language into document governing retirement plan. Officers and union appealed.

The Supreme Court held that:

- District court could not address issue of how defined contribution payment should be calculated;
- Supreme Court would remove language improperly inserted by district court into agreement;
- Officers and union were "prevailing parties" for purposes of entitlement to attorney fee; and
- Supreme Court would remand for reconsideration of attorney fee entitlement.

District Court could not address issue of how defined contribution payment should be calculated, in § 1983 action brought by police officers and their union against city challenging its decision to increase amount it regularly deducted from officers' paychecks to fund their retirement plan, where district court ordered language inserted into agreement governing retirement plan, essentially entering a declaration despite no party requesting such a declaration and agreement of both parties that such a calculation would ever be necessary.

The Supreme Court would remove language improperly inserted by district court into agreement between police officers, their union, and city governing retirement plan, which addressed issue of how defined contribution payment should be calculated, in § 1983 action brought by police officers and their union against city challenging its decision to increase amount it regularly deducted from officers' paychecks to fund their retirement plan, where amount officers would be entitled to receive if they elected defined contribution payment was not at issue, and parties agreed that it was unlikely amounts in any officer's retirement account would ever exceed defined benefit payment, as required for an officer to receive defined contribution payment.

ANNEXATION - UTAH

South Utah Valley Electric Service District v. Payson City

Supreme Court of Utah - December 9, 2021 - P.3d - 2021 WL 5831400 - 2021 UT 68

Electric improvement district brought action alleging that cities failed to comply with statutory requirements for withdrawing annexed areas from district before starting to serve district's customers following annexation.

The Fourth District Court entered partial judgment in cities' favor, and district filed interlocutory appeal.

The Supreme Court held that cities had statutory authority to provide electric service to customers inside district following annexation upon payment of required reimbursements.

Cities generally have power to regulate and sell electricity within their respective boundaries, but when they annex new land, that power is limited by requirement that they either obtain consent of previous electric provider, if it falls within statutory definition of electrical corporation, or pay it reimbursement costs.

SCHOOLS - VIRGINIA

Davison v. Rose

United States Court of Appeals, Fourth Circuit - December 3, 2021 - F.4th - 2021 WL 5750449

Students’ parent filed § 1983 action against school board, its members, elementary school principal, and school system’s supervisor of security alleging that no-trespass letters issued to him that prohibited his presence on school property and attendance at any school-sponsored activities unless authorized violated his First and Fourteenth Amendment rights.

The United States dismissed claims against board, and entered summary judgment in defendants’ favor on remaining claims. Parent appealed.

The Court of Appeals held that:

- Res judicata barred parent’s claims against school board;
- Board’s policy prohibiting all personal attacks at board meetings, regardless of viewpoint, did not violate First Amendment;
- No-trespass letters were not issued in retaliation for parent’s public comments;
- Principal was entitled to statutory immunity for reporting parent’s suspected abuse of his children;
- Officials who issued and enforced no-trespass letters were entitled to qualified immunity; and
- Officials’ failure to provide parent notice prior to issuance of no-trespass letters did not violate due process.

School board’s policy prohibiting all personal attacks at board meetings, regardless of viewpoint, did not violate students’ parent’s First Amendment rights, despite parent’s contention that policy was not used in viewpoint-neutral way towards his speech; parent was interrupted and warned for talking about particular board members, discussing their children, and providing comments that were not about topic of meeting, and was allowed to speak uninterrupted, despite mentioning individual board members, when his comments focused on topic of board meeting, and other speakers who were not interrupted when they became animated did not make comments about board members.

ZONING & PLANNING - WASHINGTON

Westridge-Issaquah II LP v. City of Issaquah

Court of Appeals of Washington, Division 1 - December 6, 2021 - P.3d - 2021 WL 5768395

Property owners filed suit pursuant to Land Use Petition Act (LUPA), seeking review of city’s imposition of general facility charges (GFC) for utility connections on property being developed.

The Superior Court granted property owners’ petition, ordered city to refund water and stormwater GFCs, which were waived under a land development agreement, and refund the difference in the sewer GFC charged from amount set forth in development agreement. City appealed.

The Court of Appeals held that:

- GFCs imposed by city for utility connections did not invoke vesting statute;
- Building permit applications were not inextricably linked to later-filed preliminary plat application, as would invoke vested rights; but
- Even if vested rights were at issue, GFCs could not be assessed at any particular amount until developer both applied for utility connections and paid applicable fees; and
- City’s GFCs were reasonable, as required to comply with authorizing statute.

Water, sewer, and stormwater general facility charges (GFC) imposed by city for utility connections on property being developed as single-family housing were not “land use control ordinances,” and thus not subject to vesting statute for such ordinances, under which a proposed division of land was considered under ordinances in effect on land at time of submission of land use application; GFCs did not limit current owners' use of the properties or the development thereon, but instead were merely fees that increased developer's costs.

Single-family residential developer's building permit applications, which were filed prior to city's modification of terms of development agreement governing subject land, were not inextricably linked to its preliminary plat application, which was filed after changes were made to development agreement, such that preliminary plat application could not be approved unless the building permit application was also approved, thus, developer did not have a right to have its building permit applications vest to the land use laws in effect when it submitted its preliminary plat application.

Single-family residential developer did not have a vested right to have general facility charges (GFC) imposed for utility connections on it property assessed at any particular amount until it both applied to connect to city's utility systems and paid the applicable fees.

General facility charges (GFC) to be imposed by city upon single-family residential property developer for water, sewer, and stormwater utility connections, pursuant to city ordinance, were reasonable, as required to comply with authorizing statute; statute required only that connection charges established by ordinance be reasonable, such that property owners would bear their equitable share of the cost of the city's utility system, and there was no indication that the GFCs imposed were not generally proportionate to property's share of the utility system's cost.

2022 State Bond Caps and Deadlines: Novogradac

Listed below are the scheduled deadlines for submitting tax-exempt bond applications and related information. We will continually update this list as new information becomes available.

View the caps and deadlines.

Infrastructure And The Outlook For Municipal Bonds In 2022.

Summary

- The Infrastructure Investment and Jobs Act is one of several positive drivers for municipal bonds in the new year.
- The most significant impact of the IIJA for municipal bond investors is likely to be incremental supply of muni bonds.
- Heading into 2022, the municipal market finds itself on solid fundamental footing.

Continue reading.

Seeking Alpha

Dec. 16, 2021

[Record-Breaking or Austere? What to Expect from the Municipal Bond Market in 2022.]

Everyone agrees: the 'real question' is the Fed

Municipal bond market experts have different takes on what 2022 will bring, although there's one constant: demand for the debt issued by state and local governments is likely to remain exceptionally strong.

"Big picture, the municipal market is fundamentally as strong as it's been in a number of years," said Paul Malloy, head of municipal investments at Vanguard.

"There was a significant amount of federal aid in 2021, tax receipts are up, market returns SPX, -1.03% have been strong, and that's aiding pension funds," Malloy told MarketWatch. "The real question mark into 2022 is the level of interest rates and their impact."

Malloy believes the federal aid doled out over the past two years in response to the COVID-19 pandemic will keep municipalities "flush with cash" and less likely to sell bonds in 2022. His forecast of $400 billion worth of new issuance would make 2022 one of the leanest years of the past decade. Through November of this year, $432 billion has been issued, according to SIFMA.

In contrast, Tom Kozlik, head of municipal research for Hilltop Securities, expects a record-breaking 2022, with $495 billion in issuance. Kozlik has deemed the current moment "a golden age of public finance" because of the possibilities for spending that have been opened up by federal largesse.

While there's no precise way to predict how the municipal market — tens of thousands of state and local governments, transportation agencies, universities, and more across the country — will behave, it's worth noting that several sources who spoke with MarketWatch in November universally appreciated the fact that federal aid would allow them to avoid the expense — and administrative headache — of issuing bonds.

One thing is certain: relatively lean supply will continue to support bond prices. Eric Kazatsky, head of municipal strategy for Bloomberg Intelligence, reckons that the market could support $475 billion of issuance.

That will continue a stretch of outsize demand. Throughout 2021, multiple weeks in a row have seen inflows to municipal-bond funds smash records. A closely-watched metric, the ratio of 10-year muni yields to those of comparable U.S. Treasurys was at about 64% at the end of November, according to IHS Markit data, below the long-term average of about 80%, and suggesting investors have been willing to pay more for the tax advantages munis bring.

That's Kazatsky's premise for 2022: "buyers of municipals will still be motivated by tax avoidance, absent a large individual tax cut," he wrote in an outlook piece, "while the bonds' low correlation to other asset classes could prove their 'safer'-haven status should the economy struggle in an era of rising rates."

The question of how the economy might do – whether in the face of monetary policy normalization or just the tail end of the global pandemic – also sets up some differences among muni experts on just how to invest.

Vanguard's Malloy thinks there are pockets of value in areas that "haven't completely come back from the pandemic," including higher education and some student housing deals. But others are more wary: Kozlik has a cautious to negative view on higher education, noting that "college campuses are not as safe as we expected from virus spread."

And despite the fact that municipalities are in strong shape now, Kazatsky writes that he continues to favor bonds "with identifiable revenue streams vs. stand-alone general-obligation pledges" – that is, those backed by taxes. What's more, he added, if stocks pull back or interest rates spike, it could exacerbate legacy fixed costs for those governments, such as public pensions.

MarketWatch

By Andrea Riquier

Dec. 15, 2021

Top Muni Bankers Say Huge Deals, ESG Will Be 2022 Highlights.

- **Federal infrastructure plan underpins market, spurs bond sales**
- **Public-private projects, hedging products also on the agenda**

For the municipal finance professional, the new year holds the promise of elephant-sized debt deals, a potential premium for environmentally friendly bonds and a bounty of securities sales spurred by the U.S. infrastructure bill.

So say some of the top bankers in the $4 trillion market, where debt offerings have shown remarkable resilience in the second year of the coronavirus pandemic as state and local government coffers quickly recovered.

A global vaccine campaign and a massive federal economic stimulus package helped tax-exempt municipal bonds outperform almost every other fixed-income asset class this year. The market's riskiest corner, junk bonds, was the best-performing muni sector, with returns approaching 8% year to date.

"As the economy continues to grow into 2022, and if the omicron or other variants remain in check via vaccines, we expect to see increased high-yield activity next year," said Peter Hill, head of public finance at UBS Group AG.

Bloomberg News surveyed the heads of public finance at the market's top investment banks on notable trends of 2021 and their outlook for 2022. In the following Q&A, they highlight just how important the historic infrastructure package will be to their industry. And like all bond professionals, they consider the potential effect of the fastest inflation in decades.

What sectors or geographies are you prioritizing next year?

Health care and housing, two areas drastically altered by the pandemic, continue to command attention.

"Affordable housing will be one of the defining subjects of the next decade in municipal finance and will impact our market in ways not yet known," said Charles Peck, head of public finance at Wells Fargo & Co. State and local governments sold about $35 billion of housing-related debt in 2021, a roughly 80% increase from 2020, Bloomberg data show.

Gary Hall, head of public finance and infrastructure at Siebert Williams Shank & Co., is focused on how to grow his firm's higher ed, health care and housing divisions. He also seeks to expand his firm's presence in the Southeast U.S and other rural areas.

"We're looking to go downstream in k through 12, for broadband expansion and water quality, taking advantage of the infrastructure package and any kind of bridge and tunnel work that needs to be done all throughout some of these states," Hall said.

What will be the biggest themes defining the market?

Bankers overwhelmingly cited the infrastructure package, signed into law by President Joe Biden in November, as a major determinant. Some bankers speculated whether the surge in funding will lead states and cities to pull projects off the shelf.

Jamison Feheley, head of banking for public finance at JPMorgan Chase & Co., said it should be "a catalyst for new project development against a very positive credit backdrop for states and local governments."

"The infrastructure package, the length of time it took to get enacted, paused a lot of our issuer clients. They said, 'I don't want to go out and use my bond capacity, because I don't know what's going to happen with the federal government. So I'm going to wait and see what they provide," said Hall at Siebert.

He expects the market to see a larger percentage of new-money sales than in the past boosted by "elephant-sized" deals from borrowers that aren't regular bond issuers. He's "bullish" on volume, predicting between $480 billion and $490 billion of total sales. Long-term municipal bond sales so far this year total about $459 billion, according to data compiled by Bloomberg.

What are you pitching your government clients?

"With inflation at 40-year highs, the prospect of higher rates in the future seems quite real." said Bob Spangler, head of municipal finance at RBC Capital Markets. "For new-money projects that are one to three years out, issuers should consider rate locks or other hedging products to reduce their interest rate exposures."

"As our clients return to whatever their new 'normal' is, there's a lot of potential motivators for M&A activity or other public private partnerships," Peck said. "They could be looking for ways to transfer risk that's not core to their mission, monetize assets to diversify revenue streams, or complete projects which will ultimately be owned and managed by a governmental entity."

What are the implications of federal stimulus for the muni-market next year?

In an attempt to blunt the pandemic's impact on the economy, the federal government provided a historic surge of stimulus dollars to state and local governments. Bankers at UBS, Wells Fargo, Stifel Financial Corp. and JPMorgan see a strong outlook for the sector buoyed by higher-than-expected tax receipts and spending increases.

"State and local governments are in good shape. Strong sales tax receipts, income taxes, and federal transfers have bolstered balances," said Betsy Kiehn, head of municipal capital markets at Stifel. "The question now is primarily how they spend it and whether they put in programs which require long term recurring revenue sources that are not identified."

"Increased spending and positive economic indicators should help perpetuate the positive rating trends for issuers of all stripes in 2022," added UBS's Hill.

How is ESG being viewed in the municipal bond market?

Municipals may have been the original impact investing market, with governments selling debt for decades to improve water systems, fund affordable housing and public education. In recent years, bonds specifically branded with a "green" or "social" label have grown in prominence.

Bonds classified as ESG, for environmental, social or governance purposes, are a focus for both issuers and investors. "While there are currently no measurable or consistent pricing benefits, the ability for issuers to diversify their investor base may be beneficial long term," Kiehn said. The impact of climate change could spur more debt sales as the need grows for improvements to water systems, flood control projects and resiliency efforts like seawalls, she said.

Peck at Wells Fargo said they've seen a few instances of a "greenium," that is, a relatively lower cost of capital, but overall, credit quality, liquidity and relative values are still the biggest price drivers.

"While some transactions have seen a modest pricing benefit, the real advantage to issuers is exposure to a broader, more diverse group of investors," he said. "This can result in an indirect pricing benefit by widening distribution."

What are you most looking forward to in 2022?

Wells Fargo, RBC and JPMorgan head bankers voiced an eagerness to return to normalcy — continued face-to-face meetings with clients and colleagues and progress toward the end of the pandemic.

"The second half of 2021 was great as we moved back to in-person interactions with clients and colleagues and I'm hopeful we can continue to move forward," said Feheley of JPMorgan.

Bloomberg Markets

By Danielle Moran and Nic Querolo

December 17, 2021, 8:59 AM PST

Vanguard Sees Muni Bond Supply Slowing to $400 Billion in 2022.

- **Issuers are flush with revenue and aid, says Vanguard's Malloy**
- **Forecast on lower end of muni estimates compiled by Bloomberg**

Vanguard, one of the largest municipal fund managers, expects states and localities to slow bond sales by at least 11% to about $400 billion next year because of a faster than anticipated revenue rebound and billions of dollars in federal aid.

"A lot of municipals are flush with cash," Paul Malloy, head of municipal investments at Vanguard, said in an interview. "They don't need to borrow as much." The firm has almost $267 billion in muni assets.

Vanguard's forecast, including municipal-backed corporate debt, is lower than 2022 forecasts from 11 other strategists compiled by Bloomberg. The 2022 supply estimates ranged from Morgan

Stanley's projection of $420 billion to Bank of America's forecast for $550 billion.

Last year, municipal issuers sold about $454 billion in long-term debt as the pandemic shuttered businesses, drove up unemployment and led tax revenue to drop temporarily. With three weeks left in 2021, long-term municipal issuance has reached about $450 billion, according to data compiled by Bloomberg.

On Credit

Malloy expects lighter sales next year because state and local governments have "a lot of cash" and municipal issuers "are in really great shape" from a fundamental credit perspective, he said. The pandemic's revenue hit has subsided for many.

Texas, among the largest state issuers, is an example of the pull back in debt overall, he said. The state usually borrows to prevent a deficit until more revenue arrives.

The state's total sales tax revenue for the three months ending in November 2021 rose 22% from the same period a year ago and is up almost 16% compared to 2019, according to a statement on the Texas comptroller's website.

In addition to rebounding revenue, state and local governments are getting $350 billion from President Joe Biden's American Rescue Plan Act.

On Rates and Valuation

Another reason to reduce borrowing next year is the cost may increase for municipal governments, Malloy said. The 10-year AAA muni benchmark could move up by mid-2022 from the current 1.05%, driven by yields in the Treasury market, Malloy said.

Muni issuers have benefited from rates hovering around historical lows partly because supply largely has not kept pace with investor demand this year and the imbalance has kept a lid on yields.

"It's not going to be as cheap to borrow as it has been," Malloy said. "It's the macro story."

One of the biggest questions for 2022 will be valuations, Malloy said. The muni to Treasury ratio is likely to range between 70% and 75% for debt maturing in 10 years, he said. The ratio was about 71.3% at the last close.

The ratio may hover around 80% for 30-year debt and 50% for bonds maturing in two to five years, he said.

On Covid

The pandemic is "an X-factor," Malloy said. "Always out there for the foreseeable future."

The virus and its variants will contribute to volatility in the market but medical advances and improvements in responses globally mean Covid "doesn't have the same potential for scarring" as it did at the outset, he said.

Bloomberg Markets

By Shruti Singh

December 10, 2021, 11:26 AM PST

Sales of Municipal Bonds That Won't Deliver for Months Reach Record.

- **State and local forward delivery sales at $15 billion in 2021**
- **Issuers look for savings as investors seek yield: Parametric**

State and local governments seeking savings from historically low interest rates before a series of expected hikes in 2022 are driving record sales of bonds that won't deliver for several months.

Sales of municipal bonds with a so-called forward delivery structure — meaning borrowers can lock in rates months before accruing interest owed to investors — reached about $15 billion in 2021, which is more than double the $6.7 billion this time last year and an-all time high, according to data compiled by Bloomberg.

The type of bond has grown in popularity ever since issuers in the $4 trillion municipal bond market were barred from a key refinancing tactic known as tax-exempt advance refunding in a 2017 tax change. But issuance this year has reached a fever pitch amid broad anticipation of higher refinancing costs next year. Sales have come from issuers in California, Maine, New Jersey, Maryland, Ohio, Illinois, Oklahoma, Arizona and Hawaii.

"They are looking for more creative ways to lock in savings," said Brian Barney, a managing director and portfolio manager for Parametric Portfolio Associates, which holds $43 billion in muni assets. "If rates remain relatively low, they will continue to use it potentially to this extent. If they do tick higher, then I expect we see this forward issuance number come down."

The Federal Reserve on Wednesday signaled that a series of interest-rate increases are coming down the pipeline, starting with three hikes in 2022. Barney said the market has already priced in most of the potential rate increases, and if they don't move too much, issuer interest in forward delivery will continue. In the meantime, the bonds should also remain attractive for investors in a low interest environment as they offer some additional yield, Barney said.

"The market has gotten efficient at pricing the per-month spread (discount) based on delayed settlement and buyers have grown more comfortable with the process," Kimberly Olsan, senior vice president of municipal bond trading at FHN Financial, said in an email. "These structures could be expected to continue as long as restoring advance refundings are off the table."

The Maine Turnpike Authority issued $102.34 million forward delivery bonds to refund $124.9 million from a 2012 series, according to an emailed statement from Douglas Davidson, the agency's chief financial officer and treasurer. The savings from the sale and redemption will strengthen the authority's financial ratios, and the issuance "freed up" about $23 million under its legislative bond cap, he said.

"The authority chose to use the forward delivery option in order to lock in savings at the current interest rates," Davidson said. "The authority has been concerned with high inflation and the uncertainty of future interest rates."

Bloomberg Markets

By Shruti Singh

December 16, 2021, 10:05 AM PST

— With assistance by Danielle Moran

[The Municipal Market is Getting Riskier. Is Anyone Paying Attention?]

There's so little new muni debt coming to market that bondholders snatch anything they can get, and relaxed standards are spreading

When CalPlant, a northern California manufacturer of fiberboard from rice farming waste, filed for bankruptcy in October, it may not have come as a complete surprise.

The company had issued $344 million of municipal bonds since 2017 in order to build a factory and start manufacturing, but faced construction overruns even before the COVID-19 pandemic hit, according to various reports. It defaulted on a payment in 2020, but just months later tapped existing bondholders for more cash.

CalPlant is hardly the first specialty project to go bust in the municipal market. A monorail running around Las Vegas has been bankrupt twice, and the American Dream mall in New Jersey has struggled for years to get off the ground. CalPlant's initial bond offering, with an 8% interest rate and investments from high-yield asset managers, make it very different than the tax-backed, tax-exempt bonds sold to wealthy households who simply want to preserve their capital.

Continue reading.

MarketWatch

By Andrea Riquier

Dec. 17, 2021

[Defaults Are Quickening in Muni Bonds in Warning Sign for High-Yield Investors.]

- **Time between issuance, impairment about half 2014 level: MMA**
- **Trend could blunt demand for riskier issuance, Fabian says**

Defaults and impairments are coming at a faster clip in the $4 trillion municipal-bond market, a potential warning sign for investors in junk munis, the best-performing sector of state and local-government debt.

The trend comes against a backdrop in which riskier issuers have gained more market access and investors awash in cash have grown more comfortable with weaker protections as yields remain well below historical averages. For muni deals that do become impaired, the time between issuance and such an event has tumbled to 32 months on average, less than half the level seen in 2014, Municipal Market Analytics data show.

The phenomenon holds for both risky and safer sectors as asset managers across the spectrum face reinvestment pressure. But weaker issuers have the most at stake, as broadly accelerating impairments could erode the segment's performance, crimping demand and making it harder for troubled borrowers to recover.

"More defaults and impairments, happening faster after issuance, could blunt the tip of high-yield demand," said Matt Fabian, a partner at MMA. "And if high-yield demand pulls back, it means less available rescue financing, so more defaults."

In MMA's definition, impairment refers to bonds in default or those that have tapped emergency means or violated a covenant.

Year to date, Bloomberg Intelligence data show that over $4.4 billion of securities have faced distress or default. In the week ended Thursday, seven deals totaling $102 million joined the ranks.

Munis' exceedingly low level of defaults relative to corporate debt, along with the improving U.S. economy, a wave of federal aid and talk of higher income taxes, have helped drive investor interest in junk offerings.

Muni Haven

In a year when munis overall have offered a haven in fixed income, earning about 1.5%, high-yield has been a standout, earning 7.7% in 2021, Bloomberg index data show.

The cash flowing in "doesn't just intensify demand, it also forces buyers to capitulate on credit conditions that they would normally require," Fabian said.

Those weaker underwriting conditions, such as sufficient reserves, contribute to the shrinking default window, he said. It's also easier for riskier projects to access capital through entities like conduits, and low yields have driven investors into more and more speculative deals.

The rise of passive investing and increased diversification has helped larger funds insulate themselves against defaults and distress. But for smaller asset managers with less liquidity and diversification, struggling deals can carry more weight.

"If you're a small, relatively concentrated asset manager, you have to be more careful than you used to be," Fabian said.

Bloomberg Markets

By Nic Querolo

December 14, 2021, 10:56 AM PST

No Deed, No Taxes, No Problem With These Dirt Bonds.

- **Utah, Colorado developers finance with 'cash flow' securities**
- **In dirt-bond twist, investors have no property to foreclose on**

Question: What do you call a dirt bond without any dirt?

Answer: Cash-flow limited-tax general obligation bonds.

"Dirt bonds" are used to help pay for new real estate development, and have been a prominent, if risky, feature of the municipal-bond market for decades, especially in fast-growing states like California, Colorado, Texas and Florida. They may have different names in each of the states, but are typically sold with no or low credit ratings and carry comparatively high yields. The bonds are repaid by property taxes and special assessments, and investors' ultimate security is foreclosure on the property.

But now we have a dirt bond without any property to foreclose on. Bond buyers are still helping to pay for a new real estate development, but they don't get the deed to the land should it stall or never take place.

That's not all the bond buyer doesn't get. Payment dates may come and go, but the issuers of these bonds tell the buyers up front that they won't get paid principal or interest until a date years in the future, and maybe not even then. These payments won't be made until people move in and the cash — property taxes — starts to flow.

Theoretical Maturity

These bonds have a maturity date, but that's only theoretical; it may take even longer to catch up on those accrued debt-service payments. And if you're not caught up by a certain year after that, you're out of luck, because these bonds also have a termination date beyond which the bondholder's claims are worthless.

I hadn't seen such a thing before. I couldn't even have imagined such a thing and called it a municipal bond. Perhaps we are at a certain point in the credit cycle, where investors are willing to absorb increasing amounts of risk. And the risk is undeniable. Land-secured deals account for about $2.3 billion of munis currently in payment default, or about 18% of the total, excluding Puerto Rico, Municipal Market Analytics data show.

This particular brand of land deal seems to have made its debut in Utah this year, but it's been used in Colorado for a few years. In Utah, the structure appears to have reached perfection, or maybe the vacation-home market there is red hot. Muni-financed development deals appear to be revving up there. Of the 66 that have been sold in the state, three were from 2009, one in 2010, six in 2013, nine in 2020 and 47 this year, data compiled by Bloomberg show.

Consider, for example Pine View Public Infrastructure District No. 1, which in November sold $13.8 million in cash-flow limited-tax GOs. The unrated deal was sold through a preliminary limited offering memorandum to qualified institutional buyers in minimum denominations of $500,000.

The proceeds of the deal are going to help pay for a development of 1,202 single-family homes on more than 300 acres in Toquerville, Utah, which had a population of 1,870 in 2020, according to the offering documents, and which is in southwest Utah near Zion National Park.

There's a helpful aerial map of Pine View PID No. 1 in the memorandum and there's not a lot there. It says so numerous times in the memorandum. Home construction hasn't commenced, and isn't expected to until the third quarter of 2022.

And then, these words: "It is not anticipated that there will be any Pledged Revenue available to pay accrued interest on the Bonds until 2025, and it is not anticipated that there will be any Pledged Revenue to pay principal on the bonds until 2042."

'No Guarantee'

The memorandum goes on to state: "These dates represent a forecast and there is no guarantee that any payments will be made on or after such date or, further, that the Bonds will be repaid prior to their discharge date of March 1, 2062."

These are relatively new creatures in MuniLand, "cash flow" securities. There's no definition of "cash flow securities" available in the Municipal Securities Rulemaking Board's Glossary, for example.

And yet, there's a market for such things. These Pine View Public Improvement District No. 1 bonds were priced by underwriter D.A. Davidson at par to yield 6% in 2051, which is 448 basis points above what top-rated issuers expect to pay. The underwriter didn't respond to an email for comment. A call to the developer wasn't immediately returned.

My first reaction to "cash flow securities" was sheer amazement, and my second was "I love these," because they're the ultimate manifestation of dirt bonds.

Why do such things usually default? Because they run out of time. Because the developers can't get the houses built and sold fast enough. Because the fuse is lit the day the bonds are priced. I bet we'll see a lot more such deals.

Bloomberg Markets

By Joseph Mysak Jr

December 13, 2021, 9:25 AM PST

— *With assistance by Kenneth Hughes*

(Joe Mysak is a municipal market columnist who writes for Bloomberg. His opinions do not necessarily reflect those of Bloomberg LP and its owner, and his observations are not intended as investment advice.)

GFOA 2021 Awards for Excellence Winners Announced.

Learn how this year's award winners provide inspiration, model examples, and provide implementation guidance for others looking to adopt best practices or to develop creative or innovative solutions.

VIEW WINNERS

NASBO Fiscal Survey of States.

Overview – Fall 2021

With data gathered from all 50 state budget offices, this semi-annual report provides a narrative analysis of the fiscal condition of the states and data summaries of state general fund revenues, expenditures, and balances. The spring edition details governors' proposed budgets; the fall edition details enacted budgets.

State general fund spending is projected to grow 9.3 percent in fiscal 2022 compared to fiscal 2021 levels, according to states' enacted budgets. This spending increase is driven by improving revenue outlooks for states as well as a host of one-time factors.

Other key highlights from the report:

- General fund spending grew **4.3 percent** in fiscal 2021 to total $931.7 billion, above originally enacted levels but still slightly below governors' proposed budget levels pre-COVID-19.
- **47 states** reported fiscal 2021 general fund revenue collections came in above original budget projections.
- Fiscal 2021 general fund revenue grew **14.5 percent** over fiscal 2020 levels, with this increase partially driven by the impact of the tax deadline shift, inclusion of federal funds, borrowing, and other revenue sources in a few states, and a lower baseline in fiscal 2020.
- In the aggregate, combined fiscal 2020 and fiscal 2021 general fund revenues came in **2.2 percent** above pre-COVID-19 projections.
- Fiscal 2022 enacted budgets are based on general fund revenues that are **2.6 percent** below preliminary actual levels for fiscal 2021; revenue forecasts used to build enacted budgets were mostly developed earlier in calendar year 2021, before the most recent uptick in collections.
- **32 states** (out of 42 states able to report early in the fiscal year) indicated that fiscal 2022 collections were coming in ahead of budget forecasts, while 10 states said they were on target.
- States adopted a mix of increases and decreases in taxes and fees, resulting in a projected net revenue change in fiscal 2022 of **-$2.9 billion** – including $1.7 billion in general fund revenue reductions (representing less than 0.2 percent of total general fund revenues forecasted in enacted budgets for fiscal 2022).
- Rainy day fund balances reached a new record level of nearly **$113 billion** in fiscal 2021 due mainly to stronger than anticipated revenue growth, with 35 states reporting increases. The median balance as a share of general fund spending is **9.4 percent**.
- Total balances increased in fiscal 2021, nearly doubling from fiscal 2020 levels, and **46 states** reported total year-end balances greater than 10 percent as a share of general fund spending.

Report Summary

Full Report

Kronos Ransomware Attack Will Challenge Public Finance Issuers.

Fitch Ratings-New York/Chicago/Austin-21 December 2021: The recent breach of Ultimate Kronos Group's (UKG) Kronos Cloud Solutions platform could pose significant, but temporary, management challenges for public finance entities that use the Kronos platform through the holiday season, says Fitch Ratings. While we do not anticipate that the UKG breach will have meaningful credit implications for individual public finance entities that use Kronos, the breach continues to reinforce the necessity of robust third-party risk management strategies and identification of critical dependencies for public finance issuers. The attack further highlights the importance of cyber emergency preparedness and response strategies for the public finance sector.

The breach has already impacted a large number of public finance entities across the country, with some of the most notable the New York Metropolitan Transportation Authority, the City of

Cleveland, the state of West Virginia, the Oregon Department of Transportation, the University of California system, and Honolulu's EMS and Board of Water Supply. Though many high-profile public finance organizations have disclosed being impacted, the actual number could be much larger.

UKG is the provider of one of the most popular and widely used payroll and workforce tracking systems for public finance entities. On Monday December 13, UKG announced that it was the victim of an ongoing ransomware attack affecting the Kronos Private Cloud, which hosts UKG Workforce Central, UKG TeleStaff, Healthcare Extensions, and Banking Scheduling Solutions. The company further disclosed that the Kronos Private Cloud solutions systems are currently unavailable and it may take up to several weeks to restore system availability for clients. The breach is forcing many issuers across the spectrum of public finance to resort to manually tracking and estimating employee hours, having to issue paper paychecks and possibly causing paycheck delays during the holidays.

The sector most impacted by the UKG ransomware attack within public finance is healthcare, where Kronos' payroll and workforce solutions systems have been popular. The breach should not affect clinical outcomes or add meaningful costs, except some added expenses activating contingencies to track hours and pay workers. That said, the timing is especially inopportune for the sector, with hospitals nationwide already grappling with increased Covid-19 cases amid the growth in the Omicron variant. Indeed, the American Hospital Association (AHA) stated that some hospitals and health systems have been impacted by this ransomware attack and urged all third-party providers that serve the healthcare community to examine their cyber readiness, response and resiliency capabilities.

In addition to the near-term challenges posed to public finance entities from the current unavailability of critical payroll systems, some entities have voiced concerns over data privacy associated with the UKG breach. According to a statement released from the City of Cleveland, some of the city data accessed may have included certain employees' first and last names, addresses, last four digits of the social security numbers, and employee ID numbers.

Contacts:

Omid Rahmani
Associate Director, USPF
+1 512 215 3734
Fitch Ratings, Inc.
2600 Via Fortuna, Suite 330
Austin, TX 78746

Greg Dziubinski
Associate Director, USPF
+1 312 606 2347
Fitch Ratings, Inc.
One North Wacker Drive
Chicago, IL 60606

Justin Patrie
Senior Director, Fitch Wire
+1 646 582 4964
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street

New York, NY 10019

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

Bloomberg Launches U.S. Municipal Bond Impact Index to Track Green, Social, and Sustainability Bonds.

NEW YORK, Dec. 15, 2021 /PRNewswire/ — Bloomberg today announced the launch of the Bloomberg U.S. Municipal Impact Index designed to track the market of municipal bonds categorized as Green, Social, and Sustainability. The index currently tracks over 2,800 securities and is the first such standardized measure of the U.S. municipal tax-exempt investment grade impact bond market.

The index is derived from Bloomberg Index Services Limited's (BISL) flagship Municipal Index (Bloomberg Ticker: I00730) and utilizes Bloomberg's data and its municipal data analysts' research to individually vet and categorize as Green, Social or Sustainability municipal bonds on the Bloomberg Terminal. For inclusion in the index, a bond must either be self-labeled as Green, Social or Sustainability directly from an initial offering, reviewed by independent assurance providers, or use 100% of proceeds for a project in line with the International Capital Market Association (ICMA) Principles. Additional sub-indices dedicated to tracking Green, Social, and Sustainability municipal bonds were also launched as part of a suite of Municipal Index Family.

"Investor demand for municipal impact bonds has been growing and its market value has more than doubled in the last three years, but participants have lacked a standard reference point for ESG-adherent securities," said Nick Gendron, Global Head of Fixed Income Index Product at Bloomberg. "We believe the Bloomberg U.S. Municipal Impact Index will hold broad appeal for both ETF product creation and traditional benchmarking while also providing a useful tool for in-depth research of this growing segment of the municipal bond market."

Eligible bonds within the index are required to have principal and interest denominated in USD, at least one year until final maturity, and hold an investment grade rating. Only fully tax-exempt issues are included, and rebalancing will occur on a monthly basis. Bloomberg provides a suite of green bond market governance, research, data, and analytics to help users identify green securities and assess alignment to the Green Bond Principles developed by the International Capital Markets Association.

The index was launched on December 13, 2021, with history calculated back to January 1, 2019. Bloomberg clients can access the index using the ticker I36676US Index .

Bloomberg provides an independent, transparent approach to indexing for customers across the globe. For more information, please visit Bloomberg Indices. To learn more about Bloomberg's ESG bond data, please visit Bloomberg ESG Data.

Muni Market Record Numbers In 2021 (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Markets, has the latest on municipal bonds. He discusses a record year for municipal markets and Puerto Rico looking to come out of bankruptcy. Hosted by Paul Sweeney and Kailey Leinz.

Listen to audio.

Bloomberg Radio

Dec 17, 2021

Fitch Ratings Updates Criteria for U.S. Public Housing Authority Capital Fund Revenue Bonds.

Fitch Ratings-New York-16 December 2021: Fitch Ratings has published an updated criteria report titled “U.S. Public Housing Authority Capital Fund Housing Revenue Bonds Rating Criteria.” The report replaces the prior report of the same title published on Dec. 22, 2020.

Revisions to the criteria include minor editorial changes and clarification of the debt service coverage approach for Capital Fund Program pooled financings that are not cross-collateralized. The key elements of Fitch’s US. Public Housing Authority Capital Fund Housing Revenue Bonds Rating criteria remain consistent with those of its prior criteria report.

The updated criteria is not expected to result in changes to the ratings of existing transactions.

The full report is available at www.fitchratings.com.

Contact:

Mikiyon Alexander
Senior Director
+1-646-582-4796
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Teresa Galicia
Associate Director
+1-312-368-2083

Kasia Reed
Director
+1-646-582-4864

Media Relations: Elizabeth Fogerty, New York, Tel: +1 212 908 0526, Email: elizabeth.fogerty@thefitchgroup.com

Additional information is available on www.fitchratings.com

Fitch: Job Recovery Picks up Steam for U.S. Metros; Omicron a Concern

Fitch Ratings-New York-21 December 2021: Job recoveries received a jolt for U.S. major metropolitan statistical areas (MSAs) thanks in large part to strong performance in the Midwest and Western parts of the country, according to Fitch Ratings in its latest U.S. Metro Labor Markets Tracker.

The median jobs recovery rate among major MSAs rose to 75% in October 2021 from 72% in September. Additionally, 48 out of 53 major metros experienced employment growth on a month-over-month basis, nine more than the previous month.

Potentially weighing down job growth in the coming months will be the Omicron variant of the coronavirus, with infections becoming more widespread. 'Vaccine mandates continue to be contested in courts, though the availability of vaccines for children ages 5 to 12 should further decrease risk of hospitalization,' said Fitch Senior Director Olu Sonola.

The Midwest's median recovery rate for major metros rose to 80% in October from 77% in September, with Chicago registering the highest recovery rate increase among major Midwestern metros in October at 4.7 pps. Strong growth was also evident in the major metros in the West (75% for October) with San Jose, San Diego and Riverside all standouts.

By contrast, the Northeast continues to be a laggard. New York City, the nation's largest employment center, trails the overall U.S. and broader Northeast recovery rates. Buffalo and Providence saw recovery rate declines in September, while Hartford posted a 3.8-pp recovery improvement for the month.

'U.S. Metro Labor Markets Tracker' is available at 'www.fitchratings.com'.

Contact:

Olu Sonola
Senior Director
+1 212 908 0583
Fitch Ratings, Inc.
300 W 57th Street
New York, NY 10019

Nicholas Rizzo
Analyst
+1 212 908 0596

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

TAX - CALIFORNIA

[Lejins v. City of Long Beach]

Court of Appeal, Second District, Division 1, California - December 1, 2021 - Cal.Rptr.3d - 2021 WL 5628744

Property owners petitioned for writ of mandate challenging surcharge municipality imposed on its water and sewer customers by embedding surcharge in rates water department charged its customers for service.

The Superior Court granted judgment for owners and awarded them attorney fees. Municipality appealed.

The Court of Appeal held that:

- Voter-approved surcharge had been imposed upon parcel or upon person as incident of property ownership within meaning of constitutional provision governing special taxes;
- Voters' approval of surcharge did not prevent it from violating constitutional provision governing special taxes; and
- Transfer or surcharge that was not in any way related to costs of providing water and sewer services was prohibited by Constitutional provision governing special taxes.

Ability of person to own real property without obtaining water or sewer service did not prevent voter-approved surcharge for water and sewer services that supported variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries from being imposed upon parcel or upon person as incident of property ownership within meaning of constitutional provision governing special taxes.

Surcharge for water and sewer services that supported variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries violated constitutional provision governing special taxes although it had been approved by voters.

Transfer or surcharge that was not in any way related to costs of providing water and sewer services was prohibited by Constitutional provision governing special taxes; although surcharge raised unrestricted revenue to support variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries, it did not reimburse municipality for costs associated with water department's use of its infrastructure.

TAX - WYOMING

[Winney v. Hoback Ranches Property Owners Improvement and Service District]

Supreme Court of Wyoming - November 24, 2021 - P.3d - 2021 WL 5504238 - 2021 WY 128

Landowners in rural residential subdivision brought action against neighbor and property owners improvement and service district, alleging violations of protective covenants and illegal imposition of property tax levies, and neighbor and district filed counterclaim alleging that landowners violated protective covenants.

The District Court granted summary judgment for district and, after a bench trial, entered judgment for neighbor on claim against him. Landowners appealed.

The Supreme Court held that:

- District's authority to levy taxes was not limited to eight mills as outlined in petition to form district;
- Protective covenant requiring buck and pole fencing applied to subdivision's perimeter fence on landowners' property;
- District's alternative argument as to inequities in enforcing covenant as to fencing was best left for a first determination on remand; and
- Neighbor's performance of road maintenance and snowplowing for subdivision did not violate covenant prohibiting commercial activity.

Authority of property owners improvement and service district, as a political subdivision of state, to levy taxes in rural residential subdivision in county was not limited to eight mills as outlined in petition to form district, where Improvement and Service District Act did not impose a mill levy or other cap on a district's authority to tax, Act specifically allowed a district to change amount or rate it charged for use of improvements and services it provided, and landowners were on notice that any district that was formed would have authority to collect revenue and to "change the amount or rate thereof.

How Government Funding Dysfunction Limits Bipartisan Infrastructure Law Implementation: Nossaman

How Government Funding Dysfunction Limits Bipartisan Infrastructure Law ImplementationThe Infrastructure Investment and Jobs Act or "IIJA" (P.L. 117-58) passed on a bipartisan basis in both the House and Senate and was signed by the President one month ago today, on November 15, 2021. One could have assumed that federal agencies would begin allocating the new funding and commence implementation of the IIJA as soon as it became effective. Unfortunately, that is not the case, but for reasons that may not be readily apparent … Continue

Nossaman LLP

By Shant Boyajian on 12.15.2021

TAX - LOUISIANA

Calcasieu Parish School Board Sales & Use Department v. Nelson Industrial Steam Company

Supreme Court of Louisiana - December 10, 2021 - So.3d - 2021 WL 5860861 - 2021-00552 (La. 10/10/21)

School board sales and use department and administrator of the department filed suit against steam company for failure to pay use tax on its purchase of limestone.

The District Court granted summary judgment in favor of plaintiffs. and denied company's exceptions, motion for summary judgment, and cross motion for summary judgment. Company appealed. The Court of Appeal reversed. The Supreme Court reversed and remanded. The Third Circuit Court of Appeal reversed. Application for review granted.

The Supreme Court held that amendment to use tax provision for materials further processed was new tax, within meaning of Tax Limitation Clause.

Amendment to use tax provision for materials further processed into a byproduct for sale, which included as taxable incidental byproducts that had previously been exempt from use tax as sales for further processing was "new tax," within meaning of Tax Limitation Clause, requiring that any levy of a new tax or tax increase be approved by two-thirds of the state legislature.

U.S. Bond Funds Post Biggest Weekly Outflow in 20 Months - Lipper

Dec 17 (Reuters) – U.S. bond funds witnessed big outflows in the week to Dec. 15 as a surge in inflation solidified investor expectations that the Federal Reserve would be more aggressive in unwinding its stimulus support to counter soaring prices.

According to Refinitiv Lipper data, U.S. bond funds faced net selling of $7.48 billion, that marked the biggest outflow since April 8, 2020.

Dec 17, 2021

FINRA Fines RBC Over $280,000 for Violating Muni Rule.

RBC Capital Markets, LLC agreed to pay more than $280,500 to settle Financial Industry Regulatory Authority charges that it violated the Municipal Securities Rulemaking Board's suitability rules when it failed to establish, maintain, and enforce a supervisory system with respect to high-yield municipal bonds.

In a December 14 Letter of Acceptance, Waiver and Consent (AWC), RBC agreed to pay a total fine of $550,000, plus restitution and interest of over $450,000 and to be subject to a censure.

In so doing, RBC neither admitted nor denied FINRA's findings that it violated NASD Rule 3010(a) and 3010(b) and FINRA Rules 3110(a) and (b) and 2010 with respect to the firm's supervision of high-yield corporate bonds, and MSRB Rules G-27(b) and (c) with respect to high-yield municipal bonds.

Specifically, FINRA found that for a period of three years, from July 2013 to June 2016, RBC, which has been a FINRA regulated broker-dealer since 1993, failed to identify for review, more than 100 customer accounts that had conservative profiles for potentially unsuitable concentration levels of high-yield bonds, i.e., those with a higher risk of default.

Under MSRB Rule G-27(b), municipal dealers are required to establish and maintain a supervisory system, which includes written supervisory procedures that reasonably ensure compliance with applicable securities laws.

FINRA Rules 2111 and 3110(a) have similar requirements for supervision, diligence and suitability. For example, under FINRA Rule 2111, member firms must have a "reasonable basis to believe that a recommended securities transaction or investment strategies is suitable for a customer based on information obtained through reasonable diligence of the firm."

In this case, FINRA found that RBC's supervisory system did not flag recommendations that resulted in potentially unsuitable concentrations of high-yield bonds in certain customer accounts. FINRA also concluded the firm's procedures did not sufficiently address suitability factors that its representatives should consider before recommending high-yield bonds.

For example, FINRA said that for a number of years, RBC's procedures did not provide guidance as to what proportion of a customer's portfolio should be invested in those high-risk products.

Additionally, FINRA found that RBC had daily and monthly recommended automated alerts designed to identify potentially unsuitable concentrations of high-yield bonds. However, FINRA concluded the alerts did not function as intended because RBC changed the tax coding of municipal bonds in its system in 2013.

The change "inadvertently disabled the ability of the high-yield bond alerts to identify concentration issues for further assessment," FINRA said.

Additionally, FINRA concluded that RBC did not test its alerts and so was not aware the system wasn't functioning properly. According to the AWC, the firm realized the problem in 2015, but did not fix the system until 2016 and failed to adopt alternate measures to identify potentially unsuitable concentrations in customer accounts in the meantime.

As a result, FINRA found that RBC "did not review more than 100 conservative customer accounts for potentially unsuitable concentrations of high-yield corporate and municipal bonds." Some of those accounts contained high-yield bond concentrations more than six times higher than the thresholds set by the firm.

Consequently, FINRA charged RBC with failing to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with the relevant MSRB rules and imposed a censure, fine, and restitution and interest as sanctions.

Regarding the AWC, Nicole Garrison, director of corporate content, communications and social media for RBC Wealth Management-U.S., said, "we are deeply committed to careful management of the wealth clients entrust to us. As a firm, we pride ourselves on having strong policies and procedures in place to protect our clients. In the rare instance those policies and procedures fall short, we take steps to address them."

Garrison added, "We fully cooperated with FINRA and are pleased to have amicably resolved this case. This matter involves restitution to just 20 accounts and an issue that occurred and was fixed more than five years ago."

By Kelley R. Taylor

BY SOURCEMEDIA | MUNICIPAL | 12/16/21 01:59 PM EST

MSRB EMMA Update to CUSIP Groups Feature.

Issuers – we heard you. In response to stakeholder feedback the MSRB has introduced a completely redesigned "CUSIP Groups" feature that allows issuers to save a group of CUSIPs to use for future disclosure filings submitted to the EMMA.

Watch our tutorial.

Puerto Rico Bankruptcy-Exit Plan Offers Island a Fresh Start.

- **Workout cuts $33 billion of debt, creates pension reserve fund**
- **Exit 'removes a huge cloud' over the economy: Marxuach**

Puerto Rico is inching closer to ending its more than four-year bankruptcy as the judge overseeing the workout is reviewing a restructuring plan that cuts billions in debt, fixes a broke pension system and potentially returns the commonwealth to balanced budgets.

U.S. District Court Judge Laura Taylor Swain may rule as soon as next month on the debt adjustment deal. If she approves it, Puerto Rico will be able to move past its bankruptcy and focus on boosting its economy and modernizing the island's electrical grid to end chronic outages.

"It removes a huge cloud that's been hanging over the economy for four years now," said Sergio Marxuach, policy director at the Center for a New Economy, a San Juan-based research institute that analyzes the commonwealth's finances. "We can start to change the narrative from 'Puerto Rico is in bankruptcy' to 'Puerto Rico is recovering,' which is positive in terms of attracting investment."

Puerto Rico's been in bankruptcy since May 2017 after years of borrowing to cover operating expenses, economic contraction and population decline as residents left to find work on the mainland. Since then, natural disasters like Hurricane Maria — which left many Puerto Ricans in the dark for a year — as well as political turmoil and the pandemic delayed efforts to emerge from the largest debt restructuring ever in the $4 trillion municipal-bond market.

The lengthy process has pushed Puerto Rico's bankruptcy costs to more than $1 billion.

Debt Service

The debt plan would slash $33 billion of debt and other obligations, including cutting $22 billion of bonds, to $7.4 billion. Investors would exchange their holdings for a lesser amount of new bonds, reducing what the government owes. Bondholders would also receive $7 billion in cash and a so-called contingent value instrument that would pay out if Puerto Rico's sales-tax collections surpass estimates.

The overall reduction means Puerto Rico would only have to pay an average of $666 million for debt service on commonwealth-guaranteed bonds annually for the first 10 years, down from an average $1.6 billion.

The workout plan also is intended to help fix the commonwealth's broke pension system — which owes current and future retirees an estimated $55 billion — by establishing a reserve fund that Puerto Rico would contribute to annually.

Still, Puerto Rico lawmakers likely will struggle to balance budgets as the commonwealth must allocate about $2.3 billion each year in pension payments to retired public workers and as Medicaid costs may increase.

Retirement costs could rise as island lawmakers passed legislation to boost pension benefits for public workers. A federally appointed financial oversight board is asking the court to pre-empt those laws. The judge late Tuesday asked the board for more details to justify nullifying the legislation.

That stress could again make it difficult for the island to pay debt service. Puerto Rico is estimated to face deficits again in fiscal 2036 with a $119 million shortfall, even if island lawmakers implement changes such as making it easier to do business there and programs to expand workforce participation, according to the commonwealth's current multi-year fiscal plan.

'Grow the Economy'

The commonwealth's ability to pay debt service once out of bankruptcy also depends on its economy growing after federal disaster aid and pandemic funds dry up.

"We need to come up with a medium to longer-term plan to grow the economy," Marxuach said.

Investors are watching to see if Puerto Rico leaders stick to sound fiscal policies once the oversight board is disbanded. The panel is set to expire after four consecutive years of balanced budgets and when the commonwealth regains access credit markets.

"There's a lot of uncertainty about where Puerto Rico policies will go," said Matt Fabian, a partner at research firm Municipal Market Analytics. "Will we return to the early 2000s of how Puerto Rico ran itself in or will Puerto Rico actually run itself similar to how other states run themselves?"

Prices on some commonwealth general obligations bonds are trading higher than what bondholders will receive in the exchange as investors factor in the upfront cash payment and potential sales-tax revenue. General obligation bonds with an 8% coupon and maturing in 2035 traded Tuesday at 89 cents on the dollar, above the 67.7 cents that bondholders will receive for that security, according to data compiled by Bloomberg.

The oversight board that manages Puerto Rico's bankruptcy negotiated the debt adjustment deal rather than the commonwealth's elected officials. That has created animosity on the island against the oversight board, especially as the panel has sought to cut spending on colleges and aid to municipalities while lawmakers have balked at cuts to public employee pensions. Governor Pedro Pierluisi supports the debt restructuring plan.

"The last thing you want is the people nominally in charge working against the plan," said Steven Rhodes, a retired federal judge who oversaw Detroit's 2013 bankruptcy. In Puerto Rico, "the people and their leaders feel cut out of the process."

Bloomberg Markets

By Michelle Kaske

December 15, 2021, 4:00 AM PST Updated on December 15, 2021, 6:04 AM PST

— With assistance by Steven Church
