

---

## **PUBLIC RECORDS - NEW HAMPSHIRE**

### **Seacoast Newspapers, Inc. v. City of Portsmouth**

**Supreme Court of New Hampshire - May 29, 2020 - A.3d - 2020 WL 2791849 - 2020 L.R.R.M. (BNA) 200,418**

Newspaper owner filed petition pursuant to Right-to-Know Law for disclosure of arbitration decision concerning termination of police officer by city for misconduct.

Superior Court denied the petition. Owner appealed.

The Supreme Court held that:

- Stare decisis factors compelled overruling prior holding to the extent it broadly interpreted the internal personnel practices exemption of the Right-to-Know Law and its progeny to the extent they relied on that broad interpretation;
- Internal personnel practices exemption of the Right-to-Know Law applies narrowly to records pertaining to internal rules and practices governing an agency's operations and employee relations, overruling *Union Leader Corp. v. Fenniman*, 136 N.H. 624, 620 A.2d 1039, *Hounsell v. North Conway Water Precinct*, 154 N.H. 1, 903 A.2d 987;
- Arbitration decision did not fall within internal personnel practices exemption; and
- Owner was not entitled to attorney fees under Right-to-Know Law.

---

## **ZONING & PLANNING - NEW YORK**

### **Neeman v. Town of Warwick**

**Supreme Court, Appellate Division, Second Department, New York - June 3, 2020 - N.Y.S.3d - 2020 WL 2892696 - 2020 N.Y. Slip Op. 03113**

Landowners filed article 78 petition against campground and city zoning board of appeals seeking an annulment of board's decision granting campgrounds application for an area variance, and filed further action seeking a declaration that board segmented its environmental review.

The Supreme Court, Orange County, denied landowners' petition, and entered order, in effect, dismissing action. Landowners appealed.

The Supreme Court, Appellate Division, held that:

- Board's determination to grant area variance was arbitrary and capricious and an abuse of discretion, and
- Board's failure to review variance application in the context of campground's overall campsite expansion plan constituted an improper segmented review.

---

## **IMMUNITY - WYOMING**

### **[Craft v. State ex rel. Wyoming Department of Health](#)**

**Supreme Court of Wyoming - June 10, 2020 - P.3d - 2020 WL 30717552020 WY 70**

Deceased patient's adoptive brother, who was also patient's biological father, and patient's appointed personal representative brought action against state hospital psychologist and state hospital, alleging numerous § 1983, wrongful death, negligence, and medical malpractice claims.

The District Court granted defendants' motions to dismiss for failure to state a claim. Adoptive brother and personal representative appealed.

The Supreme Court held that:

- Adoptive brother had standing to bring a wrongful death action, and
- Psychologist's act in providing written forensic analysis of patient's mental health qualified as an action within the scope of her duties in the operation of the hospital under the Wyoming Governmental Claims Act.

Deceased patient's adoptive brother, who was also patient's biological father, qualified as a beneficiary under the intestacy laws and had standing to bring a wrongful death action against state hospital and others; adoptive brother was an heir with a tangible interest in the outcome of the controversy.

State hospital psychologist's act in providing written forensic analysis of patient's mental health qualified as an action within the scope of her duties in the operation of the hospital under the Wyoming Governmental Claims Act; patient had been at the hospital for over eight months at the time of his death, and psychologist and hospital were treating patient throughout his stay in pursuit of restoring his competency.

---

## **[The Public Finance Implications Of COVID-19.](#)**

### **Summary**

- The Fed's expansion of its balance sheet, an understandable response to the crisis, needs to be unwound as the economy improves.
- Not only was the Fed buying up most of the new issuance, but it was buying up treasury securities with a maturity far longer than overnight reserves.
- It is worth noting that maintaining large central bank balance sheets do not guarantee robust growth.

[Continue reading.](#)

## Seeking Alpha

by David Beckworth

Jun. 17, 2020

---

### **Century Housing Announces Unique Bond Deal.**

#### **The transaction will help finance thousands of affordable homes in California.**

Century Housing announced plans to become the first Community Development Financial Institution (CDFI) to go to market with a municipal bond CUSIP (Committee on Uniform Securities Identification Procedures).

Officials involved in the deal expect to issue up to \$100 million in ESG (environmental, social, and governance) municipal bonds to raise money to support their affordable housing efforts. The bonds will be underwritten by sole senior manager Wells Fargo Securities.

Most CDFIs are nonprofit organizations, and they usually utilize corporate CUSIPs, the system that identifies different securities, including bonds. However, in this case, Century Housing decided on a municipal CUSIP, according to Peter Cannava, managing director at Wells Fargo Securities.

“We thought that issuing a muni CUSIP and going through a conduit municipal agency like the California Municipal Finance Authority would provide additional buyers for Century to market their bonds to,” says Cannava. “It would also give them some flexibility that they wouldn’t be able to get in the corporate market because corporate CUSIPs are somewhat unique as to what type of investors can buy them.”

The transaction is also the first CDFI bond deal to be rated by two rating agencies, Fitch Ratings and S&P Global Ratings, with AA and AA-, respectively, according to Cannava.

This step was to provide another set of eyes to look at the deal under their criteria and reaffirm the rating the other agency provided, especially with some of the volatility seen this year as a result of the COVID-19 pandemic. “We feel the second rating would help place Century in the best position from a marketing perspective,” Cannava says. “Often in the muni market, a lot of deals come with two ratings so it would be more in line with the municipal marketplace.”

Led by president and CEO Ronald M. Griffith, Century Housing focuses on funding affordable housing in California. The CDFI has invested more than \$2 billion in financing and has helped create approximately 45,000 affordable homes throughout the state.

“This offering will accelerate our ability to serve our mission and deliver financing exactly where it is needed most,” he says.

The bonds will be federally taxable and state tax-exempt. Century Housing will use the proceeds to provide early-stage financing, including acquisition, bridge, and construction loans, which has become the organization’s specialty.

The early financing is critical because most affordable housing is ultimately financed by low-income

housing tax credits (LIHTCs), and developers must have site control even before they can apply for the housing credits, says Alan Hoffman, senior vice president and CFO at Century Housing.

As a result, acquisition loans are vital, but they're also in short supply because many depository institutions cannot make these loans, explains Hoffman.

He says he expects the bond transaction to raise at least \$50 million and as much as \$100 million. At the larger end, the financing would help in the construction or preservation of more than 2,000 affordable housing units.

Officials point out that LIHTC properties in the state have strong green and social components. To highlight these features, the transaction has a third-party opinion by Sustainalytics that attests to both the environmental and social benefits that will be created by the housing made possible by the bonds. It's one more move to try to draw buyers to the bonds.

## **Affordable Housing Finance**

By Donna Kimura

June 19, 2020

---

### **[Fitch Ratings Rates Century Housing Corp., CA \\$100MM Rev Bonds 'AA'; Stable Outlook](#)**

**Fitch Ratings - New York - 17 Jun 2020:** Fitch Ratings has assigned a 'AA' Issuer Default Rating (IDR) with a Stable Rating Outlook to Century Housing Corporation (Century Housing or the CDFI). At the same time, Fitch assigned a 'AA' rating to the California Municipal Finance Authority Taxable Bonds, Series 2020 (Century Housing Corporation) (Sustainability Bonds) with a Stable Rating Outlook.

## **SECURITY**

The Series 2020 Bonds are general obligations of Century Housing payable from all legally available revenues and assets of Century Housing. The proceeds of the Series 2020 Sustainability Bonds will be used to refinance certain existing obligations that principally financed loans made by Century Housing related to the development of affordable multi-family rental housing. Series 2020 bonds will be issued in an amount of \$50 million up to \$100 million with two-year and three-year tenors with the possibility of 10- to 20-year tenors depending on pricing available at the time of issuance.

## **KEY RATING DRIVERS**

Century Housing Corporation's rating reflects ongoing and continued demand for multifamily affordable housing within the state of California. In addition, Century Housing Corporation exhibits growing operating revenue and cash flow derived from its lending products, grants and other sources of investment income. Century Housing Corporation's strong management of operations is evidenced by its solid financial performance and its good standing with the federal oversight provided by the Department of Treasury's Community Development Financial Institution (CDFI) Fund, evidenced by its continued certification as a CDFI.

## **Revenue Defensibility: Stronger**

Since 2014, Century Housing Corporation has shifted its lending operations from a commercial bank reliant Community Development Finance Institution (CDFI) to include a more robust lending operation using bonds which while maintaining their overall total assets well above their total liabilities. Century Housing's demand is evident by the average increase in mortgage loans of 34% since 2015. The increase in Century Housing's asset base is primarily due to affordable housing mortgage loans that the CDFI makes from the predevelopment to permanent phase financing of multifamily affordable housing. Century Housing operates in the State of California where there is a significant shortage in affordable housing units. When assessing the history of Century Housing Corporation over a span from 2006-2019, the CDFI's overall financial position changed positively to meet the demand of the affordable housing gap within the state. In the event of a future downturn in the national economy and the state's economic position, the demand for Century Housing's loan products become stronger.

### **Operating Risk: Stronger**

Fitch's analysis considers the entity's operating profile, including predictability and volatility of costs, life-cycle/capital renewal risks, key resource cost risks and the ability to manage growth in costs over time. Century Housing Corporation's strong operating risk profile is evidenced by its overall positive financial performance, the high quality of its assets, with limited delinquencies and predictability in its interest income from loans. In addition, the overall demand for its products contributes to the growing income statement of the CDFI. Century Housing exhibits sophisticated and prudent risk management as it relates to their overall lending activity and liabilities. The CDFI has taken on debt in a prudent way to fulfill its mission. While Century Housing's leverage position is shifting based on new debt liabilities, this is directly correlated to how active their programs have become. In the wake of a more aggressive lending platform, the CDFI has issued debt without impacting its overall financial position and operating flexibility.

### **Financial Profile: Stronger**

A criteria variation was made to the financial profile analysis by focusing on CDFI's debt-to-equity as the key metric for evaluating leverage and comparing it with other affordable housing lending organizations. Century Housing has recorded increases in several key ratios across its financial profile over the past five years (FY 2015-2019). The CDFI's total assets continue to grow; however, at the same time, the liabilities are growing as they issue debt to add new high quality assets to the balance sheet. Despite the growth in their liabilities, Century Housing's debt-to-equity ratio is strong at 1.1x, compared with the typical range of 0.0x-7.0x range for housing issuers rated in the 'AA' category.

### **Asymmetric Risk Additive Considerations**

Asymmetric risk factors are neutral to the rating. Debt characteristics are manageable with level debt service payments with the ability to prepay debt early with high quality assets and repayment on predevelopment loans. In addition, the governing body is solid with sound extensive experience and stability.

### **RATING SENSITIVITIES**

Factors that could, individually or collectively, lead to positive rating action/upgrade:

- Strengthened financial performance reflected in positive trends in financial ratios over a sustained period of time could have a positive impact on the rating;

-Century Housing Corporation's leverage position is strengthened by stronger asset quality yielding a greater percentage of net assets to total debt as well as a decline in its debt-to equity ratio.

Factors that could, individually or collectively, lead to negative rating action/downgrade:

-The rating is sensitive to deterioration in Century Housing Corporation financial performance with a debt-to-equity ratio increasing to above 7x;

-Should Century Housing's revenue-generating programs, such as the short-term variable rate mortgage loans, show a major decline in interest earnings and fees the CDFI's assets and overall financial position may result in negative pressure on the rating;

-Though remote, given the current levels of total assets to total liabilities, the rating is also sensitive to potential loss in revenue producing assets, mainly mortgage loans for multifamily program losses. High levels of mortgage loan delinquency coupled with higher losses on income from investments and a reduction in grants that fall upon the corporation's revenue producing assets-to-total debt could strain the rating.

## **BEST/WORST CASE RATING SCENARIO**

International scale credit ratings of Public Finance issuers have a best-case rating upgrade scenario (defined as the 99th percentile of rating transitions, measured in a positive direction) of three notches over a three-year rating horizon; and a worst-case rating downgrade scenario (defined as the 99th percentile of rating transitions, measured in a negative direction) of three notches over three years. The complete span of best- and worst-case scenario credit ratings for all rating categories ranges from 'AAA' to 'D'. Best- and worst-case scenario credit ratings are based on historical performance. For more information about the methodology used to determine sector-specific best- and worst-case scenario credit ratings, visit <https://www.fitchratings.com/site/re/10111579>.

## **CREDIT PROFILE**

Century Housing Corporation is a mission-driven Community Development Financial Institution (CDFI) supporting quality affordable home development throughout California. With offices in Culver City and Oakland, Century provides end-to-end financing from predevelopment to permanent loans. Century Housing also serves as a reliable partner to state and local agencies, municipalities and other CDFIs in pioneering aggressive financing programs like the Golden State Acquisition Fund and L.A. County Housing Innovation Fund.

Century Housing finances affordable housing developments throughout California. From acquisition loans to bridge and construction loans, Century Housing has worked for more than 20 years to provide tax-credit developers and infill developers with loan solutions.

From its beginnings as a state agency and through the past 25 years of service as a private nonprofit, Century Housing's work has resulted in more than \$1.9 billion in financing for over 42,000 new affordable and workforce homes, more than \$600 million in capital under management, and nearly 4,700 construction jobs created in 2019 alone.

## **Revenue Defensibility**

Since becoming privatized in the mid-90s, Century Housing has financed more than 43,000 affordable apartment homes with more than \$1.9 billion in loan. Despite this, California's shortage of affordable housing persists. While no state has an adequate supply of affordable rental housing for

the lowest income renters, the state of California has the most severe gap according to the National Low Income Housing Coalition, having less than the national level of affordable and available units per 100 households at or below the extremely low income threshold. California tops the list as of March 2020 with a deficit of 998,613 units for individuals at or below extremely low income threshold; this translates to about 26 available units per 100 households. The two metropolitan areas with the most severe deficit and demand for affordable housing are Los Angeles and San Francisco and the surrounding counties. Los Angeles' deficit of 377,117 translates to 20 available units per 100 households while San Francisco-Oakland area's deficit of 126,164 translates to 32 available units per 100 households.

There is strong demand across the state of California for affordable housing and Century Housing's competitive position is tied specifically to the types of products available to affordable housing providers along with its partnerships with other state and local agencies as well as non-profits that provide the same. The growth in Century Housing's asset base over the past five years demonstrates that they are responding to the overwhelming demand.

Affordable housing providers in general are price takers, which is the nature of their mission and lending model. The sophistication of Century Housing and its revenue generating assets is a key factor to offsetting the pricing characteristics. The variety of loan products, partnerships and investments are important to the overall model for the CDFI. Century Housing has an asset base made primarily of mortgage loans. The average net Interest spread, from 2015-2020 is 65%, which means that the nominal average difference between its borrowing and lending rates is strong. The spread is the difference between the average rates earned on assets minus the average rate paid on liabilities. This indicates that while they are price takers increasing their liabilities, they are making more on their low interest rate loan products than they pay for their overall liabilities. In 2019, Century Housing's total assets were \$475 million — the highest over the five year period and as far back as 2006. Of this asset base \$322 million were made up of mortgage loans. On average, (2015-2019) Century Housing's mortgage loan interest income was \$16 million while the average interest expense during the same time period was \$5 million.

## **Operating Risk**

Century Housing Corporation has created a model to fulfill their mission that does not impede on their ability to operate. The five year average of net operating revenue as a percentage of total revenues is 46%, which is an indicator of the CDFI's profitability. Century Housing's cost burden is low; creating flexibility in operations that contributes to positive margins. On a five-year average, Century Housing's operating revenue averaged \$22 million while total operating expense during the same time period averaged \$13 million.

Century Housing Corporation's net operating income on average is \$9 million. In 2019, the CDFI's total operating revenue totaled \$31 million while its expenses totaled \$18 million and net operating income was \$13 million. This is particularly strong considering Century Housing has taken on more debt in the last five years and still maintains a significant profitability margin. This is largely because the approach has been to tie the recent debt 1-1 to new mortgage assets creating a pass through concept.

Century Housing Corporation has a leverage model that they employ to account for annual volatility to cover at least three years of losses on the loan portfolio as well as its investments. In addition, while the CDFI's assets are mainly made up of mortgage loans they covenant that at all times 75% of the portfolio is made up of first lien mortgages. To date, the corporation has not added second lien mortgages to their portfolio above 10%, despite the 25% cap on those products. Lastly, the CDFI has maintained its sustainable revenue model of mortgage and investment income. They have

experienced over the last five years extremely low delinquencies with the average current loans between 2016 and first quarter 2020 being 96.24%.

## **Financial Profile**

Century Housing Corporation has four major components of income: Lending Operations, Investment Portfolio of Marketable Securities, Contingent Assets (which have no liabilities tied to them) and Grants. Year-over-year, the corporation's total assets increased on average by 17% at the same time total liabilities on average increased by 27%. However, over the previous five years the liabilities are about 50% less than total assets, creating a well-managed and stable leverage profile while at the same time growing the balance sheet with new assets derived from short-term bond liabilities.

Century has grown its balance sheet with new assets added by issuing debt and originating mortgage loans. The debt in most instances is short term in nature and is conterminous with the mortgage loans that are originated from it. Century Housing's debt obligations are also comprised of low interest rate notes payables and draws on lines of credit from Federal Home Loan Bank, Wells Fargo, US Bank and other local lending institutions. In 2019, Century issued \$100 million of bonds for housing lending activities (a portion to be refunded by the current issue) and had a total of \$240 Million in outstanding debt.

Century Housing's total cash, cash equivalents at the end of 2019 was \$147 million all of which is available for debt service. As Century Housing increased its net liabilities, the CDFI's total mortgage loan interest income increased from \$10.1 million in 2015 to \$26.6 million in 2019. At the same time, Century Housing's interest expense from amortizing debt increased from \$2 million in 2015 to \$10 million in 2019. On a five-year average, the ratio of interest- expense to interest-income is 30%. Century Housing's mortgage assets are 68% of total assets, generating more than half of the organization's revenue. Average net operating income after servicing its debt is \$11 Million, with 2019 being the highest ending at \$13 million.

There are four components to Century Housing's revenue sources. Mortgage loan interest income made up 42% of operating revenue in 2019 and averaged 33% from 2015-2019. The total investment interest income made up 3% in 2019 and averaged 5% during the same five-year period. The remaining operating revenue is derived from grants and off balance sheet income from single family and multifamily properties.

Asset quality is important to the CDFI's lending platform. While loan losses from delinquencies and real estate owned (REO) can often occur with the portfolio, over the past five years Century Housing has, on average, maintained 96% of its loans in a current position. This demonstrates strong asset quality with only 4% of the loans having experienced 30+ days delinquent. In addition, the CDFI has demonstrated that the REOs they do experience from properties in their portfolio are quickly divested to maximize the value of Century furthermore creating more funding sources to contribute to its lending platform. The largest amount the agency was potentially subjected to over the last five years was \$14 million in delinquencies at December 2019, which declined by 71% in the first quarter of 2020, with only \$4 million in delinquencies as of March 31, 2020.

While income from interest and dividends remains fairly stable year to year, realized and unrealized gain and loss can be volatile, because of the portfolio's inclusion of allocations to equities and high yield bonds. Historically these investments have provided a sufficient long term rate of return to justify the investment of such a significant proportion of assets but they do expose the portfolio to volatility. Century Housing's low leverage and high liquidity have enabled it to weather annual volatility. Further, it has demonstrated its commitment to adjust the asset allocation of its



investments continually to reduce volatility (and with it, expected return) as it increases leverage and/or confronts other risks over time. The effects of this de-risking of the asset allocation can be seen in the portfolio's relative performance during the market volatility associated with the current coronavirus pandemic. Century Housing's marketable securities were affected from the market conditions with a loss of \$10.7 million (a 10% decline) in March, at the beginning of April the losses declined to \$8 million (7% decline) and declined even further to \$3 million (2.7% decline). As of June 5, 2020, Century Housing's investment portfolio regained all of its losses that it experienced to date.

Century Housing does maintain contingent assets without liabilities that are off balance sheet; however, revenue derived from these assets is made available and placed into overall revenue for the CDFI. Predicting the timing of pay offs from Century Housing's off balance sheet portfolio of contingent assets and residual receipt loans is difficult, and the CDFI does not depend on these assets for operations. While the assets are off balance sheet, Century Housing expects a significant proportion of the \$103.1 million value of this portfolio (\$62.7 million principal balance plus \$40.4 million of accrued interest) to pay off in the next six years as these loan assets reach maturity. In 2019, Century realized \$0.7 million in revenue from this off balance sheet portfolio and realized another pay off of \$7.7 million in second quarter 2020.

Lastly, as with most non-profit organizations, grant revenue cannot be forecast with certainty. Century Housing's experience to date in applying for Department of Treasury CDFI Fund Capital Magnet Fund (CMF) and Financial Assistance (FA) grants has been positive; it received awards in all but one round of funding applied for, resulting in a cumulative grant total of \$22.4 million through the first quarter of 2020. While continuing grant awards are not assured, some level of future grant income is probable. In 2019 the CDFI received \$7.5 million in Capital Magnet Fund and \$0.7 million in Financial Assistance grant proceeds plus an additional \$0.3 million in contributions. Century Housing received an additional Capital Magnet Fund award of \$4.8 million in May of 2020.

### **Asymmetric Risk Additive Considerations**

Century Housing's debt characteristics are neutral to the rating given the type of debt outstanding as of 2019, including the issuance of the Series 2020 sustainability bonds. During 2019, the Corporation issued Century Housing Impact Investment Bonds, Taxable Series 2019 in the principal amount of \$100,000,000 pursuant to the terms of an Indenture of Trust, dated as of Jan. 1, 2019, with the BNY Mellon as trustee. The Bonds are a general obligation of Century Housing payable from all legally available revenues and assets of Century. The proceeds were used to refinance existing obligations and finance loans related to the development of multi-family affordable housing. The bonds were issued in tranches, wherein \$50 million, \$40 million and \$10 million bear interest rates of 3.824%, 3.995% and 4.148%, respectively, and have maturity dates of Nov. 1, 2020, Nov. 1, 2021 and Nov. 1, 2023, respectively. Interest incurred during 2019 was \$3,532,320. Debt issuance costs are being amortized to interest expense over the term of the bonds.

Additionally, Century Housing's Series 2020 (Sustainability Bonds) will be issued in an amount up to \$100 million to refinance certain existing obligations which principally financed loans made by Century Housing related to the development of multi-family rental housing in furtherance of Century Housing's goals to provide secure and affordable housing for families and individuals of modest means. A portion of the Series 2020 bonds will be used to refund \$50 million of 2019 outstanding bonds. The bonds will have semi-annual interest payment dates of May 1 and Nov. 1 commencing Nov. 1, 2020. The bonds are expected to consist of term bonds due Nov. 1, 2022 and 2023 and may include some longer tenors, as well. The Series 2020 bonds are subject to optional redemptions in full and in part from prepayment of loan payments by the borrowers unless such bonds shall be deemed to have been paid in full. Fitch analyzed this debt issuance assuming \$75 million with a three-year maturity and potential for a 20-year maturity for \$25 million.

Century Housing is a well governed organization with experienced management and a nine member board with a variety of backgrounds in and around California. In addition, Century has an eleven member executive team all of which many have significant experience in affordable housing development and lending at Century Housing or other mission driven organizations.

Century Housing has a leverage model that allows them to determine what the expected increase in leverage will be over the next few years with increasing loan asset volume; the annual rate of increase should reduce over time. Fitch analyzed the financial statements dating back to 2006 when Century Housing was completely unlevered (except for a \$2.8 million mortgage on Century's headquarters building). Century Housing provided Fitch with a leverage model that includes input ranges for stress testing scenarios based on the scenario analysis concept defined in Fitch's Public Sector, Revenue-Supported Entities Rating Criteria. Century does not anticipate that leverage will exceed 2.5x to 1.0x. Century Housing's revenue producing assets-to-debt was 1.9x in 2019 while the debt-to-cash available for debt Service, including the Series 2020 bonds, is 1.9x.

Century Housing is certified by the Community Development Finance Institutions Fund (a division of the Department of Treasury).

Century Housing's continuing disclosure includes audited financial statements and operating statistics for each fiscal year. In addition, they complete an annual report. These reports are complete timely and are made publicly available on their website dating back to 2006.

#### **CRITERIA VARIATION**

Variation from Published Criteria

The analysis includes a variation from the Rating Criteria for Public-Sector, Revenue-Supported Debt. As Century Housing is rated solely using the master criteria, Fitch determined the most appropriate comparability is with State Housing Finance Agencies, as these are also affordable housing lending. As such, Fitch has utilized debt to equity as the key metric in the financial analysis, as it is the most relevant for affordable housing lending organizations. Fitch has referred to other rated affordable housing lending organization for peer comparison. Century Housing's debt-to-equity ratio of 1.1x, compares favorably with the 0.0x-7.0x range for housing issuers rated in the 'AA' category.

#### **DATE OF RELEVANT COMMITTEE**

11 June 2020

In addition to the sources of information identified in Fitch's applicable criteria specified below, this action was informed by information from Century Housing Corporation.

---

### **[GASB to Hold July 28 Virtual Public Hearing on Proposal to Enhance Concepts for Notes to Financial Statements.](#)**

Norwalk, CT, June 18, 2020 — The Governmental Accounting Standards Board (GASB) has scheduled a July 28 virtual public hearing on its Exposure Draft of a proposed Concepts Statement. The public hearing will take place by videoconference.

The deadline for providing written notice of intent to participate in the virtual public hearing is June 30, 2020.

The [Exposure Draft](#), *Communication Methods in General Purpose External Financial Reports That Contain Basic Financial Statements: Notes to Financial Statements*, would enhance the guidance the Board follows when it establishes note disclosure requirements for state and local governments. The proposals set forth in the Exposure Draft would replace, in the GASB's existing conceptual framework, the criteria for disclosing information in notes to financial statements.

Stakeholders are encouraged to review the document and provide comments by June 30. The Board extended the original April 17, 2020 deadline to allow respondents additional time to provide feedback in light of the ongoing pandemic.

The notification of the intent to participate in the public hearing and comments on the proposals should be addressed to the Director of Research and Technical Activities, Project No. 3-34, and emailed to [director@gasb.org](mailto:director@gasb.org). Additional information is available in the Exposure Draft.

---

## **[SEC Grants Temporary Conditional Exemption for MAs.](#)**

### **Follows BDA Recommendations to Vastly Narrow Scope**

Chairman Jay Clayton today announced that the Commission has issued an emergency order providing a "temporary conditional exemption" allowing Municipal Advisors to engage in certain small private placement activities without registering as broker dealers. The relief will expire on December 31, 2020.

**\*\*BDA SEC advocacy can be viewed [here](#)**

**The temporary order can be viewed [here](#)**

**The BDA analysis of the temporary order can be viewed [here](#)**

**While it's been clear from day one the SEC wanted to grant relief to sought by PFM and NAMA, the BDA - with direct engagement from members - through 10 separate meetings at the SEC and 4 comment letters to the SEC was instrumental in this relief being very limited and temporary. We're unhappy the SEC moved ahead at all and we will continue working with the SEC and others to ensure it doesn't become permanent. This however is a much better outcome than has been expected from the start of this process.**

### **Below is an outline of the Order:**

The order states "In order to facilitate more timely and efficient access to bank financing alternatives by municipal issuers during this historic COVID-19-related market disruption, we are issuing this Order granting an emergency, temporary conditional exemption permitting registered municipal advisors to solicit a defined set of banks, wholly-owned subsidiaries of banks, and credit unions in connection with certain direct placements of municipal securities by their municipal issuer clients."

Today's emergency order imposes certain conditions on the relief provided.

These include:

- The investor or lender must be a bank or credit union;
- The maximum deal size is \$20 million;

- Private placements only, no public offerings.

In addition, the investor or lender—the “Qualified Provider” in the parlance of the order—must make certain representations to the MA, including:

- That the firm is a bona fide “Qualified Provider”;
- That the QP is capable of evaluating the risks of the transaction;
- That the QP is not purchasing the bonds with the intention of redistribution; and
- The QP will not transfer the bonds within one year of closing the transaction.

In addition, the order specifies the following additional restrictions:

- The minimum denomination for bonds placed under the order is \$100,000; and
- During the first year after closing the QP may sell the bonds only to another QP.

The order also imposes record-keeping and reporting rules for MAs relying on the exemption and specifies a December 31, 2020 expiration.

**While the order is disappointing, we are encouraged that it applies to a narrow slice of transactions and that the restrictions imposed by the SEC track closely the restrictions BDA recommended in our advocacy with the SEC related to the 2019 draft Exemptive Order over the last 15 months. We continue to work with SEC commissioners and staff on issues related to bank placements and the 2019 draft EO.**

#### **Bond Dealers of America**

June 16, 2020

---

### **[Announcing GFOA's New Learning Management System.](#)**

GFOA members, as adult learners, have diverse and unique learning needs. One way does not apply to all! To help meet the different needs and learning styles of individuals, we're excited to announce that we've expanded opportunities for you to advance your professional development goals through GFOA's new learning management system (LMS).

[Click here](#) to register for courses now!

---

### **[MSRB Municipal Securities Market COVID-19-Related Disclosure Summary for the Week Ending June 14, 2020.](#)**

Interested in how COVID-19 is affecting the finances of state and local governments? Check out this week's [report](#) aggregating 9,000 financial and other disclosures submitted to EMMA since January that reference the pandemic.

---

## **S&P: Moderating Debt Burdens Allow Some U.S. States Room To Borrow During A Recession**

### **Key Takeaways**

- With debt profiles comparatively stable since the Great Recession, S&P Global Ratings expects states will look to increase their capital borrowing.
- Generally, debt levels are sustainable at low-to-moderate debt ratios with capacity for growth for most states.  
Acceleration in infrastructure spending could buoy states' economies and induce longer-term growth.
- From a regional perspective, with the exception of California and Washington, the states at the top of total tax-supported debt list are all east of the Mississippi River.

[Continue reading.](#)

---

## **S&P U.S. State Ratings And Outlooks: Current List - 6/19/20**

[View the current list.](#)

19 Jun, 2020

---

## **S&P History Of U.S. State Ratings.**

[View the histories.](#)

19 Jun, 2020

---

## **SEC Commissioners Address Municipal Securities Disclosure Practices.**

At the 2020 Municipal Securities Disclosure Conference, Chair Jay Clayton, Commissioners Hester Peirce and Elad Roisman and Office of Municipal Securities Director Rebecca Olsen solicited feedback on ways to improve municipal securities disclosure practices.

Mr. Clayton [expressed concern](#) over the lack of clarity regarding whether an issuer is in compliance with ongoing disclosure obligations. He requested feedback on a Fixed Income Market Structure Advisory Committee recommendation that the Commission consider the need for the creation of a disclosure framework, including timeframe obligations.

Mr. Roisman [emphasized](#) that municipal issuers would benefit from greater clarity on both the content and timing of the information. He noted that efforts to improve transparency within the municipal market are “daunting” as a result of the diversity of issuers. However, he stated, it is ultimately necessary to ensure regulations are evolving with markets “fairly and favorably for all investors.”

Ms. Peirce [cautioned](#) against utilizing “one-size-fits-all directives” for municipal issuers. Ms. Peirce raised a number of questions regarding the role of the Commission in shaping those practices, among them:

- whether corporate issuer disclosure standards should be applied to municipal issuers;
- how to balance investor protection concerns and the “political implications of fact-checking government officials’ public statements”; and
- how the Commission can provide assurance to issuers that are hesitant to make disclosures due to potential legal liability.

Ms. Olsen [described](#) a recent [Staff Legal Bulletin](#) as to trading in municipal securities in the secondary market. She also called attention to recent statements on the importance of disclosures in light of COVID-19 ([see previous coverage](#)).

**Cadwalader Wickersham & Taft LLP - Steven D. Lofchie**

June 17 2020

---

## **[SEC Says Municipal Bond Disclosures Should Be More Frequent, Forward-Looking in Light of COVID-19 - Barnes & Thornburg](#)**

Issuers of municipal securities are being urged by the chairman of the Securities Exchange Commission (SEC) and the director of the Commission’s Office of Municipal Securities to communicate more with investors.

The SEC issued a statement entitled “[The Importance of Disclosure for our Municipal Markets](#)” on May 4. The statement is directed to issuers of municipal securities and investors and other participants in the municipal securities markets. It was prompted by the effects of COVID-19 raising uncertainties regarding the financial status of municipal bond issuers.

It specifically encourages issuers:

- To develop and provide “voluntary, unaudited, and non-routine disclosures regarding their current financial status and operating condition”
- To provide “forward-looking” information regarding the potential future impact of COVID-19 on their financial status and operations

The SEC statement applies to disclosure for both new bond issues and continuing disclosure to the secondary market for municipal bonds.

The statement acknowledges that developing and making these more frequent disclosures containing “forward-looking” information “may be challenging, particularly under the current circumstances” and that each issuer, in many cases in consultation with legal counsel, will have to assess the risk of making these additional disclosures.

**Barnes & Thornburg LLP - Kirk E. Grable, Randolph R. Rompola, Anneliese V. Williams and Gregory W. Stype**

June 15 2020

---

## **SEC Hosts Secondary Market Municipal Disclosure Virtual Conference.**

Today, the SEC Office of Municipal Securities hosted a virtual conference titled, *Spotlight on Transparency: A Discussion of Secondary Market Disclosure Practices*. **The event, which was originally scheduled for March, was opened by Chairman Jay Clayton who announced the Commission will provide a “temporary conditional exemption” allowing Municipal Advisors to engage in certain small private placement activities without registering as broker dealers.**

**\*\*The BDA analysis of the order can be viewed [here](#).**

The conference included a wide range of market participants and featured discussions of current secondary market disclosure practices, including COVID-19 related disclosure and potential opportunities for regulatory and industry improvement.

**The agenda can be viewed [here](#).**

### **Voluntary Disclosure Practices in the Secondary Market**

This panel focused on municipal issuer and conduit borrower voluntary disclosure practices in the secondary market. This discussion included the effects of changes in tax receipts received, changes and trends in disclosures due to COVID-19, and expectations of disclosure throughout the remainder of 2020.

### **Perspectives from the Buy Side**

The discussion focused on secondary market disclosure from the perspective of the buy-side. This included a review of initial disclosures following the outbreak of COVID-19, and how this has impacted buy-sell-hold decisions this spring. The panel also discussed the recent [SEC Staff Legal Bulletin](#) regarding antifraud provisions in municipal disclosure and how that was received in both the issuer and investor communities.

### **Secondary Market Disclosure Hot Topics**

This panel featured a discussion of the new 15c2-12 events 15 and 16 and the dramatic uptick in event 15 notices filed with the MSRB in recent months. The panel also discussed disclosure trends by sector, and the uptick of financial obligations reported since the onset of COVID-19

### **Bond Dealers of America**

June 16, 2020

---

## **Powell Urges Congressional Help for Unemployed, Municipalities as Economy Recovers from Coronavirus.**

Federal Reserve Chairman Jerome Powell on Wednesday specifically recommended that Congress extend unemployment insurance benefits, support state and local governments, and funnel more help to cash-strapped small businesses.

Historically, the central banker has shied away from providing recommendations on what policies Congress should pursue. However, Powell expressed concern that an emerging recovery from the coronavirus pandemic could prompt lawmakers to curtail support prematurely.

"I would think that it would be a concern if Congress were to pull back from the support that it is providing too quickly," Powell said in virtual testimony to the House Financial Services Committee. He repeated that both the Fed and Congress should be prepared to do more based on the trajectory of the recovery.

Through the Coronavirus Aid, Relief, and Economic Security (CARES) Act passed in late March, those laid off from their jobs during the crisis are entitled to receive up to \$600 a week in additional unemployment insurance. However, the additional payment only lasts through July.

Powell added that while the May jobs report showed Americans going back to work fairly quickly, not all industries should expect to see rehiring right away. In high-contact services industries like food and accommodation, travel, and tourism, Powell warned that unemployment benefits may be needed past July, as unemployment could persist for a while.

"I think better to keep them in their apartments, better to keep them paying their bills," Powell said, declining to offer recommendations on specific policies.

Over the last few weeks, the Fed has emphasized that more help may be needed from monetary policy in addition to fiscal policy. In a speech Tuesday night, Fed Vice Chairman Richard Clarida acknowledged the central bank's unprecedented effort to ease financial conditions "may not prove to be durable, depending on the course that the coronavirus contagion takes."

## **Municipal help**

Fed chairs are usually reluctant to offer recommendations on fiscal policy, part of the central bank's efforts to insulate its actions from the politics of Capitol Hill.

But amid the COVID-19 crisis, Powell has gradually offered more commentary on Congressional actions, in part because much of the Fed's emergency actions are rooted in the CARES Act.

The Fed has launched eleven liquidity facilities as part of an unprecedented response to backstop a collapsing economy. Those include aid to corporate debt markets and loans to Main Street businesses, many of which are backed by over \$200 billion of the \$454 billion pot of money appropriated to the Fed and the U.S. Treasury via the CARES Act.

In May, Powell deflected a question about what to do about municipalities across the country facing funding gaps, due to income and business tax bases drying up from the COVID-19 crisis.

"We try to stick to our knitting over here," Powell said in testimony to the Senate on May 19.

Powell's tone was markedly different on Wednesday, as he expressed concern that budget shortfalls are already leading to widespread layoffs in state and local governments. In April, 981,000 state and local government jobs were lost, and even the overall positive May jobs report detailed another 571,000 job losses in the sector.

"It will hold back the economic recovery if they continue to lay people off and if they continue to cut essential services," Powell warned.

Powell said direct support for municipalities would be "worth looking at." For the Fed's part, the



central bank has stood up a Municipal Liquidity Facility to offer loans to states, local governments, and even some public authorities (like the New York Metropolitan Transit Authority).

## **Yahoo Finance**

by Brian Cheung

June 17, 2020

---

### **States Grappling With Hit to Tax Collections.**

COVID-19 has triggered a severe state budget crisis. While the full magnitude of this crisis is not yet clear, state revenues are declining precipitously and costs are rising sharply with many businesses closed and tens of millions of people newly unemployed. Due to the economy's rapid decline, official state revenue projections generally do not yet fully reflect the unprecedented fiscal impact of the coronavirus pandemic. In many cases, states do not even know how much their revenues have already fallen, in part because they've extended deadlines for filing sales and income tax payments that otherwise would have been due in recent months. Executive and legislative fiscal offices in many states are analyzing new economic projections and producing initial estimates of the damage before state legislatures meet in regular or special sessions to address shortfalls. Some states have released initial or preliminary estimates. (See Table 1.)

[Continue reading.](#)

## **Center on Budget and Policy Priorities**

JUNE 15, 2020

---

### **States Continue to Face Large Shortfalls Due to COVID-19 Effects.**

The restoration of a portion of the jobs lost as a result of COVID-19, as reflected in the Labor Department's recent jobs report for May, was welcome news. Nevertheless, the economy remains in a deep recession, and state and local governments have been hit particularly hard. We now project that the state budget shortfalls expected from COVID-19's economic fallout will total a cumulative \$615 billion over the current state fiscal year (which ends on June 30 in most states), the new state fiscal year that starts on July 1, and the subsequent state fiscal year. This figure is for state shortfalls only and does not include the additional shortfalls that local and tribal governments and the U.S. territories face.

The private-sector job market performed somewhat better in May than many economists had expected, and this has led to some improvement in the outlook for the period ahead. That, in turn, has somewhat moderated the size of the shortfalls states face now and in the coming years. But states remain in dire straits; in just three months, state and local governments have furloughed or laid off more than 1.5 million workers[1] — twice as many as in all of the Great Recession. While some of those workers, such as school bus drivers and college security staff, are often furloughed during the summer, many of these and other workers will lose their jobs permanently in the coming weeks as states cut spending to balance their budgets, unless the federal government provides

substantially more aid.

Our new shortfall figure, which is based on the Federal Reserve Board's summary of economic projections from last week[2] and the Congressional Budget Office's (CBO) May projections,[3] is lower than our estimate of three weeks ago but higher than our projection of early May.[4]

[Continue reading.](#)

## **Center on Budget and Policy Priorities**

BY ELIZABETH MCNICHOL MICHAEL LEACHMAN

JUNE 15, 2020

---

### **[States Face 'Uphill' Fight as Financial Gains Reverse, Firm Says.](#)**

U.S. states are facing unprecedented fiscal stress and are poised to draw down their reserves as the pandemic-related shutdowns hammer tax collections, marking a stark reversal for governments that just a year ago were in the strongest financial shape in a decade, according to Conning.

The investment firm, which oversees \$8.8 billion in municipal bonds and issues an [annual report](#) on states, changed its outlook on their credit quality to negative from stable because of the coronavirus.

"The long-term impact of the Covid-19 pandemic on states' credit quality will be significant," Karel Citroen, head of the municipal credit research group at Conning, said in a statement. "States are facing an uphill battle with decreased sales and income tax revenues. They will have to address funding gaps by either using reserves, issuing debt, reducing expenditures and/or increasing revenues."

U.S. states are projected to see budget deficits of \$615 billion through 2022, a bigger hit than they faced in the immediate wake of the last recession, according to the Center on Budget and Policy Priorities.

States with growing populations and strong reserve levels will be able to better weather the downturn, Citroen said in an interview. Utah remains the top-ranked credit, and South Carolina shot up 17 positions in a year to the fifth spot on the back of strong population growth, strong reserves, a growing economy and relatively low fixed costs, according to the report.

However, for states with high fixed costs, like legacy pension liabilities, and low reserve levels — including Illinois and Kentucky, which Conning assigned the lowest rank — the crisis will be hard to navigate without major structural changes, Citroen said.

These states risk falling into a "snowball" effect where population loss and high fixed costs translate into a need to increase taxes, which in turn will make them less desirable locations to live, said Citroen. The reverse is also true for the highly-ranked states with growing populations, he added.

"The divergence between the higher ranked states and the lower ranked states is going to increase," Citroen said in an interview. "It's so much easier to adjust or react to what we're seeing right now with Covid-19 if you have the solid tax base to begin with, if you have reserves you can dip into."

**Bloomberg Markets**

By Fola Akinnibi

June 16, 2020, 5:00 AM PDT

---

## **[Fitch: Student Housing Vulnerable in New Normal of Higher Education \(Pressures on Universities, Public Private Partnerships and CMBS Loan Performance\)](#)**

[Read the Fitch Special Report.](#)

Tue 16 Jun, 2020 - 11:47 AM ET

---

## **[Fitch: Coronavirus Weakens Student Housing PPP, US CMBS Performance](#)**

Fitch Ratings-New York-16 June 2020: Unprecedented pressures on colleges and universities as a result of the coronavirus will weaken student housing asset performance across sectors, according to Fitch Ratings. Student housing public private partnerships (PPP) metrics have generally been stable through 2019, but student housing loans held by US commercial mortgage-backed securities (CMBS) portfolios performed weaker compared with the overall multifamily sector even before the outbreak. The effects of the pandemic are expected to further impair standalone student housing performance, as described in Fitch's recently published report [Student Housing Vulnerable in New Normal of Higher Education](#).

Factors that traditionally drive student housing occupancy are now informed to a large extent by the course of the coronavirus and its effect on university enrollment trends and housing density policies. Declines in student revenues as a result of reduced enrollment will pressure standalone university housing and PPP projects. Most university-owned housing systems, which are secured by multiple revenue sources and not solely by net housing revenue, will be less affected.

Fitch's college and university base case scenario anticipates declines in enrollment in the upcoming school year to range between 5% to 10% with most residential campuses reopening in fall 2020. Our downside scenario considers declines of up to 20%, and sporadic closures if a spike of coronavirus cases occurs during the academic year. The continuation of distance learning in the fall would have an even more negative effect on housing and parking revenues, directly affecting demand-driven PPPs as well as the ability or willingness of CMBS borrowers to make debt service payments on student housing loans.

[Continue reading.](#)

---

## **[Higher-Education Bonds in a COVID-19 World.](#)**

As the economy reopens from COVID-19 restrictions, a question looms: What will colleges and universities look like come fall? Will students return to a more normal on-campus learning experience, some form of online experience, a combination of both ... or will they simply not return?

The question is important to municipal bond investors because the education sector accounts for roughly 7% of the investment-grade muni market.

We believe the core of a well-built muni portfolio should consist primarily of general obligation bonds and essential-service revenue bonds. However, for investors who wish to expand their municipal portfolios, another area to consider is higher-education revenue bonds, or bonds that are issued by public or private universities or colleges. But don't consider just any university or college, especially in a COVID-19 world.

[Continue reading.](#)

## **Advisor Perspectives**

by Cooper Howard of Charles Schwab, 6/22/20

---

### **TAX - RHODE ISLAND**

#### **[ACP Land, LLC v. Rhode Island Public Utilities Commission](#)**

#### **Supreme Court of Rhode Island - June 1, 2020 - A.3d - 2020 WL 2829552**

Owners and operators of solar energy systems and wind turbines petitioned for review of Public Utilities Commission (PUC) order that approved interconnection tax which electric and gas utility charged owners and operators to interconnect to utility's power distribution system and then paid to IRS as contributions in aid of construction.

The Supreme Court held that:

- Utility was reasonable in believing that it owed an interconnection tax to IRS, and
- PUC order comported with parties' settlement with respect to escrow or refund of tax funds.

As reasonably determined by Public Utilities Commission (PUC), electric and gas utility was reasonable in believing that it owed interconnection tax to IRS as contributions in aid of construction, which utility passed along to owners and operators of solar energy systems and wind turbines to interconnect to utility's power distribution system, where IRS notice relating to possible safe harbor from interconnection tax for power generators connecting to a distribution system was not clear when read as a whole, utility hired nationally-recognized accounting firm to analyze IRS notice, accounting firm produced opinion that IRS notice was not clear, and, in a private letter ruling six months before release of notice, IRS had reached a conclusion opposite to that claimed by owners and operators.

Public Utilities Commission (PUC) order approving interconnection tax that electric and gas utility reasonably charged wind and solar power generators and paid to the IRS comported with parties' settlement with respect to escrow or refund of tax funds, where, under settlement agreement, utility agreed to hold tax funds in escrow until a decision was made by PUC and not by IRS, PUC determined that utility was reasonable in continuing to charge an interconnection tax, and PUC order did not provide for a refund of collected taxes to generators.

---

## **A Warning to Muni Bond Investors: Coronavirus Recession Will Decimate State Finances**

### **'Defund the police?' More like 'defund everything'**

The effects of the coronavirus pandemic have spread widely, causing over 100,000 deaths in the U.S., massive disruptions to the global economy and the loss, however briefly, of some 40 million jobs.

Now the next wave is about to hit: Shutdowns, layoffs, and business bankruptcies will cause a sickening drop in tax revenues for state and local governments, plunging their budgets deep into the red. That is likely to result in steep drops to government payrolls, maybe higher taxes and cuts in essential services.

It also could mean sharp declines in the quality of life of thriving urban centers. And it makes municipal bonds, which have done exceptionally well in recent years and have become particularly attractive to middle- and upper-middle-class people in high-tax states, a far less desirable investment.

[Continue reading.](#)

### **MarketWatch**

By Howard Gold

June 19, 2020

---

## **Cities Turn to K Street for Help with Coronavirus.**

CITIES TURN TO K STREET FOR HELP WITH CORONAVIRUS: The National League of Cities has hired its first Washington lobbying firm in more than a decade as the country's cities grapple with the coronavirus and the resulting budget shortfalls. Former Rep. Ed Royce (R-Calif.); Nadeam Elshami, a former chief of staff to House Speaker Nancy Pelosi; and nine others at Brownstein Hyatt Farber Schreck will lobby on municipal finance and the coronavirus, among other issues, according to a disclosure filing.

— "This is an unprecedented time in our country and for cities economic needs," a National League of Cities spokesperson said in a statement. "The National League of Cities hired additional lobbying support to secure critically needed direct, flexible federal aid and support to help with our Cities Are Essential campaign. Local governments are calling for at least \$500 billion in direct federal funding to protect families, municipal workers and America's economic future in response to the COVID-19 pandemic."

— The National League of Cities' decision to hire the lobbying firm came as a number of cities have turned to K Street for aid securing aid from the federal government. The city of Denver also hired Brownstein Hyatt in April to lobby on municipal finance "with a priority emphasis on COVID-19." The city of Savannah, Ga., hired Holland & Knight to lobby on the coronavirus last month; the city of Detroit hired former Transportation Secretary Rodney Slater and another Squire Patton Boggs lobbyist last month; the city of Coral Springs, Fla., hired Alcalde & Fay in April to lobby on the coronavirus; and the city of Vallejo, Calif., hired Akin Gump Strauss Hauer & Feld.

— The National League of Cities also called on the Justice Department on Thursday to update its use of force guidelines for police officers. “While we appreciate the speed at which Congress and the Administration are moving to reform our nation’s law enforcement, federal actions taken thus far — including the President’s Executive Order signed this week — only scratch the surface of the critical reforms that our communities are desperately calling for,” Clarence Anthony, the group’s chief executive, said in a statement. But Brownstein Hyatt isn’t lobbying on police reform for the National League of Cities, according to the group.

POLITICO

By THEODORIC MEYER 06/19/2020 02:36 PM EDT

*With David Beavers and Daniel Lippman*

---

## **[NABL: House Democrats Release Moving Forward Act Fact Sheet](#)**

Good afternoon,

Today, House Democrats announced plans for permanently reinstating Build America Bonds and tax-exempt advance refunding bonds while also expanding the issuance of private activity bonds. Speaker Nancy Pelosi said the proposals would be combined into one bill known as the Moving America Forward Act that will be voted on by the House July 1 or 2.

A fact sheet is [here](#).

We are awaiting further details and bill text, but a number of top priorities are expected to be in the package, including:

- Restoration of advanced refunding bonds
- Municipal Bond Market Support Act, HR 3967
- Revival of Build America Bonds
- New Markets Tax Credit permanence legislation, H.R. 1680

I will follow up with further details as they are released.

-----  
Jessica Giroux  
National Association of Bond Lawyers  
Washington, DC  
(202) 503-3300  
-----

---

## **[Is Another Exodus Ahead for U.S. Cities?](#)**

**Without the right policy response, the pandemic and civil unrest could undo decades of urban progress.**

Picture two young people living in the same divided American city, both of whom decided to take to

the streets to protest police violence in the wake of the killing of George Floyd. One is working-class, recently unemployed and living with extended family in a neighborhood plagued by violent crime. The other is upper-middle-class, securely employed and living with a spouse in a much safer neighborhood where serious crime is almost unheard of.

Both are committed to fighting racism and support defunding the police. But consider what happens if defunding the police doesn't turn out as its champions hope and the dangerous neighborhood grows more dangerous, the safe neighborhood less safe. Will the better-off of the two young people choose to endure a deteriorating quality of life in solidarity with the poorest of her neighbors? Or will she move out of the city and leave her fellow protester to pick up the pieces? If I had to guess, I suspect she'd bolt. Self-interest has a way of trumping other considerations, including ideological ones.

The twin crises of Covid-19 and the recent civil unrest represent a turning point for urban life in America. They could herald an age of disorder and disinvestment for the American metropolis, or a civic revival that lifts the fortunes of city-dwellers of every color, class and creed.

As recently as February, it was hard to imagine that the workers, investors and entrepreneurs who have flocked to America's cities in recent years would flee en masse, not least because most cities had become so safe. Violent crime in the U.S. has fallen by half since the early 1990s, when the crack epidemic was raging in neighborhoods around the country. Hundreds of thousands of lives have been spared as a result of this extraordinary crime decline. Communities that saw steep declines in violence also saw increases in academic achievement, according to a 2014 study in the journal *Sociological Science* by Patrick Sharkey and colleagues.

The crime decline helped to stem the flow of people out of inner-city neighborhoods. It led a not insignificant number of high-income and college-educated families to choose to build their lives in neighborhoods that were once blighted and abandoned. It also created opportunities for less-skilled workers, many of them immigrants. Even as middle-skill jobs in production and clerical work evaporated, a large and growing urban service economy was a hopeful sign. Jobs in hospitality or entertainment, for example, depend on face-to-face interaction and a modicum of human warmth, making them resistant to automation.

Then the pandemic struck, causing a massive rupture in urban life that left millions of service workers unemployed, idle and angry. This development almost certainly contributed to the recent outbreaks of violence that were intertwined with the Floyd protests. Inevitably, the crippling of the service economy has also made urban life less attractive for the skilled professionals who fueled its expansion with their spending.

The shutdowns have already taught many large employers that much knowledge work can be done remotely. It remains to be seen if the rise of Zoom will transform America's urban geography, but it would be foolish to dismiss the possibility. In a recent survey of 1,500 U.S. hiring managers, Adam Ozimek, the chief economist at the online freelancer platform Upwork, found that 61.9% expected their workforce to be more remote in the years to come.

Consider the post-1960s transformation of America's urban cores, when poor black migrants arrived in large numbers and middle-class white residents fled. It's common to reduce this "white flight" to racial animus, and no doubt it played a role. But as the Princeton economist Leah Boustan observed in her 2017 book *"Competition in the Promised Land,"* many middle-class whites decamped for the suburbs in those years even when their own neighborhoods remained as white as ever.

Part of the story is that the arrival of poor black migrants changed the composition of the municipal

electorate, shifting the political balance in favor of increased spending on public services, which meant higher taxes. In other words, white flight often amounted to people fleeing taxes, some of whom surely thought of themselves as committed to the cause of racial justice. And though this middle-class exodus started with white city-dwellers, many upwardly mobile black families soon made the same journey.

One can imagine a similar dynamic in the near future, with a steady outflow of middle- and high-income households driving change in the composition of municipal electorates. As cities grow poorer and less populous, and as public employees come to represent an even larger share of those with meaningful political influence, urban populists may promise to redistribute whatever wealth is left—which in turn will contribute to further outmigration.

What can be done to prevent a repeat of the post-1960s exodus from America's cities? The indispensable first step is to meet the threat of Covid-19, an effort that must be led by a competent and committed federal government. Failure to contain and ultimately defeat the pandemic would do grievous harm to cities, where the virus spreads most easily, and to America's prospects for a meaningful economic recovery.

While fighting the pandemic, however, public safety can't be taken for granted. Instead of calling for defunding the police, urban leaders should focus on how they can make police departments more capable and effective. To foster more positive police-community relations, departments would do well to embrace precision policing, which leans on community outreach and careful analysis of crime patterns. The aim is to minimize adversarial encounters with law-abiding people who happen to reside in unsafe neighborhoods.

Cities must also limit the collective bargaining rights of public sector employees, to ensure that labor contracts don't lock in place rigid work rules that make it exceedingly difficult to boost efficiency. The coming years will be a time of fiscal retrenchment, which means that cities will have to get creative to maintain or improve the quality of public services while limiting spending. That simply can't happen without increased flexibility.

It is also time to end the gentrification wars that have roiled our most prosperous and productive cities over the past decade. The problem is real: A number of once-impoverished urban neighborhoods have grown so attractive to educated professionals that working- and middle-class residents, not to mention the very poor, have found themselves priced out. But the solution is not to resist new development, especially in the current economic climate. The best way to solve the problem of displacement in these neighborhoods is to relax and rescind counterproductive regulations and allow developers big and small to build new homes.

Finally, cities would do well to embrace a more pluralistic approach to education. There should be room for high-performing charter school networks, support for low-income families who send their children to private schools, and a more differentiated approach to learning within district schools. Urban school districts ought to look to Idaho, which gives the parents of every seventh grader \$4,125 to spend on education however they wish, from AP classes to remedial summer courses to training programs at local community colleges.

All these measures recognize that urban residents aren't a captive audience. Cities are facing a much more competitive landscape than they were even six months ago. Those that succeed will do so by offering the highest quality of life at a price that won't cause sticker shock. That is the surest route to maintaining urban communities that are more integrated, prosperous and just—a goal worthy of this moment.



## The Wall Street Journal

By Reihan Salam

June 18, 2020 9:50 am ET

—Mr. Salam is the president of the Manhattan Institute and the author of “Melting Pot or Civil War? A Son of Immigrants Makes the Case Against Open Borders.”

---

### **While Washington Dithers, States Put Infrastructure Spending on Ice.**

**With no federal aid in sight, local governments are canceling construction projects.**

For years, U.S. infrastructure has been waiting for a blast of new money. Instead, the coronavirus slump is draining away the already limited resources available to maintain and improve it.

Just three months ago, when the country went into lockdown to curtail the spread of Covid-19, there were expectations the crisis would spur the government and lawmakers in Washington into long-delayed action. The Trump administration is preparing to unveil a \$1 trillion infrastructure proposal as part of its push to revive the U.S. economy, according to people familiar with the discussions, while Democrats today presented their own \$1.5 trillion plan. Yet experts say that even if a bipartisan deal could be struck, any increase in federal funding for highways, bridges, and the like may not be enough to compensate for reductions in infrastructure spending at the state and municipal levels, preventing many projects from moving forward.

Tara Beauchamp, a project manager at Anderson Columbia Co., a family-owned contracting company in Lake City, Fla., has already seen at least one project canceled because states have been tightening their spending. She’s worried that more will do so as the shutdowns and the recession eat into revenue streams that pay for transportation and other types of projects. Road traffic in the U.S. is down 38%, which is crimping revenue from excise taxes on gasoline and highway tolls.

“You don’t know when they’ll start trying to reserve money by being more cautious,” Beauchamp says about the states. “We’re going to senators and governors, preparing to tell them we need to keep the budget up for the state because a lot of people are affected. If we don’t have road work, Caterpillar is not selling to contractors. From paint subcontractors to concrete manufacturers to men who lay sod, it trickles down to so many people.” About 1 of every 10 jobs in America is related to infrastructure, according to the Brookings Institution.

Barbara Smith, chief executive officer of steelmaker Commercial Metals Co., based in Irving, Texas, told analysts in a March earnings call that she expected rapid moves toward an infrastructure bill. Some three months later, she and the rest of the industry are still waiting. In a May 19 interview, Smith said she worried about a slowdown in her business next year as states scramble to get a grip on how rising medical costs and other expenses related to the pandemic, as well as falling tax revenue, will impact them. On a June 18 earnings call she said she hasn’t abandoned hope that Republicans and Democrats could arrive at a compromise, given that both parties are eager to create jobs. “I think there will be something that both sides can agree on,” said Smith, noting that a deal in Washington could boost demand for steel by as much as 1.5 million tons.

Donald Trump has periodically called for more spending on infrastructure, including during his 2016 presidential campaign. On March 31 he tweeted that with interest rates back near zero, it would be

a good time for a \$2 trillion infrastructure bill. That echoed his call two years ago for Congress to dedicate \$1.5 trillion for infrastructure investment. That plan required states to put up at least 80% of the total costs of projects.

But hopes for federal legislation ended in May 2019 after Democrats said the president vowed not to work with them unless they stopped investigating him and his administration.

After the pandemic hit, both parties appeared to converge around the idea of a public works-centered stimulus inspired by Franklin Roosevelt's New Deal. But momentum dissipated following disagreements on how to fund it. (In case you're wondering, spending on Depression-era infrastructure programs totaled about \$207 billion in present-day dollars.)

The inability of politicians in Washington to find common ground is forcing bureaucrats at the state level to scramble for alternatives. The American Association of State Highway and Transportation Officials estimates an average loss of at least 30% of state transportation revenues in the next 18 months if lockdowns continue and people remain in their homes. The association is asking Congress to greenlight about \$50 billion in flexible federal spending to offset those losses.

States are required to match about 20¢ of every dollar they get from the federal government to build highways and bridges. If a state fails to make the match, Washington cancels the funding. That can be devastating for states such as Montana, which gets as much as 90% of its infrastructure budget from the federal government.

Beauchamp says Anderson Columbia mostly does highway and bridge work in Florida and Texas, two states where infrastructure funding is in good shape. But the company has already seen the cancellation of a tender for a \$709 million project in North Carolina to widen Interstate 95 near Raleigh. It's on a 20-page list of delayed projects that appears on the website of the state's department of transportation. North Carolina, along with Texas and Florida, is among a group of states seeing a sharp uptick in new coronavirus infections, which is forcing authorities to divert monies to help fund the public health crisis.

Most infrastructure projects are prefunded, meaning companies aren't all that worried about 2020. But Beauchamp and others are already fretting about 2021 projects that might not receive financing if states remain partially closed. The real test may come in a matter of weeks, when states finalize spending plans for the fiscal year that begins July 1.

"When you have to shut down restaurants and small business, the impact is very sudden and severe," says Joseph Kane, a senior research associate at Brookings. "But when it comes to infrastructure projects, those budgets are determined a long time before. So right now we're sort of at the tip of the iceberg in terms of these impacts."

Also looming in September is the expiration of the FAST Act, a program last reauthorized under the Obama administration in 2015 giving \$305 billion in funding over five years for surface transportation infrastructure planning and investment. Lawmakers face a choice of either extending it or coming up with a long-term replacement.

The plan Democrats unveiled today goes far beyond roads and bridges. It encompasses roughly \$500 billion in highway and transit funds, \$100 billion for schools, \$100 billion for affordable housing, \$100 billion for broadband, \$65 billion for water projects, \$70 billion for the electric grid, \$30 billion for hospitals and \$25 billion for the Postal Service over 10 years.

It's not yet clear how closely the plan the Trump administration is putting together will align with

the Democrats' proposal. "The bottom line is the state DOTs need a backstop," says Jay Hansen, executive vice president of advocacy for the National Asphalt Pavement Association. "All of them need Congress to do their job and pass a multiyear reauthorization bill with increased funding for investing in highways, roads, and bridges."

Smith, of Commercial Metals, said in the May interview that while her order book remains strong, her worry is that if state budgets run short and the FAST Act isn't renewed, the steel producer will see cancellations heading into next year. And that's the thing about the pandemic: The worry isn't just about a loss of economic activity now, but about the lingering effects of the virus months and potentially years down the line. "We have an economic shock that translates to an economic slowdown," she said. "But the FAST Act and making up some of the budget shortfalls could go a long way and be very helpful."

## **Bloomberg BusinessWeek**

by Joe Deaux

June 18, 2020

---

### **[Water Groups Propose New Fed Program, Return of Advance Refunding.](#)**

Water sector advocacy groups say water agencies will face cash-flow challenges over the next few years due to the coronavirus and want for federal relief through advance refunding and federal lending programs.

In a white paper released by the National Association of Clean Water Agencies this week, the group asked for different financing measures to help water facilities pull themselves through the pandemic. Those include asking the Federal Reserve to create a municipal short-term note program targeted for water systems and restoring tax-exempt advance refunding, among other tools.

Nathan Gardner-Andrews, NACWA's general counsel and chief advocacy officer, said he would want those provisions to be included in the next COVID-19 stimulus bill. Senate leaders have said that bill could be its last stimulus package. If their asks are not included in a stimulus bill, NACWA would want them to be folded into a water reauthorization bill, which has been introduced in both the Senate and House already, or an annual appropriations bill.

"The reality is that regardless if Congress passes another standalone coronavirus relief package that this federal government and Congress will continue to do things to address the economic fallout from the pandemic through the end of this year and maybe even into early next year," Gardner-Andrews said.

The water sector has been hit hard by the effects of COVID-19 and water utilities have said they are largely being left out of COVID-19 federal funding. NACWA estimated a \$16.8 billion revenue loss to clean water facilities and a \$13.9 billion revenue loss to drinking water utilities.

The water sector holds more than \$300 billion in outstanding municipal bond debt. Pre-pandemic, water sector issuers of different sizes had strong levels of liquidity, NACWA wrote.

"These metrics highlight that for most systems the crisis is less related to immediate cash requirements but instead related to the ability to withstand cash-flow challenges over the next

one to three years,” NACWA wrote. “This points to the opportunity to provide meaningful relief through restructuring of debt obligations.”

NACWA wants to bring back tax-exempt advance refunding, which was eliminated by the Tax Cuts and Jobs Act of 2017. A lower debt service payment would help water utilities absorb revenue losses and would help those with bonds callable in the next one to three years, NACWA said.

NACWA also wants to increase the cap on bank-qualified bonds to \$40 million from its current \$10 million, which would allow banks to expedite access to low-cost capital needed to help water facilities weather the pandemic, NACWA said. Bank-qualified bonds allow banks to deduct most of the carrying costs of the debt as a business cost. The bonds have to have been sold by an issuer that issues no more than the cap that calendar year.

NACWA also wants to see the Fed create a Water System Liquidity Facility, which would be similar to the Fed’s \$500 billion Municipal Liquidity Program.

The proposed program would provide short-term liquidity support for the water and wastewater sector. It would mirror the MLF closely, using a special purpose vehicle to purchase short-term notes and bond anticipation notes to assist in revenue impacts caused by COVID-19.

“Right now with the existing municipal window, water utilities have to jockey with every other municipal function and in most cases, it’s not the utility itself, it’s the city or county that is getting the funds,” Gardner-Andrews said. “Then, it depends on local politics and those jurisdictions on how those funds get divided up.”

NACWA wants to see the proposed program lend \$30 billion to water facilities, Gardner-Andrews said.

NACWA also suggested lawmakers supplement the Drinking Water State Revolving Fund and Clean Water Revolving Fund programs with short-term or no-interest loans to be repaid or forgiven after five years.

SRF’s act as infrastructure banks by providing low-interest loans for drinking water infrastructure projects. As money is paid back into the state’s revolving loan fund, the state makes new loans for other projects. These recycled repayments of loan principal and interest earnings allow the state’s fund to “revolve” over time. They are typically longer-term loans.

Last, NACWA wants to create a Taxable, Interest-Subsidized Infrastructure Bond, or TIIB, which would be similar to Build America Bonds and have those not be subject to sequestration.

Gardner-Andrews said NACWA has not had specific conversations with lawmakers yet.

“We tried to come up with some ideas, that if a certain concept wasn’t politically viable, there would be another option that would kind of achieve the same result, but might be more politically palatable,” he said.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 06/10/20 02:07 PM EDT

---

## **Fitch Coronavirus Stress Test: U.S. Large Airports and Concentrated Hubs (Resilient Assets with Moderate Fiscal Pressures Under Stress Scenarios)**

[Read the Fitch Special Report.](#)

Wed 17 Jun, 2020 - 3:18 PM ET

---

## **Fitch Coronavirus Stress Test: U.S. Regional Airports (Risks More Acute to Smaller Regional Airports Under Downside Scenarios)**

[Read the Fitch Special Report.](#)

Wed 17 Jun, 2020 - 1:48 PM ET

---

## **Fitch Coronavirus Stress Test U.S. Airports' Special Revenue Bonds (Limited Revenue Pledge May Pose Elevated Risk Should Traffic Downturn Persist)**

[Read the Fitch Special Report.](#)

Wed 17 Jun, 2020 - 3:24 PM ET

---

## **Fitch: Most U.S. Airports Resilient So Far Amid Coronavirus Fallout**

Fitch Ratings-New York-17 June 2020: Most U.S. airports are expected to have the financial capability of withstanding large passenger traffic declines likely to persist at least for the remainder of 2020, according to stress tests conducted by Fitch Ratings of its entire portfolio of rated U.S. airports. The results are detailed in a series of reports published today.

A key question that will dictate performance of all rated airports over time, however, will be “How long will these seismic declines in passenger traffic and subsequent revenue declines last?” While most Fitch-rated airports have safeguards in place that will protect them by and large from coronavirus-fueled losses, each subset has pockets of concern.

Fitch’s rating case contemplates enplanement declines of approximately 50% in calendar year 2020 (relative to 2019), with a recovery of 85% in 2021, 95% in 2022, and 100% in 2023 (relative to 2019). Fitch also modelled two more severe coronavirus downside cases to reflect an additional quarter period of severe traffic declines as well as prolong timeframe to recover back to 2019 levels.

### **LARGE AIRPORTS AND CONCENTRATED HUBS**

Fitch revised the Rating Outlook for the vast majority of its rated large airports to Negative due to the virtual stoppage of air traffic brought on by the pandemic. Key credit metrics of Fitch-rated large airports would remain largely stable over the medium term against the numerous stresses Fitch applied. That said, “Large airports that serve as fortress hubs for a single carrier may have greater

vulnerabilities with regards to recovering its connecting segment of passengers when compared to O&D traffic,” said Director Jeffrey Lack. Among the large airports with elevated risk include Charlotte, Chicago-Midway and Dallas-Love Field. Another notable anomaly is New York’s LaGuardia Airport, which saw passenger volumes decline substantially from coronavirus-related service reductions despite serving one of the strongest markets in the U.S. This led Fitch to place LaGuardia’s central terminal development bonds on Rating Watch Negative.

## REGIONAL AIRPORTS

The same level of resiliency applies to most of Fitch’s rated regional airports. “Airline revenues for regional airports tend to be better protected against volume declines as they are closely tied to cost recovery mechanisms under lease agreements,” said Jeffrey Lack. However, some regional airports, particularly those with a more limited underlying traffic base, would be susceptible to downgrades under Fitch’s more severe stress scenario. This includes airports in Buffalo, Burlington, Dayton, Fresno and Harrisburg, all of which Fitch placed on Rating Watch Negative as a result of the coronavirus fallout.

## INTERNATIONAL GATEWAY AND PRIMARY HUB AIRPORTS

The international gateway airports included in Fitch’s review typically benefit from a high degree of franchise strength with many serving as primary destinations for foreign-flag carriers with direct service into major U.S. markets and can also serve as a “primary hub” for the respective airlines. They also however, tend to operate with more leverage. Further, single terminal projects tend to have relatively low liquidity cushions relative to entire airport facilities. A notable example is New York’s JFK Airport. Fitch downgraded its Terminal One and Terminal Four project bonds. “Both terminals have more limited revenue pledges to support costs depending on carrier payments and terminal concessions,” said Lack.

## SPECIAL REVENUE BONDS

Performance of the airport consolidated car rental (CONRAC) and parking system projects, fuel facilities, and passenger facility charge (PFC) backed bonds issued by medium- and large-hub airports have been more of mixed bag. Reason being is these projects are exposed to volume risk, and to some extent, counterparty performance. Notable cases are Baltimore’s (BWI) passenger facility charge bonds, which diluted its financial profile with additional debt last year only to have the effects compounded by coronavirus volume losses. As a result, Fitch downgraded BWI bonds. The same type of pressure holds true for Philadelphia Parking, which Fitch placed on Rating Watch Negative as the precipitous shock to demand coupled with limited balance sheet liquidity could create a need to tap into the debt service reserve fund and creates uncertainty around future borrowing plans.

The following reports are all available at ‘[www.fitchratings.com](http://www.fitchratings.com)’.

- ‘Coronavirus Stress Test: U.S. Regional Airports’;
- ‘Coronavirus Stress Test: U.S. Large Airports and Concentrated Hubs’;
- ‘Coronavirus Stress Test: U.S. International Gateway and Primary Hub Airports’;
- ‘Coronavirus Stress Test: U.S. Airports – Special Revenue Bonds’.

Contact:

Seth Lehman  
Senior Director

+1-212-908-0755  
Fitch Ratings, Inc.  
300 West 57th Street  
New York, NY 10019

Jeffrey Lack  
Director  
+1-312-368-3171

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

Additional information is available on [www.fitchratings.com](http://www.fitchratings.com)

---

## **[Fitch Coronavirus Stress Testing: U.S. International Gateway and Primary Hub Airports \(Franchise Strength and Liquidity Offset Downside Stresses, Terminal Projects More Exposed\)](#)**

[Read the Fitch Special Report.](#)

Wed 17 Jun, 2020 - 1:38 PM ET

---

## **[In the Covid Era, the Relationship Between Cities and Megadevelopments Makes Even Less Sense.](#)**

Sidewalk Labs' Waterfront Toronto project was the first high-profile megadevelopment to be undone (at least in part) by Covid-19, and it may not be the last. The project, battered by years of controversy over the Alphabet-affiliated company's desire to turn a 12-acre (and later a 362-acre) Quayside area into the world's first neighbourhood "built from the internet up," gave up the ghost in early May, with Sidewalk CEO Dan Doctoroff citing "unprecedented economic uncertainty" for the withdrawal.

Unprecedented economic uncertainty is, improbably, an understatement. With a coronavirus vaccine unlikely to emerge until 2021 at the earliest, there remains no way for the economy to come fully back to life without significant loss of life, a reality that has already disproportionately hurt lower-income communities of color. In this environment, large-scale projects like Quayside appear increasingly untenable, laying bare many of the criticisms brought against such developments: speculative by nature, they make even less sense in an economy decimated by the virus.

Although both are still active, I think of two similar megadevelopments currently planned for Chicago, where I live: Lincoln Yards and The 78, projected to cost \$6 billion and \$7 billion, respectively. Lincoln Yards, located adjacent to the wealthy Lincoln Park and Bucktown neighbourhoods on the city's North Side, originally promised the construction of a Major League Soccer stadium and three Live Nation-owned performance venues, but both of those aspects were eventually scuttled, leaving a mixed-use residential and retail district built on the banks of the Chicago River. Meanwhile, The 78, so named as a proposed addition to the city's existing 77 community areas, also offers a river-centric, mixed-use plan, with a technology and business

incubator and towers reaching nearly 1,000 feet. It's slated for construction just south of downtown, served by the addition of a new train station on the CTA Red line.

[Continue reading.](#)

## CityMetric

By Annie Howard

June 19, 2020

---

## [NFMA Newsletter.](#)

The NFMA publishes newsletters for its membership. The current newsletter will bring members up to date on the activities of the NFMA and its societies during COVID-19.

To read the June 2020 issue of the NFMA Municipal Analyst Bulletin, [click here](#).

---

## [SIFMA Webinar: LIBOR - Preparing for Alternative Reference Rates](#)

### OVERVIEW

On **Wednesday, September 16 at 1:00 - 2:00 p.m. EDT**, this webinar will discuss how operations professionals need to prepare for the transition to alternative reference rates, which may come as soon as the end of 2021.

From internal funds transfer to vendor agreements, to loans, bond, and derivatives, LIBOR is everywhere. Firms need to be able to adapt to instruments using new rates such as the Secured Overnight Financing Rate (SOFR), implement fallbacks, and review and execute new agreements. A lot of work needs to be done, but not much time remains.

This SIFMA Webinar is part of an Ops Series called *What Operations Professionals Need to Know*.

[Register today.](#)

---

## [PG&E Rescue Fund Bond Sale Delayed by Drop in Power Demand.](#)

- **California can't sell new bonds until existing ones retire**
- **Virus-related shutdown means less collected to defease bonds**

The coronavirus-related economic shutdowns have led to one arcane consequence: delaying California's sale of \$10.5 billion in bonds to finance future wildfire costs.

Power customers are using less electricity with shops and businesses closed, and that has slowed the efforts to pay down bonds sold in the last energy crisis that must be defeased before the new debt is offered.



The delay means the state can't take advantage of the current rally in the \$3.9 trillion municipal market. While investors in need of tax-havens generally seek California bonds, the market now is seeing even greater demand for such securities. Bondholders are set to receive a wall of debt payments this summer that's expected to exceed the amount of new securities on tap.

"It's hard to anticipate what the fall is going to look like," said James Dearborn, director of municipal credit research at DWS. "If they were issuing bonds today, I think they would be well received."

Last year, California Governor Gavin Newsom and state legislators agreed to establish a \$21 billion fund to help utility giants including PG&E Corp. and Edison International cover future liabilities when their equipment ignites catastrophic blazes. Such exposure led to PG&E Corp.'s bankruptcy last year, and its incipient exit will allow it to tap the fund.

The fund was part of legislation needed to keep investor-owned power companies operating as wildfires increase in number and severity. An unusual California doctrine holds utilities liable for wildfires that their equipment sparks, even if they aren't proven negligent, leaving officials worried about the reliability of power in the most-populous U.S. state.

Helping finance the fund is \$10.5 billion to be raised through the sale of municipal revenue bonds. The bonds will be backed by a charge customers are already seeing on their bills from the \$11.2 billion in bonds the state sold starting in 2002. That issuance reimbursed California from buying electricity for insolvent utilities hobbled by rising prices and manipulation by Enron Corp. and other companies in the deregulated market.

The catch: California officials have to wait until they can defease those bonds, of which \$1.5 billion is outstanding. The amount collected by the \$.005 per kilowatt hour charge depends on usage. With the state mandating residents to shelter in place at the end of March, electricity demand dropped. Since the first full week of the statewide stay-at-home order through June 7, homes, businesses and manufacturers used 3.7% less in electricity on an average weekday, according to California ISO, which manages the state's power grid.

Originally, the bonds were to be retired around the third week of August. Due to lower than projected revenue, the estimate is now mid- to late-September, with the new bonds potentially being sold in October, according to the state treasurer's office. It's likely the new bonds would pay back the \$2 billion in loans to the fund from the state's general fund, said H.D. Palmer, a spokesman for Newsom's finance department.

Contributions from the utilities make up the rest of the fund. PG&E's share is \$4.8 billion. Southern California Edison made its initial contribution to the fund of \$2.4 billion in September 2019 and made the first of its 10 annual payments of \$95 million in December. SDG&E made its first initial contribution of \$322.5 million and its first of its ten annual payments of \$12.9 million.

## **Bloomberg Law**

June 22, 2020, 10:33 AM

-With assistance from Mark Chediak.

To contact the reporter on this story:

Romy Varghese in San Francisco at [rvarghese8@bloomberg.net](mailto:rvarghese8@bloomberg.net)

To contact the editors responsible for this story:

Elizabeth Campbell at [ecampbell14@bloomberg.net](mailto:ecampbell14@bloomberg.net)

---

## **The Opportunity Zone Incentive Isn't Living Up to Its Equitable Development Goals. Here Are Four Ways to Improve It.**

COVID-19's disproportionate impact on Black communities and the recent killings of George Floyd, Breonna Taylor, and other Black Americans have shone a spotlight on the US's ongoing legacy of state-sanctioned violence, segregation, discrimination, and racially driven disinvestment. Nationwide protests have lifted up the need for government to invest in Black neighborhoods and remedy the poor economic conditions it purposefully created for these communities in decades and centuries past.

The Opportunity Zone (OZ) incentive, created by the Tax Cuts and Jobs Act of 2017, aimed to establish an economic development tool that would foster equitable development outcomes—such as quality job creation and business growth—in undercapitalized communities, many of which are majority Black. Two years after OZs were designated, is the incentive living up to its goals?

Without the federal government requiring detailed reporting on OZ investments, answering that question has been challenging. But through nearly 70 interviews with a range of stakeholders working on mission-oriented OZ projects across the US, we assessed how the program is working in practice.

[Continue reading.](#)

**The Urban Institute**

June 17, 2020

---

## **N.Y. Seen With 40% Drop in Tax Revenue, Steepest Fall in U.S.**

Tax collections will fall by more than 30% in at least 10 American states due to Covid-19, according to a new report from researchers at Arizona State and Old Dominion universities.

On average, states will suffer a 20% decline in tax revenue, the economists predict. New Jersey and New York have already reported sharp declines, while California is implementing higher taxes on corporations to help deal with the revenue shortfall.

Budget shortfalls are forcing state and municipal authorities to cut jobs and spending, as they did after the 2008 financial crisis when local austerity held back the economy's recovery. Congress is deadlocked over sending more cash to the states to plug the gap.

[Continue reading.](#)

**Bloomberg Economics**

By Alexandre Tanzi

## **[Economics in Brief: Opportunity Zones Aren't Creating Jobs.](#)**

### **Opportunity Zones Aren't Creating Jobs, Study Says**

A new report from the Urban Institute finds that the Trump administration-touted Opportunity Zones have enriched real estate developers rather than the small businesses the program was allegedly designed to help.

The New York Times [reports](#) that the tax break, which as Next City readers already know, gives investors a break on capital gains taxes — or eliminates them entirely — if they invest the money into a designated geographical area known as an Opportunity Zone.

But the report finds that developers who took advantage of Opportunity Zone tax breaks would have proceeded with their projects even without the tax incentive, and that investors in the program are mainly interested in putting their money into luxury developments that have the opportunity to bring high returns, rather than affordable housing or small businesses.

[Continue reading.](#)

NEXT CITY JUNE 19, 2020

---

## **[Updates from the White House Council on Opportunity Zones, with Scott Turner.](#)**

What is the state of Opportunity Zones from the perspective of the White House Opportunity and Revitalization Council, now one year into its mission? Scott Turner is executive director of the Council — a collaboration of 17 Federal agencies and Federal-State partnerships with a mandate to identify and disseminate best practices for utilizing the Opportunity Zones tax incentive and existing Federal resources to stimulate economic

[Read More »](#)

June 17, 2020

---

## **[White House OZ Council Issues Opportunity Zones Best Practices Report.](#)**

The White House Opportunity and Revitalization Council (WHORC) has delivered their Opportunity Zones Best Practices Report to the President. Listen to WHORC executive director Scott Turner on the Opportunity Zones Podcast. The Council's report includes Opportunity Zones case studies and best practices observed around the country. The report highlights several inspiring stories that involve public-private partnership between state and local governments, Qualified Opportunity Funds, and ...

[Read More »](#)

June 18, 2020

---

## **[NABL: The Bond Lawyer - Spring 2020](#)**

The Spring 2020 issue of The Bond Lawyer® is now available. Download the document [here](#).

The Bond Lawyer®: The Journal of the National Association of Bond Lawyers is published quarterly, for distribution to members of the Association. Article submissions and comments should be submitted to Linda Wyman, (202) 503-3300.

---

## **[Mid-Grade Munis Have Room To Rebound.](#)**

### **Summary**

- Caught in the COVID-19 economic downdraft, the municipal market suffered unprecedented volatility in March.
- Since then, however, demand for higher-grade municipal bonds has soared, driving the Bloomberg Barclays AAA Municipal Index up 11% between its March 23 low and May 31.
- Many mid-grade municipal issues – such as BBB-rated bonds – have lagged this rally, even as other higher-risk assets, such as corporate debt and equities, have enjoyed strong comebacks.

[Continue reading.](#)

### **Seeking Alpha**

Jun. 18, 2020

---

## **[GASB Requires Public Entities to Make Room in the Debt Column for Availability Payment-Based P3 Projects: Ballard Spahr](#)**

For those interested in availability payment (AP) or service payment structures for public-private partnerships (P3s), June 15, 2020, was an important day despite lack of fanfare. In a policy debate within the P3 space between those who view APs as contractual obligations versus those who view APs as “debt,” the Governmental Accounting Standards Board (GASB) picked a side: APs constitute a debt obligation of the public sector participant in the P3.

In GASB’s Statement No. 94, “[Public Private and Public-Public Partnerships and Availability Payment Arrangements](#),” the Board purports to “improve financial reporting” as it relates to AP arrangements, effective in June 2022. GASB refers to AP arrangements as “APAs,” as distinguished from revenue- or user fee-type P3s, which GASB classifies as “service concession arrangements” or SCA-type P3s. GASB-94 requires that APs are to be “accounted for by a government as a financed purchase of the underlying nonfinancial asset.”

More broadly, GASB-94 sets out to provide “accounting and financial reporting requirements for all other” P3s, specifically, those that aren’t “leases” or SCAs. P3s that are structured similarly enough to leases are guided by a prior statement, [GASB-87](#), from 2017, which essentially requires that a lessor similarly “recognize a lease receivable.” An even earlier statement, [GASB-60](#), from 2010, addresses SCAs and accounting and reporting requirements that are more complicated, given the transfer or sharing of revenue risk associated with the P3 asset, a topic we are not addressing today.

Taking the position that APs constitute debt is vitally important, as GASB promulgates the “generally accepted accounting principles” (GAAP), the accounting and financial reporting standards state and municipal governments observe, and require that many contractors do, as well, in many transactions.

Aligning APs more closely to leases than to SCAs also strikes an important policy position. Many public entities with a long history of procuring AP P3s have reasonably taken the opposite view – that APAs are more like SCAs. With SCAs, rather than taking a revenue or user fee risk (that is, payment for use of a facility, such as bridge toll), a private sector partner/concessionaire takes the underlying performance risk (that is, whether or not there is a toll, the private sector partner is paid if the facility is available for use and thus capable of assessing the toll/user fee). This opposing view holds that APAs and SCAs are more alike than different, and the nature of the transaction was to document the agreement about which P3 party would have more or less exposure to the users.

Accordingly, procuring public entities negotiated detailed, project-specific performance criteria – valuing those aspects of performance that were important to the public entity and its constituency. For example, if a transit line failed to keep its headways, then the public agency would pay the private sector/concessionaire less. The risk of variability of payments incentivized performance. In an effort to mediate what was left of the user-fee risk – for instance, despite a water works functioning properly, consumer use was down – procuring agencies were able to attract more competition and better prices for the P3 contracts.

With GASB’s position, the variability of the payments is not relevant to whether those payments are a structured purchase (i.e., debt obligation). It takes a position that there will always be payments, which presumes that the private sector/concessionaire will consistently and fully perform. This is an optimistic view.

Now, public entity treasurers and CFOs are charged with recognizing “[g]overnmental fund revenue ... in a systematic and rational manner over the P3 term,” which is not a clear guide. And the public sector has to figure this out in the context of the payments as debt payments, albeit variable debt payments under circumstances in someone else’s control. This will likely require, under other accounting practices and conventions, restatements and revisions as the performance (or lack of performance) of the facility or private sector partner/concessionaire plays out over the term of the P3.

For certain sectors and P3 projects, the ability to treat an AP P3 as an SCA and not as debt from an accounting standpoint is often a motivating factor in deciding whether to pursue the project from the outset. If the APs are not debt, then the obligation to pay the APs would not count towards the public entity’s overall debt restrictions, including debt caps (whether statutory or via covenants) and debt-related covenants (including debt service coverage ratios). One result of GASB-94 is to remove an impetus for projects and programs. The APs will count as debt for these various calculations, which may result in potential AP P3s being less attractive to the public entity.

But the ultimate impact of GASB-94 is yet to be determined. It takes effect for those fiscal years beginning after June 15, 2022. P3s currently in procurement and predevelopment will likely undergo

near-term reconsideration of their affordability.

Ballard Spahr's P3/Infrastructure Group advises government and private sector participants on all facets of projects, from highways, bridges, and other transportation projects to schools hospitals, courthouses, and the spectrum of social infrastructure. The Group's attorneys have helped design and implement some of the nation's largest and most innovative P3 projects.

June 18, 2020

---

Copyright © 2020 by Ballard Spahr LLP.  
www.ballardspahr.com  
(No claim to original U.S. government material.)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the author and publisher.

This alert is a periodic publication of Ballard Spahr LLP and is intended to notify recipients of new developments in the law. It should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your situation and specific legal questions you have.

- 
- [Federal Reserve Opens Municipal Liquidity Facility And Releases Transaction Documents.](#)
  - [GASB Proposes Application Guidance on CARES Act and Coronavirus Diseases Issues.](#)
  - [Top US SEC Officials Urge Voluntary Municipal Securities COVID-19 Disclosure: Have They Overstated Their Case? - Norton Rose Fulbright](#)
  - [Investors Are in a Race to Find the Best Models of Climate Risk.](#)
  - [Dual Threats: COVID and Climate Change](#)
  - [McGee v. Torrance Unified School District](#) - Court of Appeal holds that lease-leaseback agreements between school district and construction contractor involved district's financial obligations and were inextricably bound up in district's bond financing, and, thus, constituted "contracts" within the meaning of statute declaring that validation statutes applied to an action to determine the validity of a local agency's contracts.
  - And finally, In That Case, I Guess We Got No Beef is brought to us this week by [Abdisamad v. City of Lewiston](#), in which the Court of Appeals held that city and its school department were not subject to liability under § 1983 for student's drowning death while on school field trip because their policies did not cause student's death, but rather that student's death was result of their failure to *follow* those policies. Ah, that explains it. Surely a great comfort to the kid's parents.

---

## VALIDATION - CALIFORNIA

### [McGee v. Torrance Unified School District](#)

Court of Appeal, Second District, Division 8, California - May 29, 2020 - Cal.Rptr.3d - 2020 WL 2781608 - 20 Cal. Daily Op. Serv. 5028 - 2020 Daily Journal D.A.R. 5274

Taxpayer brought reverse validation action against school district and construction company, seeking to invalidate lease-leaseback agreements on numerous bases.

Trial court sustained demurrers, and taxpayer appealed. The Court of Appeal, 2015 WL 301918, affirmed in part but reversed as to conflict of interest claim and remanded. Taxpayer, together with taxpayer organization, brought separate reverse validation action against school district and construction company, and after the trial court sustained demurrers, taxpayer appealed. The Court of Appeal affirmed in part but reversed as to conflict of interest claim and remanded. Taxpayer and organization brought third action against school district and construction company for conflict of interest. Cases were consolidated. Following trial on issue of mootness, the Superior Court found claims were rendered moot by completion of construction projects and entered judgment of dismissal. Taxpayer appealed.

The Court of Appeal held that:

- Lease-leaseback agreements constituted contracts to which validation statutes applied;
- Taxpayer's conflict of interest claims were subject to validation statutes; and
- Completion of construction projects rendered conflict of interest claims moot.

Lease-leaseback agreements between school district and construction contractor involved district's financial obligations and were inextricably bound up in district's bond financing, and, thus, constituted "contracts" within the meaning of statute declaring that validation statutes applied to an action to determine the validity of a local agency's contracts; Education Code authorized lease-leaseback agreements without competitive bidding as a method to finance school construction, lease-leaseback agreements at issue were funded through school district's general obligation bond, and taxpayer who brought actions to invalidate lease-leaseback agreements on grounds including conflict of interest relied on reverse validation procedures and principles.

Taxpayer's claims that conflict of interest statute prohibited school district from entering into lease-leaseback agreements with construction contractor were, in essence, requests to invalidate agreements, and, thus, were subject to validation statutes; taxpayer sought finding that agreements were ultra vires, illegal, void, and unenforceable due to conflict of interest, any judgment in taxpayer's favor would necessarily render agreements void from their inception, and given lengthy procedural history of litigation, judgment in taxpayer's favor would undermine purpose behind validation statutes, namely, prompt validation of school district's actions to preserve district's ability to finance itself through public bonds and credit.

Completion of construction projects pursuant to lease-leaseback agreement between school district and construction contractor rendered moot taxpayer's conflict of interest claims, by which he sought to declare agreements void and obtain disgorgement of funds spent on projects, where agreements were subject to validation statutes, and taxpayer's requested relief required invalidation of agreements.

---

## **ZONING & PLANNING - GEORGIA**

### **[City of Douglasville v. Boyd](#)**

**Court of Appeals of Georgia - June 2, 2020 - S.E.2d - 2020 WL 2846963**

Applicant filed petition for writ of certiorari asserting that city council's decision to deny his development plan application for portable rock crushing plant on property zoned heavy industrial



was arbitrary, capricious, an abuse of discretion, and not supported by any evidence.

The Superior Court entered order summarily concluding that city council acted arbitrarily and capriciously. City applied for discretionary appeal, which the Court of Appeals granted.

The Court of Appeals held that applicant's proposed use of access road located on light industrial property to transport raw materials to portable rock crushing plant located on property zoned heavy industrial did not comply with city zoning ordinance prohibiting accessory uses except in relation to existing principal use on the lot.

---

## **LIABILITY - MAINE**

### **[Abdisamad v. City of Lewiston](#)**

**United States Court of Appeals, First Circuit - June 2, 2020 - F.3d - 2020 WL 2847183**

Student's parent brought action against city, its school department, and Maine Department of Agriculture, Conservation, and Forestry (DACF) asserting federal and state civil rights claims and state wrongful death claims based on student's drowning death while on school field trip to state park.

The United States District Court dismissed complaint, and parent appealed.

The Court of Appeals held that city and school department were not subject to liability under § 1983 for student's death.

City and its school department were not subject to liability under § 1983 for student's drowning death while on school field trip to state park, where complaint did not allege that their policies caused student's death, but rather that student's death was result of their failure to follow those policies.

---

## **EMINENT DOMAIN - NEW JERSEY**

### **[Township of Manalapan v. Gentile](#)**

**Supreme Court of New Jersey - June 2, 2020 - A.3d - 2020 WL 2844223**

Township commenced condemnation proceedings. Township moved for judgment at the close of evidence. The Superior Court granted the motion in part, but allowed the question of fair market value to go to jury.

The Superior Court entered judgment on jury's verdict, awarding landowners \$4.5 million, and denied township's post-trial motions for judgment notwithstanding the verdict and for a new trial. Township appealed. The Superior Court, Appellate Division, affirmed, and township's petition for certification was granted.

The Supreme Court held that:

- Trial court erred by allowing jury to consider testimony that the highest and best use of the subject property would require zoning variance without first confirming probability of securing that variance, and



- Because there was no finding that zoning variance would likely be granted, jury should not have been permitted to evaluate property on any basis other than its highest and best use in accordance with current zoning ordinances.

---

## **BALLOT INITIATIVES - OHIO**

### **[Thompson v. Dewine](#)**

**United States Court of Appeals, Sixth Circuit - May 26, 2020 - 959 F.3d 804**

Individuals and organizations that were obtaining signatures in support of initiatives to amend Ohio Constitution and propose municipal ordinances brought action alleging that enforcement of state's requirements for initiatives while state's stay-at-home orders during COVID-19 pandemic were in effect violated their First Amendment rights.

Other organizations and individuals intervened. The United States District Court granted in part plaintiffs' and intervenors' motion for preliminary injunction, and state filed interlocutory appeal. State filed motion for stay pending appeal.

The Court of Appeals held that:

- State was likely to succeed on merits of its appeal, and
- State would suffer serious and irreparable harm if it was enjoined from conducting its election in accordance with its lawfully enacted ballot-access regulations.

State was likely to succeed on merits of its appeal of district court's order preliminarily enjoining it from strictly enforcing requirements that signatures on initiative petitions be written in ink and be witnessed by initiative's circulator during COVID-19 pandemic, for purposes of determining whether to issue stay pending appeal, even though pandemic made it more difficult to obtain signatures by deadline; state had compelling interest in ensuring that signatures were authentic, state exempted conduct protected by First Amendment from its stay-at-home orders, and state specifically exempted petition and referendum circulators from its stay-at-home restrictions five weeks before deadline for submitting ballot-access petitions.

State would suffer serious and irreparable harm if it was enjoined from conducting its election in accordance with its lawfully enacted ballot-access regulations, for purposes of determining whether state was entitled to stay pending its appeal of district court order preliminarily enjoining it from enforcing regulations during COVID-19 pandemic.

---

## **BALLOT INITIATIVES - OKLAHOMA**

### **[In re Initiative Petition No. 426, State Question No. 810](#)**

**Supreme Court of Oklahoma - May 27, 2020 - P.3d - 2020 WL 2753562 - 2020 OK 44**

Protesters filed petition to challenge gist statement of initiative petition to create a new article to the Oklahoma Constitution for the purpose of establishing the Citizens' Independent Redistricting Commission.

The Supreme Court of Oklahoma held that:

- Gist statement that "a panel of retired judges and justices designated by the Chief Justice of the

Oklahoma Supreme Court will choose pools” of potential commission members was not affirmatively inaccurate;

- Gist statement concerning vote for approving a redistricting plan was sufficient; and
- Gist statement’s short mention of redistricting criteria was sufficient.

Gist of initiative petition seeking to create a new article to the Oklahoma Constitution establishing citizens’ independent redistricting commission, which stated that “a panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools” of potential commission members, was not affirmatively inaccurate, although panel was to be composed of retired judges and justices “who are able and willing to serve on the Panel, selected by random drawing,” as Chief Justice would designate the potential panel members, and random drawing might never come into play.

Information in redistricting commission initiative petition’s gist statement concerning vote for approving a redistricting plan, which stated that there was a “fallback mechanism by which the state Supreme Court, using a report from the Special Master, will select a plan if the Commission cannot reach the required level of consensus within a set timeframe,” was sufficient, despite speculation that there was high likelihood the Supreme Court would be called upon to adopt the redistricting plan based upon “super majority” voting requirements; statement clearly stated that the Supreme Court would select a plan if the Commission could reach the “required level of consensus” within a set timeframe, which informed the potential signatory that a certain “level of consensus” would be required by the Commission to vote on a redistricting plan.

Short mention of redistricting criteria in gist statement for initiative petition seeking to create a new article to the Oklahoma Constitution establishing citizens’ independent redistricting commission was sufficient; gist stated that its purpose was to prevent political gerrymandering, gist provided that, in creating the redistricting plans, certain criteria will be used, including political fairness, and gist put a potential signatory on notice that the commission would seek to maximize political fairness as well as the other criteria

---

## **BILLBOARDS - SOUTH DAKOTA**

### **[Lamar Advertising of South Dakota, L.L.C. v. City of Rapid City](#)**

**Supreme Court of South Dakota - June 3, 2020 - N.W.2d - 2020 WL 2959720 - 2020 S.D. 30**

Competitor filed declaratory judgment action against city and billboard company, requesting that settlement between them regarding company’s signs be declared invalid. Billboard company filed counterclaim for tortious interference with contractual relations and sought declaration that similarly agreement between competitor and city was invalid.

The Circuit Court denied competitor’s motion for summary judgment on its request for declaratory judgment, denied company’s motion for summary judgment requesting that the court declare competitor’s agreement with city void, and granted competitor’s motion for summary judgment on counterclaim for tortious interference with contractual relations. Competitor appealed, and, by notice of review, company challenged denial of its summary judgment motion.

The Supreme Court held that:

- Settlement agreement between billboard company and city was a lawful conditional agreement which did not result in city contracting away its police powers;

- City did not act unreasonably and arbitrarily when it amended sign code as contemplated by settlement agreement;
- Permits issued to company were not void ab initio;
- Failure to exhaust administrative remedies by administratively appealing city's decision to issue sign permits precluded court challenge to permits; and
- Case did not present an extraordinary factual situation warranting review.

---

## EMINENT DOMAIN - TEXAS

### [Stratta v. Roe](#)

**United States Court of Appeals, Fifth Circuit - May 29, 2020 - F.3d - 2020 WL 2781642**

Two property owners brought § 1983 action against multi-county water conservation district, board of directors of water district, board members, and other officials alleging that district allowed city to drain groundwater from property without compensation in violation of the Takings Clause and the Equal Protection Clause, and that board prevented one property owner from speaking at public meeting in violation of his First Amendment rights.

The United States District Court dismissed the action. Property owners appealed.

The Court of Appeals held that:

- Multi-county water conservation district was not arm of the state entitled to Eleventh Amendment immunity;  
Takings claim was ripe for adjudication;
- District Court abused its discretion in abstaining under *Burford*;
- Property owner stated plausible class-of-one equal protection claim against district; and
- First Amendment rights were not violated.

Multi-county water conservation district in Texas was not “arm of the state” of Texas, and thus, was not entitled to Eleventh Amendment immunity, in § 1983 action brought by property owners; district was political subdivision that stood upon same footing as counties, which were not granted sovereign immunity, state funds were not permitted to be used to indemnify or assume debts of water districts, districts were funded by locally-assessed taxes and fees, Texas law granted water districts broad authority to make and enforce rules governing groundwater usage within each district, district's legal boundaries were coextensive with the counties, and district had authority to sue and be sued in its own right.

Texas property owner's Fifth Amendment takings claim, alleging that multi-county water conservation district allowed city to drain groundwater from his property without compensation, was ripe for adjudication, where property owner fully pursued the administrative remedies available to him before filing this action.

District Court abused its discretion in abstaining under *Burford*, in property owners' § 1983 action against multi-county water conservation district in Texas and district officials, alleging that district allowed city to drain groundwater from property without compensation in violation of the Takings Clause and the Equal Protection Clause; action involved federal constitutional law, case did not involve unsettled issues of state law, and although regulation of water resources was matter of great state concern in Texas, judgment in federal court would not interfere with coherence of state policy, and there was no special state forum in Texas for judicial review of claims against water districts.

Property owner stated plausible class-of-one equal protection claim against multi-county water conservation district based on district's alleged conduct in treating city as exempt from district's well water usage and pumping limits, while rigorously enforcing those limits against property owner, without any rational basis for the differential treatment.

Texas Open Meetings Act (TOMA) notice requirement prohibited member of board of directors for multi-county water conservation district from requesting during board meeting's public comment period on non-agenda items that board address public's concerns about particular well usage, and thus, board member's First Amendment rights were not violated when he was barred as member of public from speaking about well usage.

---

## **ZONING & PLANNING - VIRGINIA**

### **[Rowland v. Town Council of Warrenton](#)**

**Supreme Court of Virginia - May 28, 2020 - S.E.2d - 2020 WL 2763785**

Town residents brought action challenging town council's approval of developers' rezoning request.

The Circuit Court entered order of final judgment in favor of town and developers, and residents appealed.

The Supreme Court held that:

- Town council had the authority to accept developers' proffer that departed from the requirements of town's zoning ordinance for a specific property as part of a conditional rezoning process;
- Residents' expressed concerns were insufficient to overcome the presumption of legislative correctness on a fairly debatable issue, whether acceptance of developer's proffer was a permissible use of conditional zoning, as required to challenge the reasonableness of the decision to grant the zoning application;
- Town council was not precluded from considering changes to developers' zoning application made after the application was considered and rejected by the planning commission, without first referring it back to the commission; and
- Residents' expressed concerns were insufficient to overcome the presumption of legislative correctness on a fairly debatable issue, whether the developers met requirement of town ordinance that their master plan showed their intended use of the industrial planned unit development (I-PUD) "as an integrated, cohesive entity," as required to challenge the reasonableness of the decision to grant the zoning application.

---

## **PREEMPTION - WASHINGTON**

### **[Anti-Smoking Alliance v. Tacoma-Pierce County Department of Health and Health Board](#)**

**Court of Appeals of Washington, Division 2 - June 2, 2020 - P.3d - 2020 WL 2847009**

Anti-smoking nonprofit, which included vapor product retailers, brought action against county board of health for injunction against enforcement of new ordinances affecting vapor product sellers.

Trial court denied health board's motion for summary judgment. After hearing, the Superior Court granted permanent injunction but denied nonprofit's request for attorney fees and costs. Health

board appealed.

The Court of Appeals held that:

- Legislature expressly intended to preempt local regulation of field of vapor product promotions and sales at retail;
- Ordinances constituted regulation of vapor product promotions and sales at retail;
- Nonprofit members had clear legal right to be free from local regulation of vapor product promotions and sales at retail; and
- Sufficient evidence supported finding that ordinances would cause actual and substantial injury to nonprofit members.

---

## **Federal Reserve Opens Municipal Liquidity Facility And Releases Transaction Documents.**

The Board of Governors of the Federal Reserve System (the “Federal Reserve”), through the Federal Reserve Bank of New York (the “Reserve Bank”), has opened its new CARES Act lending program for state and local governments affected by COVID-19, known as the Municipal Liquidity Facility (the “MLF”).[1] The State of Illinois will be the first borrower under the MLF, with a planned issuance on June 5, 2020 of \$1.2 billion general obligation bond anticipation notes, maturing in one year and bearing interest at 3.8%.

On May 15th, the Federal Reserve released its form Notice of Interest (“NOI”), which enables Eligible Issuers[2] to express their interest in selling Eligible Notes[3] through the MLF.[4] Municipal Liquidity Facility LLC, the special purpose vehicle established by the Federal Reserve to facilitate the MLF, will serve as the purchaser of the Eligible Notes (the “Purchaser”). The NOI was followed by the release on May 18th of a sample application (the “Application Form”), including an attached Supporting Document Checklist (the “Checklist”), and form documents and certifications (collectively, the “Form Documents”) for the MLF. The requirements of the Application Form, Checklist and Form Documents are summarized below.

### **Recent Updates to Eligible Issuers**

Before we review the Form Documents, we note that on June 3, 2020, the Federal Reserve released an updated term sheet (the “Term Sheet”) and updated frequently asked questions (the “FAQs”) for the MLF.[5] As described in the Term Sheet and the FAQs, the list of Eligible Issuers has been expanded to include “Designated Cities,” “Designated Counties” and “Designated RBIs.” Designated Cities and Designated Counties are cities and counties designated by a governor for participation in the MLF where the state has less than two cities and counties (on a combined basis) with populations exceeding 250,000 residents and 500,000 residents, respectively (i.e., the population thresholds for participation in the MLF).

Included with the updated FAQs is a table showing the maximum number of Designated Cities and Designated Counties that may be identified by each governor. The numbers in the table were selected to ensure that each state. In situations where a governor is able to designate only one Designated City or Designated County, the governor may choose either (i) the most populous city in the state with 250,000 residents or less, or (ii) the most populous county in the state with 500,000 residents or less. In situations where a governor is able to designate two Designated Cities and Designated Counties (on a combined basis), the governor may choose: (i) the most populous city and most populous county; (ii) the most populous city and second-most populous city; or (iii) the most

populous county and second-most populous county.

Designated RBIs consist of up to two Revenue Bond Issuers designated by a governor for participation in the MLF.[6] A “Revenue Bond Issuer” is defined as a state or political subdivision of a state, or a public authority, agency, or instrumentality of such state or political subdivision, that issues bonds payable from revenues of a specified source that is owned by a governmental entity (i.e., public transit, airport, toll facility and utility revenues).

To participate in the MLF, each Designated City, Designated County and Designated RBI must deliver: (i) with its NOI, evidence that the governor of the applicable state will designate the city or county as a Designated City or a Designated County; and (ii) at closing, a governor’s certification reflecting the designation.[7] The ratings criteria for Designated RBIs and the debt limit and type of security required for its Eligible Notes are the same as for Multi-State Entities.[8]

## **Application Form**

As we noted in MLF Blog 4, if an Eligible Issuer’s Notice of Interest (“NOI”) is approved, the Eligible Issuer will be invited to submit an application for financing through the MLF.[9] The application consists of: (i) the completed Application Form and the Checklist; (ii) a signed Issuer Certification included as Section F to the Application Form (the “Issuer’s Application Certification”)[10]; and (iii) all attachments requested and referenced in the Application Form and Checklist (collectively, the “Application”).

Similar in format to the NOI, the Application Form contains a list of confirmatory and supplemental questions pertaining to the Eligible Issuer and the Eligible Notes which are generally standard for public finance transactions, including: (i) identifying information for the Eligible Issuer and other working group members; (ii) a bring-down confirmation that the information submitted in the NOI remains unchanged; (iii) details of the Eligible Notes (including the applicable series designation, maturity date, principal amount, interest payment date(s) and tax status); (iv) confirmation of the proposed closing date; and (v) a description of the required authorizing actions and approvals obtained and to be obtained by the Eligible Issuer (including any appeal periods).

In addition to these general questions, the Application Form requires Eligible Issuers to provide the following specific information relative to the MLF:

1. For Eligible Notes consisting of TRANs, TANs or similar notes to be repaid from revenues, a description of any statutorily-required or policy-determined revenue set-asides to be used for repaying the Eligible Notes, including the plan for repayment in situations where the set-asides are not required;
2. For Eligible Notes that are BANs, a description of the repayment plan, including the governmental authorizations for the issuance of the bonds that will repay the BANs;
3. A bring-down of the Eligible Issuer’s efforts to obtain the required ratings actions from the major nationally-recognized statistical rating organizations (“NRSROs”) with respect to the Eligible Issuer and the proposed credit for the Eligible Notes, as described in the NOI;[11]
4. Confirmation of the Eligible Issuer’s compliance with its existing continuing disclosure undertakings under Rule 15c2-12 of the Securities Exchange Act of 1934 (“Rule 15c2-12”);[12] and
5. For transactions using a Designated Issuer, confirmation that either the Eligible Issuer or the Designated Issuer, or both, will be responsible for providing continuing disclosure to the MLF, and if both, a description of the information to be provided by each entity. Similar to the NOI, Eligible Issuers may attach and cite to other source documents in responding to the Application Form, provided, that they include the name of the document and the relevant pages or sections.

## **The Checklist**

### *Transaction Documents*

The Checklist consists of a list of documents that must be included with the Application Form, including the following final form documents for the Eligible Notes[13]: (i) authorizing resolution; (ii) form of Eligible Notes; (iii) a form of authorization, incumbency and signature certificate for the Eligible Issuer or Designated Issuer; (iv) other Eligible Note documents (e.g., general/series resolution, indenture or other note agreement; bond ordinance, statute or other authorization documents; documentation evidencing the security for the Eligible Notes; and any other transaction documents); (v) a timeline for any pending authorizing actions or approvals; and (vi) for Eligible Notes that are BANs, documentation providing for the authorization and issuance of the bonds to be issued to repay the BANs. For transactions involving a Designated Issuer, Eligible Issuers must also provide either: (i) the form of agreement whereby the Designated Issuer commits the credit of, or pledge the revenues of, the applicable state, city or county; or (ii) the form of guarantee of the Eligible Notes by the applicable state, city or county (each a “Designated Issuer Document”).

### *Required Opinions*

The Checklist also requires Eligible Issuers to provide drafts of the following opinions, each in final form: (i) an opinion of bond counsel as to the validity, enforceability and binding nature of the Eligible Notes; (ii) an opinion as to the exemption of the Eligible Notes from the registration requirements of the federal securities laws; (iii) for a competitive offering, a Rule 10b-5 opinion of bond counsel (the “Rule 10b-5 Opinion”)[14]; (iv) a tax opinion of bond counsel or special tax counsel, if the Eligible Notes are to be issued as tax-exempt securities; and (v) an opinion as to the validity, enforceability and binding nature of the applicable Designated Issuer Document, if the Eligible Notes are to be issued by a Designated Issuer.

### *Diligence Documents – Competitive Offering versus Direct Purchase*

Eligible Issuers will also be required to provide specific documents depending on whether the sale of the Eligible Notes is being effectuated through a competitive offering (where the Purchaser is either submitting a bid or serving as the fallback purchaser following the competitive bid process) or a direct purchase to the Purchaser.[15] For competitive offerings, the Eligible Issuer must provide the same level of disclosure normally prepared for a public offering of notes, specifically: (i) the form of notice of sale; (ii) the preliminary official statement;[16] and (iii) the Rule 10b-5 Opinion in final form.

In contrast, for a direct purchase to the Purchaser (where no preliminary official statement or other offering document is prepared), the Eligible Issuer must provide: (i) copies of the Eligible Issuer’s financial information and operating data provided to the NRSROs in connection with obtaining the required ratings confirmations;[17] (ii) the Eligible Issuer’s most recent audited financial statements for the past two years; (iii) unaudited fiscal year-to-date financial statements presented to the Eligible Issuer’s governing body; (iv) the Eligible Issuer’s budget for the current and next succeeding fiscal year; (iv) its most recent official statement (or other offering document) for obligations that are secured on a parity basis with the Eligible Notes; and (v) for Eligible Notes that are TANs, TRANs or similar notes, cash-flow statements prepared during the last 60 days (including prior-year actuals and 12-month projections).[18]

### *Additional Thoughts*

For certain documents listed on the Checklist, Eligible Issuers may indicate that they are either not

applicable or not available; provided, that it is not clear how the Federal Reserve will respond to such a determination. In any event, Eligible Issuers are encouraged to review the Checklist prior to submitting the Application, to ensure that all of the required information has been included.

## **Next Steps**

Once submitted, Eligible Issuers will receive an email confirming receipt of the Application and, if the Application is approved, a further email: (i) confirming approval of the Application; (ii) providing the anticipated pricing and closing dates (in consultation with the Eligible Issuer); (iii) designating a primary contact at BLX Group LLC, the administrative agent for the MLF ("BLX"), to facilitate pricing and closing; and (iv) setting forth any additional requirements and conditions.

## **Form Documents**

The Form Documents consist of: (i) the Note Purchase Agreement (the "NPA") between the Eligible Issuer or the Designated Issuer, as applicable (the "Issuer") and the Purchaser; (ii) the Note Purchase Commitment (the "NPC") between the Issuer and the Purchaser; (iii) the Continuing Disclosure Undertaking of the Issuer (the "CDU");<sup>[19]</sup> and (iv) a packet of certificates to be delivered by the Issuer at closing (the "Issuer Certification Packet").

### *The NPA and NPC*

The NPA sets forth the terms and conditions governing the purchase of the Eligible Notes from the Issuer in either: (i) a direct purchase transaction where the Issuer sells the Eligible Notes to the Purchaser; or (ii) a competitive offering where the Purchaser does not submit a bid but rather acts as the fallback purchaser. In contrast, the NPC sets forth the terms and conditions governing the Purchaser's submission of a bid to, and ultimate purchase of the Eligible Notes from, the Issuer in competitive offerings where the Purchaser submits a bid.<sup>[20]</sup> As a practical matter, this is where the differences between the NPA and NPC end. Both documents: (i) are similar in form and substance to bond or note purchase agreements used in other public finance transactions generally; (ii) memorialize the terms and conditions for the MLF that were described in the Term Sheet and the FAQs; and (iii) contain substantially the same requirements for closing; representations, warranties and covenants of the Issuer; conditions for the Purchaser to submit a bid and/or purchase the Eligible Notes; and termination rights. Nevertheless, Issuers should pay particular attention to the following unique provisions as they review the NPA and NPC.

### *Pricing and Closing Logistics*

The Purchaser will send: (i) a completed and executed NPA to the Issuer on the agreed-upon pricing date for a direct purchase transaction or (ii) a completed and executed NPA (for competitive offerings where the Purchaser is the fallback purchaser) or NPC (for competitive offerings where the Purchaser submits a bid) within three (3) business days after the Purchaser approves the Application. The Issuer must execute and return the NPA or NPC within one (1) business day of its receipt. Schedule I to the NPA and the NPC (in each case, "Schedule I") will set forth certain information regarding the Issuer and the Eligible Notes, including, but not limited to: (i) the principal amount of the Eligible Notes; (ii) purchase price;<sup>[21]</sup> (iii) closing date;<sup>[22]</sup> (iv) maturity date; (v) tax status; (vi) ratings information; (vii) use of proceeds; and (vi) interest rate. With respect to the interest rate, for direct purchase transactions, Schedule I will include the actual interest rate for the Eligible Notes. In contrast, for competitive offerings, Schedule I will include a description of the formula for determining the interest rate, as more particularly described in Appendix B to the FAQs. The Purchaser will determine the interest rate on the morning of the competitive offering and communicate it to the Issuer either through its bid submission (for competitive offerings where the



Purchaser submits a bid) or directly to the Issuer prior to the competitive bid process (for competitive offerings where the Purchaser is the fallback purchaser).

### *Required Statements and Other Actions for Competitive Offerings*

For competitive offerings, the NPA or the NPC, as applicable, requires the Issuer to: (i) include language in the notice of sale describing the Purchaser's commitment to purchase or submit a bid to purchase the Eligible Notes, as applicable; and (ii) notify the Purchaser in writing of the results of the competitive bid process immediately following its completion, in the form of Exhibit A to the NPA or the NPC (the "Notice of Results of Competitive Bid"), which notice will be countersigned by the Purchaser. In addition, for competitive offerings where the Purchaser is submitting a bid, the Issuer must deliver to the Purchaser the final notice of sale, in a form acceptable to the Purchaser, not later than three (3) business days prior to the competitive sale date.

### *Ratings Requirement*

The Issuer must provide the Purchaser with evidence of the long-term ratings applicable to the credit for the Eligible Notes and, for competitive offerings, the short-term ratings on the Eligible Notes, on or prior to the pricing date (for direct purchase transactions) or the date the Issuer conducts the competitive bid process (for competitive offerings), followed by ratings confirmation letters from the NRSROs at closing.[23]

### *Representations and Warranties*

For the most part, the Issuer's required representations and warranties included in the NPA and NPC are substantially similar to the ones generally found in other bond or note purchase agreements. However, Issuers should pay particular attention to the following unique representations:

1. In addition to the typical "no materially adverse litigation" representation, Issuers must represent that there is no litigation that would in any other manner adversely affect the source of repayment of the Eligible Notes (regardless of the materiality of such litigation).
2. Except as otherwise disclosed to the Purchaser, Issuers must represent that they are not aware of any material adverse change in their financial position, results of operations or condition, financial or otherwise, from what is set forth in the audited and unaudited financial statements that the Issuers previously provided to the Purchaser.[24]
3. The Issuers must represent that all information provided to the Purchaser, including the information provided in the Application and NOI (unless revised in the Application), remains true, correct and accurate (no materiality qualifier).

### *Final Official Statement in Competitive Offerings*

Although implied in the FAQs and the Application Form, the NPA and NPC clarify that, for competitive offerings, the Issuer is responsible for producing both a Preliminary Official Statement (the "POS") and a Final Official Statement (the "FOS"), even if the Purchaser ends up as the sole purchaser of the Eligible Notes. The FOS must be delivered to the Purchaser no later than two (2) business days prior to the closing date. To that end, bond counsel will be required to provide not only the opinion as to the exemption of the Eligible Notes from the registration requirements of the federal securities laws, but also the Rule 10b-5 opinion covering both the POS and the FOS.

### *Closing Documents*

The NPA and NPC include as Exhibit B a closing certificate of the Issuer (the "NPA/NPC Closing

Certificate”), which functions as a bring-down of certain provisions of the NPA and NPC at closing, specifically that: (i) the Issuer’s representations and warranties remain true and correct, (ii) the Issuer has complied with its covenants (specifically including the ratings requirements); (iii) all of the transaction documents are in substantially the final forms previously presented to the Purchaser; and (iv) the Issuer has satisfied each of the other conditions to closing, all as set forth in the NPA and NPC.

The terms of the NPA and NPC confirm that the Purchaser will not deliver any certifications, receipts, agreements, instruments or other closing documents (including issue price certificates) beyond the NPA and the NPC (and the Notice of Results of Competitive Bid, which is countersigned by the Purchaser). This requirement may be problematic for Issuers, since the NPA and NPC will be executed prior to the closing date for both direct purchase transactions and competitive offerings. At a minimum, underwriters and purchasers typically sign a receipt and an issue price certificate (for tax-exempt issuances) at closing in connection with the issuance of most municipal securities. It appears that Issuers accessing the MLF will have to forego such documents, accepting: (i) the Purchaser’s wire transfer of the purchase price of the Eligible Notes and (ii) email correspondence between the parties, as the Issuer delivers the various closing documents, opinions and rating confirmations to the Purchaser, as tangible confirmation that the Purchaser has purchased the Eligible Notes on the closing date.

### *Termination*

The NPA and NPC will terminate and be of no further force and effect if: (i) the Issuer is unable to satisfy the conditions set forth in the NPA and NPC; (ii) the Issuer’s general obligation or issuer credit ratings are downgraded below the lowest rating level required for Issuers participating in the MLF or are otherwise withdrawn; or (iii) all of the Eligible Notes are sold to other purchasers through a competitive offering.

### *Governing Law*

The NPA and NPC will be governed by the laws of the State of New York and the Issuer must: (i) submit to the exclusive jurisdiction of the courts of the United States for the Southern District of New York (and the appellate courts thereof) and (ii) consent to any related actions or proceedings being brought only in such courts.

### *CDU*

Consistent with the disclosure obligations described in Rule 15c2-12, the CDU is substantially similar in form and substance to continuing disclosure agreements delivered in connection with the issuance of publicly-sold municipal securities. As such, the requirements of the CDU that Issuers file annual financial reports (the “Annual Report”) and notices of certain enumerated events with the Purchaser will be familiar to Issuers that are already a party to existing continuing disclosure agreements.[25] However, Issuers should note the following required filing deadlines and additional disclosure obligations, which are unique to the CDU.

### *Filing Deadline for Annual Financial Information*

Even if the Issuer has a different filing deadline under its existing continuing disclosure agreements, the CDU requires the filing of the Annual Report not later than six months after the end of each fiscal year, commencing with the report for fiscal year 2020.

### *Additional Financial Disclosure Requirements*

Beyond the Annual Report and notices of certain enumerated events, the CDU requires Issuers to provide the following additional disclosures:

1. Not later than forty-five (45) days after the end of each calendar quarter, (a) quarterly reports: (i) of cash flows, showing actual results compared to projections included in the prior report and the projected results for the succeeding twelve-month period (or to the maturity of the Eligible Notes, if shorter) and (ii) of the implementation status and funding of planned set asides, with an explanation of any negative variances; and (b) quarterly financial reports/information in a format provided to governing bodies or otherwise to the public;
2. Not later than ten (10) business days after the occurrence thereof, any changes in the long-term ratings applicable to the security for the Eligible Notes; and
3. Not less than six months prior to, and again at three months prior to, the maturity of the Eligible Notes, a written report explaining the Issuer's plan to pay the Eligible Notes at maturity; provided, that, in the case of BANs, such report must identify any material credit or other matters relating to the issuance of the Bonds expected to repay the BANs.

The Issuer may satisfy these disclosure obligations by: (i) filing such information with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access (EMMA) system and notifying the Purchaser of such filing; (ii) with respect to the information described in subsection (1) above, posting the reports on its website, notifying the Purchaser that the information is available and providing a link to the website; or (iii) with respect to the information described in subsections (2) and (3) above, submitting the notice/report directly to the Purchaser.

Additionally, the Purchaser reserves the right: (i) to request and receive other information relating to the Issuer's ability to repay the Eligible Notes and (ii) publicize any information received in connection with its purchase of the Eligible Notes, including the information received under the CDU.

As noted in the NPA and NPC, Issuers should be aware that the CDU is a particular requirement of the Purchaser. As such, and in accordance with Rule 15c2-12, a further continuing disclosure agreement may be necessary or appropriate in competitive offerings where, in addition to the Purchaser, one or more underwriters purchase a portion of the Eligible Notes.

#### *Issuer Certification Packet*

In addition to the NPA/NPC Closing Certificate (the form of which is included as Exhibit B to the NPA and NPC), the Form Documents include an Issuer Certification Packet consisting of the following certificates to be delivered by the Issuer at closing: (i) the certificate as to the Issuer's solvency and the lack of adequate credit (the "Solvency and Adequate Credit Certificate"), as required by of Section 13(3) of the Federal Reserve Act ("Section 13(3)") and the Federal Reserve's Regulation A ("Regulation A"); (ii) the certificate regarding the conflict of interest requirements of Section 4019 of the CARES Act (the "Conflict of Interest Certificate"); (iii) the certificate regarding the U.S. business requirement of Section 4003(c)(3)(C) of the CARES Act (the "U.S. Business Certificate"); and (iv) the certificate regarding the forms of the closing documents (the "MLF Closing Certificate").

#### *Solvency and Adequate Credit Certificate*

Under Section 13(3) and Regulation A, as a condition to participating in the MLF, the Issuer must certify that: (i) it is not insolvent<sup>[26]</sup> and (ii) it is unable to secure adequate credit accommodations from other banking institutions.<sup>[27]</sup>

## *Conflict of Interest Certificate*

Section 4019 of the CARES Act places certain conflict of interest restrictions on entities that issue equity interests.[28] Given the governmental nature of the entities that would qualify as Issuers under the MLF, it is highly unlikely that they would be issuing equity interests. As such, Issuers will be required to certify that they are not subject to these restrictions because they issue no equity interests.

## *U.S. Business Certificate*

Sections 4003(a) and (b) of the CARES Act authorized the establishment of certain liquidity facilities for eligible businesses, states and municipalities relative to the COVID-19 pandemic including, with respect to Issuers, the MLF. Under Section 4003(c)(3)(C), such facilities may not purchase obligations from a business unless the business is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States. Section 4003(c)(3)(C) would not apply to Issuers, as they are not organized as a for-profit business. As such, Issuers will be required to certify that they are not “businesses” for purposes of Section 4003(c)(3)(C).

## *MLF Closing Certificate*

Finally, Issuers must certify that the documents submitted to the Purchaser in connection with the closing of the Eligible Notes are identical to the draft documents submitted with their Application, other than dates, signatures and pricing details. In furtherance of this certification, the Issuer must attach redlined copies of such closing documents to the certificate.

## **Concluding Thoughts**

The Application Form, Checklist and Form Documents can be found on the Reserve Bank’s MLF website: <https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-application>. If you have any questions regarding the requirements of the MLF, the Application or the Form Documents, please contact Neal Pandozzi at [npandozzi@apslaw.com](mailto:npandozzi@apslaw.com) or Jonathan Cabot at [jcabot@apslaw.com](mailto:jcabot@apslaw.com).

---

[1] For a discussion of the MLF in general and earlier guidance from the Federal Reserve, please see our previous blogs entitled “CARES Act Support for State and Local Governments – Municipal Liquidity Facility” (“MLF Blog 1”), “Federal Reserve Releases Updated Guidance on Municipal Liquidity Facility” (“MLF Blog 2”), “Federal Reserve Releases Updated FAQs for Municipal Liquidity Facility” (“MLF Blog 3”) and “Federal Reserve Opens Municipal Liquidity Facility with Release of Notice of Interest” (“MLF Blog 4” and collectively with MLF Blog 1, MLF Blog 2 and MLF Blog 3, the “Previous MLF Blogs”), which can be found at: <https://www.apslaw.com/its-your-business/>. Readers should review the following summary of the Application and Form Documents in conjunction with the Previous MLF Blogs. Capitalized terms not otherwise defined in this blog have the meanings set forth in the Previous MLF Blogs.

[2] Previously, an “Eligible Issuer” included a state, city or county (or, subject to Federal Reserve approval, an entity that issues securities on behalf of such state, city or county), or a multi-state entity created by a Congressionally-approved compact (a “Multi-State Entity”); provided that cities and counties meet a pre-determined population threshold. On June 3, 2020, the Federal Reserve announced a further expansion of this list to include Designated Cities, Designated Counties and

Designated RBIs, as further described in this Blog under the heading “Recent Updates to Eligible Issuers.”

[3] “Eligible Notes” consist of newly-issued tax anticipation notes (“TANs”), tax and revenue anticipation notes (“TRANs”), bond anticipation notes (“BANs”), and other short-term notes.

[4] We discuss the NOI in detail in MLF Blog 4.

[5] The Term Sheet and FAQs can be found on the Federal Reserve’s website:  
<https://www.federalreserve.gov/monetarypolicy/muni.htm>,

[6] The mayor of the District of Columbia may designate one Revenue Bond Issuer for participation in the MLF.

[7] In the case of the District of Columbia, the mayor would provide such designation.

[8] Like a Multi-State Entity, (i) a Designated RBI may sell Eligible Notes to the MLF up to an aggregate amount of 20% of its gross revenues, as reported in its audited financial statements for fiscal year 2019; (ii) the Eligible Notes are expected to be parity obligations of existing debt secured by a senior lien on the revenues of the Designated RBI; (iii) the Designated RBI must have been rated at least A-/A3 as of April 8, 2020, by two or more NRSROs; (iv) if the Designated RBI met the foregoing ratings requirement as of April 8, 2020 but was subsequently downgraded, it may still participate in the MLF if it is rated at least BBB-/Baa3 by two or more NRSROs at the time the MLF purchases its Eligible Notes; and (v) if the Designated RBI was rated by only one NRSRO as of April 8, 2020, it may still participate in the MLF if: (1) the rating was at least A-/A3; (2) the Designated RBI is rated by at least two NRSROs at the time the MLF purchases its Eligible Notes; and (3) such ratings are at least BBB-/Baa3.

[9] Similar to the NOI process, only Eligible Issuers, as opposed to Designated Issuers, may submit an Application. Eligible Issuers submit the NOI and Application through BLX Group LLC, the administrative agent for the MLF.

[10] The Issuer’s Application Certification includes certifications to the effect that: (i) the information provided in the Application and NOI is true and correct; (ii) the documents submitted with the Application are in substantially final form and include the required authorization documents for the Eligible Notes; (iii) the Eligible Issuer is prepared to execute the Form Documents; (iv) the Eligible Issuer remains eligible to participate in the MLF; and (v) the issuance of the Eligible Notes satisfies the requirements of the MLF.

[11] The NRSROs are currently S&P Global Ratings, Moody’s Investors Service, Fitch Ratings and Kroll Bond Rating Agency, Inc. As noted in MLF Blog #4, Eligible Issuers must provide written evidence of their qualifying general obligation or issuer credit ratings as part of the NOI process. Eligible Issuers must also provide evidence of the existing long-term ratings on the applicable credit to be used for the Eligible Notes and, for competitive offerings, the ratings on the Eligible Notes, as of the pricing date or the date of the competitive offering, as applicable.

[12] Under the MLF, Eligible Issuers must enter into a continuing disclosure undertaking at closing consistent with the requirements of Rule 15c2-12, even if the sale of the Eligible Notes would not otherwise be subject to Rule 15c2-12. As such, the answer to this question may provide an indication of the Issuer’s likely compliance with the MLF’s continuing disclosure obligations.

[13] Although the documents listed in the Checklist itself are referred to as “final form” documents, the opening paragraph of the Checklist and certain of the other Form Documents refer to such

documents as “substantially final,” allowing for updates such as final dates, signatures, pricing details, or other changes that are satisfactory to the Purchaser.

[14] The Rule 10b-5 opinion is actually a statement of fact that, based on the counsel’s due diligence efforts, nothing has come to their attention indicating that the preliminary official statement or the final official statement contains any misstatements of material facts or any material omissions.

[15] The Purchaser will serve as a fallback purchaser of the Eligible Notes following a competitive offering where: (i) no bids were received; (ii) all bids were rejected by the Issuer; or (iii) the Issuer has awarded only a portion of the Eligible Notes to a winning bidder(s).

[16] If the preliminary official statement is not available at the time of the Application, the Eligible Issuer must provide it as soon as it is released to the public.

[17] For review purposes, Eligible Issuers are also required to provide a direct link to the financial information and operating data posted on the MSRB’s EMMA system and on the Eligible Issuer’s website.

[18] Although the Checklist is not clear on this point, depending on the relationship between the two entities, documentation relating to the Eligible Issuer and the Designated Issuer may be required in situations where a Designated Issuer is issuing the Eligible Notes.

[19] Rule 15c2-12 requires underwriters in certain municipal securities transactions to confirm that the state or local government issuing the securities has entered into an agreement to provide certain financial information and event notices regarding the securities to the MSRB on an ongoing basis.

[20] As noted in the FAQs, the Purchaser will only submit a bid in cases where the Issuer: (i) is required by law to sell Eligible Notes through a competitive sale process and (ii) is not authorized to sell Eligible Notes directly to the Purchaser, even after a competitive offering where less than all of the Eligible Notes are sold.

[21] The Purchaser will deduct the origination fee (0.10% of the principal amount of the Eligible Notes) from the purchase price of the Eligible Notes.

[22] The closing date will be a date selected by the Issuer and agreed to by BLX that is not less than five (5) nor more than seven (7) business days after the pricing (for a competitive offering) or the date of the NPA (for a direct purchase transaction).

[23] Section 6(a) of the Application Form provides a specific deadline of two (2) business days prior to pricing for Issuers to provide such evidence. Contrast the more general language used in Section 2(a) of the NPA and NPC, which states that the evidence must be received on or prior to the pricing date (for direct purchase transactions) or the date that the Issuer conducts the competitive bid process (for competitive offerings), and Section 2(b), which states that, for competitive offerings, such evidence must be received before the date the competitive bid is conducted.

[24] In light of the impact of the COVID-19 pandemic, Issuers should be mindful of the breadth of this requirement, which extends not only to financial and operational matters, but also to the Issuer’s overall condition.

[25] Under the CDU, the Annual Report consists of the Issuer’s audited financial statements or, if otherwise unavailable by the filing deadline, unaudited financial statements followed by the audited financial statements when available. The list of enumerated events set forth in the CDU is taken from Section 5(i)(C) of Rule 15c2-12.

[26] As noted in Regulation A, an entity is “insolvent” if the entity: (i) is in bankruptcy or any other Federal or State insolvency proceeding, or (ii) was generally failing to pay undisputed debts as they became due during the 90 days preceding the issuance date of the Eligible Notes.

[27] Consistent with the requirements of Regulation A, the Issuer may consider current economic or market conditions as compared to normal economic or market conditions, in making this certification, including the inability of the Issuer to fully meet its financial needs through the capital markets. To that end, the Issuer is not required to establish that credit is unavailable, but rather that credit may be available, but at such prices or upon such terms that are inconsistent with normal market conditions.

[28] Section 4019 of the CARES Act defines “equity interest” as “(A) a share in an entity, without regard to whether the share is (i) transferable; or (ii) classified as stock or anything similar; (B) a capital or profit interest in a limited liability company or partnership; or (C) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in subparagraph (A) or (B), respectively.”

### **Adler Pollock & Sheehan P.C.**

June 8, 2020

---

## **Federal Reserve Further Modifies Eligibility for Municipal Liquidity Facility.**

The Federal Reserve expanded the Municipal Liquidity Facility (MLF) eligibility criteria on June 3, 2020 to allow more state and local governments to participate in the program. The MLF was originally established to help state and local governments respond to cash flow issues resulting from COVID-19.

### **Designated Cities and Counties**

Upon its announcement, only states, the District of Columbia, U.S. cities with a population exceeding one million residents, and U.S. counties with a population exceeding two million residents could participate in the MLF program. Subsequently, the city and county population requirements were reduced to allow cities exceeding 250,000 residents and counties exceeding 500,000 residents to participate. However, even after the reduction in population requirements, some states still only had one or zero eligible cities and counties.

The Federal Reserve’s [revised Term Sheet](#) granted governors the ability to designate up to two additional “Designated Cities and Counties.” Under the updated Term Sheet, a governor who has been given the ability to designate one Designated City or Designated County may choose either:

1. The most populous city in their state that has less than 250,000 residents; or
2. The most populous county in their state that has less than 500,000 residents.

A governor that has been given the ability to designate two Designated Cities and Designated Counties (on a combined basis) may choose any of the following combinations:

1. The most populous city and most populous county;
2. The most populous city and second-most populous city; or
3. The most populous county and second-most populous county.

Designated Cities and Counties may participate in an amount up to 20% of their own sources and utility revenues for the fiscal year 2017.

### **Designated Revenue Bond Issuers**

In addition to designating cities and counties for participation, each governor may designate up to two Revenue Bond Issuers (RBI) to participate in the MLF program. To be eligible for an RBI designation, the RBI must be a state or political subdivision thereof, or a public authority, agency, or instrumentality of a state or political subdivision thereof, that issues bonds secured by a specified source of revenue that is owned by a governmental entity. Eligible RBIs may participate in an amount up to twenty percent of the gross revenue of the RBI for fiscal year 2019.

### **Security of Obligations Issued under the MLF**

Security for notes issued under the MLF are subject to review and approval by the Federal Reserve and will depend on the applicable constitutional and statutory provisions governing the issuer and should be generally consistent with the source of repayment and strongest security typically pledged to repay publicly offered obligations of the issuer. To be eligible to participate, the issuer also must meet a minimum credit rating threshold as determined by the Federal Reserve. If the issuer is a state, city, or county, the notes will be expected to represent general obligations of the issuer, or be backed by tax or other specified governmental revenues. If the issuer is an authority, agency, or other entity of a state, city, or county, the issuer must either commit the credit of, or pledge revenues of, the state, city, or county, or the state, city, or county must guarantee the notes. If the issuer is an RBI, the notes will be expected to be secured by a lien on the gross or net revenues of the RBI.

Unless extended, the MLF program will expire on December 31, 2020.

**Frost Brown Todd LLC** – Michael A. Brockman, David A. Rogers, Laura H. Theilmann, Carrie J. Cecil, Scott A. Krapf and Stephen M. Sparks

June 10 2020

---

## **[Second Expansion to the Federal Reserve's Municipal Lending Program: Hunton Andrews Kurth](#)**

### **Recap of Program**

In April 2020, the Federal Reserve (the “Fed”) announced the creation of a municipal lending program called the Municipal Liquidity Facility (the “MLF”).<sup>1</sup> The MLF, which became operational on May 26, 2020, is a federal loan program offering up to \$500 billion in short-term direct lending to state and local governments to help manage cash flow stresses caused by the COVID-19 pandemic. All counties with a population of at least 500,000 residents and cities with a population of at least 250,000 residents are eligible to sell short-term notes (taxable or tax-exempt) directly to the MLF. The Fed maintains a list of the eligible cities and counties based on their populations.<sup>2</sup>

### **Program Expansion**

On June 3, 2020, the Fed expanded the number of municipal entities that can access the MLF. The expanded regulations permit the governor of each state to designate up to two Revenue Bond



Issuers located within such state (“Designated RBIs”) for participation in the MLF. The Designated RBIs may be a state, political subdivision or a public authority, agency, or instrumentality thereof that issues bonds that are secured by revenue from a specified source that is owned by a governmental entity (such as public transit, airports, toll facilities and utilities). In addition to Designated RBIs, other governmental entities that provide essential public services on behalf of an eligible state, city, or county may participate in the MLF by borrowing through an eligible issuer.

Also under the expanded regulations, each state is now guaranteed a minimum of two “population-based” issuers. States which do not have cities/counties that meet the population thresholds are now eligible, by governor designation, to select the two most populous cities or counties to utilize the MLF. Non-qualifying cities and counties are also encouraged to utilize the MLF indirectly by borrowing through a qualifying entity.

Pursuant to the MLF’s purchasing guidelines, an eligible issuer may (i) sell notes directly to the MLF, or (ii) conduct a competitive sale process in conjunction with a direct sale to the MLF. Under the competitive sale model, the MLF will serve as a backstop and agree to purchase notes that are not awarded to other bidders. The MLF will agree to purchase the notes at a price determined by the MLF’s pricing model found [here](#).

The MLF is currently operational. Any eligible issuer that wishes to utilize the MLF should complete a “Notice of Interest” application found [here](#). Among other requirements:

- Eligible state, county or city issuers must have an investment grade rating (BBB-/Baa3) as of April 8, 2020, from at least two nationally recognized rating agencies.
- Designated RBIs must have an investment grade rating of A-/A3 as of April 8, 2020, from at least two nationally recognized rating agencies.
- Designated RBIs must provide the following in order to qualify:

1) At the time it submits a Notice of Interest application, evidence that its status of “Designated RBI” has been verified with the governor; and

2) At the time of the note sale, a certification from the governor reflecting its designation.

- Eligible issuers must provide a written certification that they are unable to secure adequate credit accommodations from other banking institutions and that they are not insolvent. In making this certification, issuers may consider economic or market conditions intended to be addressed by the MLF as compared to normal market conditions, including the availability and price of credit.<sup>3</sup> Issuers should consider consulting with their financial advisors regarding the terms of the MLF and the comparability and viability of alternative credit accommodations.
- Eligible issuers must deliver standard legal opinions for the issuance of debt, including, but not limited to, an opinion of nationally recognized bond counsel as to the validity, enforceability and binding nature of the notes.
- The termination date for the MLF is December 31, 2020.

To view all formatting for this article (eg, tables, footnotes), please access the original [here](#).

**Hunton Andrews Kurth LLP** – Martha A. Warthen, Ryan M. Bledsaw, Andrew R. Kintzinger, Christopher G. Kulp, Darren C. McHugh, Douglass P. Selby, Caryl Greenberg Smith, Brendan M. Staley, Yeshake, Audra L. Herrera, Thomas A. Sage, Benjamin Vernon, Clayton T. Holland, William H. McBride, Samantha Gilley Rachlin and Adam Midkiff

June 10 2020

---

## **States Contemplate Borrowing to Help Manage Pandemic's Fiscal Impact**

### **Short-term financing, Federal Reserve program may buy time, but budgets will need adjusting**

As Illinois lawmakers in May considered a budget for the fiscal year that starts July 1, they already faced an estimated \$7 billion combined revenue shortfall for fiscal 2020 and 2021, in large part attributable to the COVID-19 pandemic. To help close that gap, the General Assembly adopted a spending plan premised on borrowing up to \$4.5 billion from the Federal Reserve's new Municipal Liquidity Facility (MLF)—with the hope that the state will be able to repay those funds with federal budget aid not yet approved by Congress. On June 2, the state announced an initial \$1.2 billion of borrowing from the MLF.

Although it is not clear whether federal aid targeted to help states will materialize, the plan illustrates the measures policymakers are considering in response to an unprecedented dive in tax revenue and new demands on spending. Borrowing could help, but it would be only one component in a broader strategy that will require other budget adjustments.

States generally have two options for borrowing money: long-term bonds and short-term notes.

Long-term bonds mainly finance long-lived infrastructure projects. They are often repaid over years or decades and represent the vast majority of municipal debt.

Short-term borrowing most commonly takes the form of "anticipation notes." These are used to manage cash flow because tax revenue tends to arrive in periodic large amounts while spending demands are spread throughout the year.

States face challenges and limitations using either approach to respond to fiscal emergencies such as those caused by the coronavirus. Creating a long-term liability—as with bonding—to pay for immediate, short-term operating costs is generally considered unsound practice, with potentially negative credit rating implications. Some governments constitutionally or statutorily prohibit it.

Short-term anticipation notes can help states address revenue delays, such as those created by moving the tax filing deadline to July 15 this year. But they are not a budget solution. Anticipation notes require sufficient future revenue to borrow against; however, states will probably have few uncommitted income streams that they can use to fill new, unexpected budget gaps.

Moreover, states usually require that anticipation notes be repaid within 12 months or by the close of the fiscal year. Rhode Island's constitution, for example, stipulates the latter. This means that notes issued to meet current costs may need to be paid back too soon to make a difference in closing the gap.

And neither short- nor long-term borrowing can solve the harder problem of dramatic revenue declines driven by an economic downturn. Ultimately, balancing state budgets will require longer-term solutions such as spending cuts, tax increases, drawing on rainy day funds, or federal aid. Borrowing can provide immediate cash and buy time to make those decisions but will have to be repaid with interest.

Despite the limitations of borrowing, the current crisis presents such a challenge to state finances that policymakers will likely need to employ a range of tools to weather the storm. Although state rainy day funds, on average, are in better shape now than going into the Great Recession, they will

not be enough for most states. Borrowing then may need to be one part of a package of state budget and policy responses.

This time, there is also a new borrowing option for policymakers to consider. In response to unprecedented turmoil in the municipal bond market in March linked to the pandemic, the Federal Reserve announced a plan to purchase up to \$500 billion worth of short-term debt from state and local governments through the newly created MLF.

The program will purchase notes directly from all 50 states, counties exceeding 500,000 residents, and cities with more than 250,000. In states with no counties or cities meeting those requirements, governors can designate up to one county and one city to participate. Borrowers can use the funds to help manage revenue delays and declines as well as increased expenses linked to the pandemic, or to lend to governments that don't meet the size restrictions. The total note size is limited to 20% of the borrower's 2017 own-source revenue.

In addition, the MLF can purchase notes with maturities of up to three years, longer than typical anticipation notes. That could provide policymakers with more time to decide on sustainable budget solutions—without creating an obligation that weighs on budgets many years into the future, such as with long-term bonds. However, in order to benefit, some states would have to modify their rules to allow borrowing for operating expenses for this length of time.

Borrowing costs could play an important role in determining whether governments will take advantage of the MLF. The Fed requires prospective borrowers to certify that interest rates demanded by the market are higher than normal. After a turbulent March, the muni market stabilized and yields dropped to more ordinary levels, meaning states might not currently meet the requirement.

Further, the laws governing the Fed require it to charge borrowers a “penalty rate” above the typical market rates seen in normal circumstances. This rule is intended to ensure that would-be borrowers turn to the MLF only as a last resort when market rates are substantively above normal. In that event the program might provide a cheaper borrowing opportunity, but until then states may hesitate to tap into the facility.

The Fed has unveiled MLF details on a rolling basis, with additional clarifications and changes still possible. Despite that uncertainty, the significant fiscal challenges that states face because of the pandemic make it likely that policymakers will consider borrowing, whether from the MLF or the market. Understanding the trade-offs of the various options will help them make sound budget decisions.

Jeff Chapman is a director, Adam Levin is a principal associate, and Mark Robyn is a senior officer with The Pew Charitable Trusts' state fiscal health initiative.

### **The Pew Charitable Trusts**

By: Jeff Chapman, Adam Levin & Mark Robyn

June 9, 2020

---

**[Cities Prepared for Rainy Days, but Not a Fiscal Tsunami.](#)**

As the pandemic-induced economic downturn continues, cities are facing immediate, significant and irreplaceable losses to major revenue streams. NLC estimates that cities will experience a \$360 billion budget shortfall over the next three years.

The question, of course, quickly turns to are cities prepared to weather a fiscal storm this severe?

One critical way to assess fiscal preparedness is levels of General Fund ending balances (also called reserves or rainy-day funds). To better understand the fiscal position of cities, we analyze city ending balances as a percentage of General Fund expenditures.

[Continue reading.](#)

## **National League of Cities**

by NLC Staff

June 8, 2020

---

### **Biden Calls for More Federal Aid For Cash-Strapped Governments.**

Joe Biden said Congress should increase aid to state and local governments to preserve the jobs of first responders and other government workers and to make sure Americans can return to work safely.

Biden, the presumptive Democratic presidential nominee, emphasized the need for aid to state and local governments on a conference call with members of the American Federation of State, County and Municipal Employees, a trade union. The economic shutdown triggered by the coronavirus pandemic has devastated municipal budgets across the country, forcing governments to ask for additional federal aid.

“I’ve called on Congress to increase the funding states have,” Biden said on the call. “This isn’t an exercise in mathematics. The Republican Senate needs to do its job.”

States alone could see \$765 billion in budget shortfalls over the next three years, according to projections made by the Center on Budget and Policy Priorities. Cities are expected to see another \$360 billion in revenue losses through 2022, according to the National League of Cities. Because states and cities are almost always required to balance their budgets, the shortfalls could result in jobs cuts or reductions in public services.

House Democrats led by Nancy Pelosi passed a \$3 trillion package that devoted about one third of that as direct aid to states and localities. The bill has stalled in the Senate. So far, no direct money has been provided to localities aside from an allocation in the first stimulus package that gave them funds to spend only on virus-related expenses.

Public sector job cuts are already happening. The number of workers on state and local government payrolls fell by 571,000 to 18.3 million in May, pushing the number of job losses to about 1.5 million over the past two months, roughly twice as many as were ushered in after the last economic contraction over a decade ago.

**Bloomberg Politics**

By Fola Akinnibi and Danielle Moran

June 12, 2020, 12:25 PM PDT

---

## **[S&P: How Artificial Intelligence Technologies Are Changing U.S. Public Finance](#)**

### **Key Takeaways**

- The application of deep learning and generalized AI is still emerging in some U.S. public finance sectors such as local government, but has advanced in other sectors such as health care.
- There are several purposes of AI in the public finance space, including: reducing expenditures, alternative data pattern recognition, and public investment.
- State transportation agencies and health care entities are at the forefront of adopting AI in public finance.
- Many governments are using AI and machine learning to help address their cybersecurity needs.

[Continue reading.](#)

---

## **[Future of Airport Debt in the Midst of Travel Restrictions Around the World.](#)**

**The constant fear of COVID-19 and the uncertainty about the longevity of its financial impacts has shaken the world to new realities.**

One of the very first sectors to be impacted was the airline and tourism sector around the world. As more and more countries assimilated to the reality of COVID-19 and how the coronavirus spreads, they started to impose serious travel restriction that were then adopted worldwide. Furthermore, people were already skeptical about traveling which worsened the overall impact on the travel and airline industry.

In this article, we will take a closer look at how airports around the world are coping with the new reality of minimal travel and the struggle to generate revenue to maintain their operations. Furthermore, what does this mean for municipal debt secured by these revenue sources that have now been slashed and their forecast looks grim?

[Continue reading.](#)

**municipalbonds.com**

by Jayden Sangha

Jun 10, 2020

---

## **[S&P: U.S. Oil-Producing States Dealt Double Blow From Price Collapse And](#)**

## **COVID-19**

### **Key Takeaways**

- The double blow of a collapse in oil prices and the COVID-19-induced recession will likely have an outsized economic effect in oil-producing states compared to the rest of the country.
- U.S. oil-producing states are entering a new period of credit deterioration not unlike what occurred in mid-2015 after the last price rout.
- Over the past five years, various budgetary management techniques prevented more significant credit deterioration among oil-producing states.
- Any sharp pull-back in oil exploration and production will likely inflict considerable strain on oil-producing state economies and revenues.

[Continue reading.](#)

8 Jun, 2020

---

### **Federal Legislative Proposals at a Crossroads? - Ballard Spahr**

Surface transportation has been a topic of federal policy consideration in recent weeks. The U.S. House of Representatives floated a partisan, large transportation bill, while the U.S. Senate continues to advocate for a bipartisan surface transportation-heavy bill. The Trump administration, meanwhile, focused largely upon removing ostensible project delivery impediments. There's been a flurry of activity, yet no clear sign of the compromise.

On June 3, 2020, the House Transportation Committee unveiled the full text of its Investing in a New Vision for the Environment and Surface Transportation in America (INVEST in America) Act. The proposed legislation provides for \$494 billion in spending over a five-year period to modernize existing infrastructure, fund new infrastructure projects, and increase funding for related government programs. The proposal would direct \$319 billion to the Federal Highway Administration's Federal-Aid Highway Program, \$105 billion to the Federal Transit Administration, and \$60 billion to various governmental recipients with the aim of improving intercity railway infrastructure.

The INVEST in America Act places particular emphasis on modernizing and improving the weatherization of existing roads and bridges, with \$6.25 billion apportioned for a newly created natural disaster mitigation program aimed at bolstering long-term resilience of existing infrastructure. Mitigation of climate change is also a central aspect of the legislation through measures such as an \$8.4 billion carbon reduction program, \$1.8 billion in funds for low-emission vehicle infrastructure, and an increase in funding to public transit agencies, including a \$958 million increase in the base authorization of FTA's Capital Investment Grants program. Transportation safety programs would also see funding increases, with the National Highway Traffic Safety Administration and Federal Motor Carrier Safety Administration authorized for \$5.3 billion and \$4.6 billion in funds, respectively. Where the bill doesn't appear to turn to public-private partnership (P3) approaches outright to these projects, it is clear that P3s are available and certainly not precluded.

The full text of the INVEST in America Act can be found [here](#).

In the Senate, Environment and Public Works Committee (EPW Committee) Chairman John Barrasso (R-Wyoming) has continued to push for passage of the America's Transportation Infrastructure Act

(ATIA), a bipartisan effort which passed the EPW Committee by a unanimous vote in July 2019. ATIA would authorize \$287 billion in spending from the Highway Trust Fund over a five-year period with a primary focus on road and bridge maintenance. The proposed legislation also aims to streamline project delivery by establishing a two-year target for completion of environmental reviews relating to highway projects and a 90-day target for issuance of subsequent related project authorizations. The full text of ATIA can be found [here](#).

Elsewhere, in response to the COVID-19 pandemic, on June 4, 2020, President Trump issued an Executive Order on Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities (6/4 EO). The 6/4 EO provides broad direction to federal agencies administering infrastructure projects to "...take all reasonable measures to speed infrastructure investments and to speed other actions in addition to such investments that will strengthen the economy and return Americans to work, while providing appropriate protection for public health and safety, natural resources, and the environment, as required by law." The 6/4 EO also requires applicable federal agencies to review the National Environmental Policy Act, the Endangered Species Act, and the Clean Water Act, and identify any actions which may be taken thereunder in furtherance of economic recovery. The full text of the 6/4 EO can be found [here](#).

Any of the strategies—the House's rail/transit-heavy strategy, the Senate's repair and preserve strategy, and the White House's expedited delivery strategy (shared with the Senate)—acknowledge the need to establish and implement an infrastructure and transportation public policy. President Trump has been promising a \$1 trillion infrastructure plan since his 2016 campaign, although not much progress has been made. With the September expiration of the FAST Act—the last comprehensive federal transportation bill signed into law—the time is now.

Although the release of respective transportation infrastructure bills by the House Transportation Committee and Senate EPW Committee should serve as an important starting point for negotiations between the two chambers, observers caution that the November election and an anticipated focus on short-term funding measures in response to the COVID-19 pandemic make passage of a comprehensive infrastructure bill unlikely in 2020. But collectively, they do appear to mark the spaces and approaches favored by the political parties, and depending on the results of the November elections, which direction transportation public policy will likely proceed.

Attorneys in [Ballard Spahr's P3/Infrastructure Group](#) routinely monitor and report on new developments in federal and state infrastructure programs related to transportation and other types of projects.

Copyright © 2020 by Ballard Spahr LLP.  
[www.ballardspahr.com](http://www.ballardspahr.com)  
(No claim to original U.S. government material.)

June 10, 2020

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the author and publisher.

This alert is a periodic publication of Ballard Spahr LLP and is intended to notify recipients of new developments in the law. It should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your situation and specific legal questions you



have.

---

## **Wall Street Risk Analysts Rise in the Muni Bond Market.**

- **Credit analysis returns as slowdown hits almost every sector**
- **Prices revived, but financial toll may not be known for months**

Don't be fooled by the market's calm: these are hectic times for Wall Street's municipal-bond analysts.

The \$3.9 trillion state and local government debt market, typically the safest of havens, has suddenly become one where assessing risk matters again, thanks to the economic wreckage wrought by the pandemic.

Since the nation went virtually overnight from a record-setting expansion to the worst recession in decades, analysts at investment firms have been sifting through a wave of bond documents, disclosures and data from governments, city agencies, universities, hospitals, public transit authorities and nursing homes.

The challenge is to figure out what's still a safe investment bet. That's a difficult feat considering there's no clear way to predict how it will keep affecting American life and the worst of the financial effects typically don't show up until well after a contraction begins.

At DWS Group, an investment firm, six full-time municipal credit analysts are working closely with portfolio managers and traders there, attending two team calls a day to discuss trades and sector trends. "They're busy," said Ashton Goodfield, who leads the municipal department.

The municipal market, used by some 50,000 issuers, has gone through a period of unprecedented volatility. In March, investors pulled record amounts out of mutual funds, triggering a steep rout and moves by the Federal Reserve to stabilize the market. Since then, prices have essentially recovered, raising the possibility that the financial impacts of the slowdown have been too deeply discounted.

At Franklin Templeton, the firm's new head of municipal debt investing, Ben Barber, is also focusing on risk analysis. The firm has more than a dozen credit analysts that have dedicated sector focuses like student housing and tobacco-settlement backed bonds. Tom Walsh leads the company's municipal credit research effort.

Credit research is "very near and dear to my heart," Barber said.

Barber started his career as an analyst covering the classic segment of the muni market, states and local governments. He said he still views municipalities positively despite their shutdown-related budget deficits, given that they have tools at their disposal like raising taxes.

The DWS research team has been looking for bonds at risk as well as those that are showing strength, Goodfield said. That way, she said, "if we want to sell something we think is showing weakness, we know where to go with that money, we know what to replace it with."

Defaults have remained relatively rare compared with other markets, though they've started to rise. In a note to clients last week, Municipal Market Analytics said at least 29 borrowers became impaired in May, which includes defaults and steps like tapping reserves to avoid them. That's the



most since December 2014, according to MMA.

Goodfield said that it's hard to generalize both positively or negatively about the plethora of industries that tap the muni market. For the most part, though, the firm is cautious on high-yield deals that were sold for ventures that seek to make novel products from waste. One such deal for a California project to turn rice waste into fiberboard skipped bond payments in June.

Issuers have been uploading so-called continuing disclosures online that give details to investors on how their business is faring. The volume of those rose nearly 13% in the week ended June 7, [according to](#) the Municipal Securities Rulemaking Board.

The increase of information is welcome in a market where issuers are notoriously slow to post financial updates.

Yet some of the filings are more detailed than others. Take Foley, Alabama, which included a [big caveat](#) for bond analysts: "This information is subject to change without notice."

## **Bloomberg Markets**

By Amanda Albright

June 9, 2020, 10:30 AM PDT

— *With assistance by Danielle Moran*

---

## **[Investors Are in a Race to Find the Best Models of Climate Risk.](#)**

### **Nobody wants their assets to wind up underwater in 20 years.**

Sustainable finance is having a reasonably good pandemic. Environmental themed funds have had fewer outflows, and companies with better environmental, social, and governance ratings have tended to fare more lucratively than their peers.

It makes sense on an intuitive level. The pandemic reminds us of the fragility and importance of the physical world, and also of the threat of sudden, non-linear risks. This has dramatically accelerated the emergence of a hot new finance trend: assessing how potential climate change outcomes such as rising sea levels or heatwaves might affect the performance of an investment.

"Physical risk" or "climate impact risk" used to be a niche concern, mostly consisting of bespoke analysis for companies big investments in massive infrastructure. (This category includes, ironically, oil companies.) That's changed quickly. Scientists have spent decades refining models of the Earth's climate, and financial institutions—increasingly conscious that the effects of climate change are already costing them money—want to use sophisticated tools to get an edge on understanding their level of exposure in the years to come.

There's now an array of companies offering portfolio-wide assessments of physical climate risks, ranging from specialist startups to mid-sized sustainability consultancies to shops within the big global advisory firms. The idea has become so popular, it's now tough to find a consultancy in the financial services sector that *isn't* offering some kind of physical risk analysis. Some investment managers such as BlackRock are even developing their own capabilities in-house as a service for

clients.

That said, there's a steep learning curve with assessing physical climate risk. In the last two years there have been around a dozen guides published by investor networks, consultancies, and research institutions that aim to walk financial institutions through the process. The most recent is from the London-based Institutional Investor Group on Climate Change, published in late May. It advises, for example, that investors not rely on disclosures of physical risks from an investee itself, as most of the reports published by companies don't contain "decision useful information" for investors.

In other words, those sophisticated climate risk maps now starting to appear in company reports are pretty worthless.

Exploring the risks yourself may be the best option, and like many similar guides, IIGCC's lays out a detailed process. This includes figuring out which climate-related hazards you're analyzing—wildfires? flooding? extreme heat?—and how far into the future you're looking—a few years? several decades?—and where the physical assets and supply chains you're interested in are located. You need to identify what you're concerned about: A threshold temperature beyond which facilities—or people—might be unable to function properly? The level of storm surge that could ruin a municipality's sewage system?

The next step is to actually overlay the data about expected climate change. This is where it gets into really niche expertise.

The data from climate models is hard to access, let alone interpret and apply in a context like finance. This is where those consultants could help—but that too, raises a whole new set of pitfalls. The IIGCC report cautions against consultants who use "black box" approaches, where the method for generating an estimate is opaque or proprietary. Without deep knowledge of the models, how do you believe a colleague, consultant, or an investment manager telling you that a swathe of real estate will be fine (or doomed) in 20 years?

IIGCC also recommends taking care to understand the limitations of the work that's being done. One such limitation is "downscaling," or the practice of breaking down the large gridded squares of climate models into smaller, seemingly more precise chunks. Scientists who work with climate models warn that apparent granularity can be worse than illusory and give an even less accurate view of what's at stake.

The simple answer to all of this is: standards. Rely on scientists set out what can and can't be done and develop a clear, shared terminology that makes sense to non-specialists. As with most things about climate change, though, it's not at all easy. Almost two years ago I was involved in kicking off a process to do exactly this in Australia. Only now, after much hard work from numerous experts and practitioners, is that nearing the point of delivering actual recommendations.

One other important thing to remember: these are just the teething pains of an emerging industry in which both buyers and sellers are motivated to find a solution. An infinitely thornier question is what will be done with this information. Selling to a greater fool is one option; investing in "resilience" to protect an at-risk asset is another. KMPG published a [case study](#) last month pointing out that a 4 degrees Celsius average annual temperature increase could mean days as hot as 60 degrees C (140 degrees Fahrenheit) in some places.

The authors raise good points about heat extremes, and also about unforeseen second order effects. The resulting lack of travel, for instance, might harm the revenues for a toll road operator. But it's hard to imagine who, in such a scenario, would be lucky enough to be primarily concerned about

revenues.

## **Bloomberg Green**

by Kate Mackenzie

June 12, 2020

*Kate Mackenzie writes the Stranded Assets column for Bloomberg Green. She advises organizations working to limit climate change to the Paris Agreement goals. Follow her on Twitter: @kmac. This column does not necessarily reflect the opinion of Bloomberg LP and its owners.*

---

### **Dual Threats: COVID and Climate Change**

The pandemic has intensified existing stresses on U.S. state and municipal economies – with implications for investors.

The COVID-19 pandemic is exhausting local finances and may impact growth trajectories for years to come. As of mid-April, states and municipalities will need at least \$500 billion in aid to shore up balance sheets as demand for services intensifies and tax revenue plummets, according to the National Governors Association. At the same time, hurricane season – and the economic havoc it wreaks – is officially upon us.

To understand the implications of this dual threat, we have combined our local economic coronavirus impact modeling with our climate change risk assessments. We find, regrettably, that:

Hurricane damage is expected to produce a negative local GDP impact along the Gulf Coast and Atlantic Basin ranging up to 1.9% annualized GDP loss over the decade.

Some of the regions hardest hit by the pandemic may also have the greatest exposure to hurricane risk and costs from wind and flooding damage. For example, we estimate Miami-Dade County with a joint COVID/Climate annualized loss of 2.6% to 2030

Even those counties with relatively muted GDP impacts from COVID may face more significant losses after factoring in climate risks

As investors navigate the uncharted waters of COVID-19 and look ahead, we recommend that they, too, bear in mind this dual threat of climate change.

[Continue reading.](#)

## **BlackRock**

Written by

Amit Madaan, CFA, FRM

Director, BlackRock Financial Modeling Group

Michael Kent

Vice President, BlackRock Sustainable Investing

May 30, 2020

---

## **Municipal Borrowers Prepare for New Issuance Surge as CUSIP Request Volume Climbs for Second Straight Month.**

NEW YORK, June 15, 2020 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for May 2020. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a significant surge in request volume for new municipal identifiers and a significant decline in request for new corporate debt identifiers.

CUSIP identifier requests for the broad category of U.S.- and Canada-issued equity and debt totaled 4,325 in May, down 31.9% from last month. On a year-over-year basis, corporate CUSIP requests were up 23.8%. The May 2020 monthly volume declines were focused in U.S. corporate debt, which fell 43.4%, U.S. corporate equity, which was down 12.7% and certificates of deposit with maturities greater than one year, which saw a 39.9% month-over-month slowdown.

Municipal CUSIP request volume increased sharply in April for the second straight month. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – climbed 53.1% versus April totals. This comes on top of a 12.3% increase the previous month. On an annualized basis, municipal ID request volumes are up 10.6% through May.

“If there was ever any doubt about the ability of municipal bond issuers to access liquidity during the COVID-19 pandemic, our CUSIP Issuance Trends indicator is sending a clear signal that municipalities are putting the pieces in place for a surge in new issuance volume in the weeks and months to come,” said Gerard Faulkner, Director of Operations for CGS. “The corporate market is telling a different story, however. With corporate CUSIP request volume slowing significantly in May, we may be seeing early signs of a slowdown in corporate debt issuance.”

Requests for international equity and debt CUSIPs both grew in May. International equity CUSIP requests were up in May and up 41.2% on a year-over-year basis. International debt CUSIPs increased 27.3% on a monthly basis and 2.0% on a year-over-year basis.

To view the full CUSIP Issuance Trends report for May, [click here](#).

---

## **GASB Proposes Application Guidance on CARES Act and Coronavirus Diseases Issues.**

**Norwalk, CT, June 11, 2020** — As part of its continuing efforts to assist state and local governments during the COVID-19 pandemic, the Governmental Accounting Standards Board (GASB) today released a proposed staff Technical Bulletin containing application guidance related to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) of 2020 and certain outflows incurred in response to the coronavirus. The Technical Bulletin is being proposed to address questions raised with the GASB by its stakeholders.

The Exposure Draft of the [proposed Technical Bulletin](#), *Accounting and Financial Reporting Issues Related to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) of 2020 and Coronavirus Diseases*, clarifies the application of existing recognition requirements to resources received from certain programs established by the CARES Act. It also clarifies how existing

presentation requirements apply to certain inflows of CARES Act resources and to the unplanned and additional outflows of resources incurred in response to the coronavirus disease.

The GASB is working to issue this guidance as quickly as practicable. The Exposure Draft is available on the GASB website, [www.gasb.org](http://www.gasb.org), with a comment deadline of June 25. The Board is scheduled to review stakeholder feedback and consider clearing a final Technical Bulletin on June 30.

COVID-19-related resources for stakeholders, including an emergency toolbox, are available on the GASB website at [www.gasb.org/COVID19](http://www.gasb.org/COVID19).

---

## **Where Are Munis Getting Their Money?**

### **Summary**

- The coronavirus-induced recession comes on the heels of a period of strong growth in revenues enabled by improved economic activity and better fiscal and budgetary balance by municipal governments.
- In addition, given the severe effects of the shutdown on revenues and the increased expenses municipalities face to combat the virus and increase social service spending, the federal government has sought to provide some relief. The Municipal Liquidity Facility (MLF) is one such new Fed program.
- The MLF and other federal stimulus and programs have already lent some stability to the market and will allow market access to those states and issuers needing additional borrowing.

[Continue reading.](#)

### **Seeking Alpha**

by David Kotok

Chief Investment Officer, Wealth Preservation, portfolio strategy

Cumberland Advisors

Jun. 9, 2020

---

## **Event Recap: BDA Hosts Fixed Income Legal and Compliance Roundtable Webinar.**

Yesterday, the BDA hosted representatives from the SEC, FINRA and the MSRB for its bi-annual Fixed Income Legal and Compliance Roundtable. 75 fixed income professionals from over 35 firms participated in this roundtable at which pressing regulatory and legal issues were discussed.

**A video recording of the event can be viewed [here](#).**

The webinar was moderated by Dan Deaton, Nixon Peabody and featured:

- Rebecca Olsen, Director of the SEC Office of Municipal Securities

- Cynthia Friedlander, FINRA Senior Director of Fixed Income Regulation
- Gail Marshall, MSRB Chief Compliance Officer

The event featured extensive conversation on currently regulatory matters such as:

- The Recent SEC Staff Bulletin;
- Ongoing Efforts Around Municipal Disclosure During COVID-19;
- The Proposed SEC Exemptive Order on Private Placements;
- Recent MSRB A-3 Draft Amendments;
- MSRB G-17 Implementation; and
- FINRA Transformation

## **Bond Dealers of America**

June 12, 2020

---

### **[Risky Munis Shrug Off Recession in Biggest Rally Since 2009.](#)**

- **High-yield muni bonds have surged 7.8% since start of April**
- **Federal Reserve's muni lending program improved sentiment**

To judge by the municipal junk-bond market, it would seem like the economic collapse is already over.

High-yield state and local government debt, the most susceptible to defaulting during a sustained slowdown, have returned 7.8% since April 1, putting them on track for the biggest quarterly jump since the end of the Great Recession in 2009.

The rally tracks the broader optimism on display in American financial market that has also lifted stocks and corporate bonds. It signals speculation by investors that even the riskiest borrowers in the \$3.9 trillion municipal-securities market are likely to weather the fallout of the coronavirus shutdown that sent unemployment surging, shut businesses and decimated the tax collections of local governments.

Initial fears about the toll prompted investors to pull record amounts out of municipal-debt mutual funds in March, before the Federal Reserve revived confidence by promising to extend short-term loans to governments to head off another liquidity crisis.

"While that didn't apply to high yield in the muni market, what it did do is give people confidence that munis in general weren't all going to default," said Lyle Fitterer, co-head of municipal investments at Baird Advisors, which manages \$6 billion of state and local debt. "You saw cash flows from retail investors finally turn around and turn positive."

Prices on some bonds that were hit the hardest in March are coming back, such as tobacco-settlement backed bonds. Ohio's Buckeye Tobacco Settlement Financing Authority debt maturing in 2055 with a 5% coupon traded Wednesday at 105 cents on the dollar, up from an average 73.2 cents on March 23, according to data compiled by Bloomberg.

The gain for high-yield municipals in the past 10 weeks follows a 6.9% drop in the first quarter of 2020, according to Bloomberg Barclays Indexes. The last time the sector jumped more in a single

quarter was during the three months ending September 30, 2009, right after the formal end of the last recession, when high-yield munis gained 13.6%.

The full economic impact of the shutdowns has likely yet to be felt by many governments and the projects that have been financed in the municipal market, since they have the ability to draw on reserves and tax collections take months to fully reflect a downturn.

"It's going to take a long time for the economy to recover," Fitterer said.

"You're going to see more debt-service reserve draws. You're going to see more technical defaults. And longer term, it'll lead into more actual defaults," he said. "Temporarily, people have forgotten about that."

## **Bloomberg Markets**

By Michelle Kaske

June 10, 2020, 11:03 AM PDT Updated on June 10, 2020, 12:14 PM PDT

---

### **Pandemic Makes Municipal Stadiums an Even Worse Deal for Taxpayers.**

Cities across the country are struggling to make their debt payments on municipal stadiums in an era of canceled events, report Sebastian Pellejero and Heather Gillers in the [Wall Street Journal](#):

Public officials have borrowed billions of dollars to build stadiums for major teams. Since 2000, more than 40% of almost \$17 billion in tax-exempt municipal bonds sold to finance major-league stadiums were backed by levies on hotels and rental cars—making tourism taxes the predominant means of public stadium finance, according to the Brookings Institution.

The borrowers envisioned the sports facilities as a form of economic development that would attract fans from near and far, raising cities' national profile and boosting their revenue beyond what was needed to pay back the bonds. The pandemic has turned that calculus on its head, crushing tourism proceeds and turning stadiums into a strain on city budgets.

But that calculus was never very sound, as I've written here before. Academic studies have consistently found few if any economic benefits of subsidies for stadiums, arenas, convention centers, and the like.

Several Cato studies over the years have looked at the absurd economic claims of stadium advocates. In "[Sports Pork: The Costly Relationship between Major League Sports and Government](#)," Raymond Keating finds:

The lone beneficiaries of sports subsidies are team owners and players. The existence of what economists call the "substitution effect" (in terms of the stadium game, leisure dollars will be spent one way or another whether a stadium exists or not), the dubiousness of the Keynesian multiplier, the offsetting impact of a negative multiplier,



the inefficiency of government, and the negatives of higher taxes all argue against government sports subsidies. Indeed, the results of studies on changes in the economy resulting from the presence of stadiums, arenas, and sports teams show no positive economic impact from professional sports – or a possible negative effect.

In [Regulation magazine](#) (.pdf), Dennis Coates and Brad Humphreys found that the economic literature on stadium subsidies comes to consistent conclusions:

The evidence suggests that attracting a professional sports franchise to a city and building that franchise a new stadium or arena will have no effect on the growth rate of real per capita income and may reduce the level of real per capita income in that city.

And in “[Caught Stealing: Debunking the Economic Case for D.C. Baseball](#),” Coates and Humphreys looked specifically at the economics of the new baseball stadium in Washington, D.C., and found similar results:

Our conclusion, and that of nearly all academic economists studying this issue, is that professional sports generally have little, if any, positive effect on a city’s economy. The net economic impact of professional sports in Washington, D.C., and the 36 other cities that hosted professional sports teams over nearly 30 years, was a reduction in real per capita income over the entire metropolitan area.

In an [updated study](#) from the Mercatus Center at George Mason University, Coates finds similar results:

- *Professional sports can have some impact on the economy.* Looking at all the sports variables, including presence of franchises, arrival and departure of clubs in a metropolitan area, and stadium and arena construction, the study finds that the presence of a franchise is a statistically significant factor in explaining personal income per capita, wage and salary disbursements, and wages per job.
- *But this impact tends to be negative.* Individual coefficients, such as stadium or arena construction, sometimes have no impact, but frequently indicate harmful effects of sports on per capita income, wage and salary disbursements, and wages per job.

Michael Farren of Mercatus [summed up](#), “Furthermore, peer-reviewed academic research consistently shows that public financing for professional sports stadiums is a poor way to spur economic development or accomplish ‘downtown revitalization.’ ”

The pandemic and the event cancellations it has generated have seriously disrupted the financial calculations that cities made in building stadiums at taxpayers’ expense. But they were never a good bargain.

**The Cato Institute**

by David Boaz

June 11, 2020



---

## **BDA Washington Weekly: Congress Waiting for Recess.**

Following a surprising May jobs report in which the U.S economy gained over 2 million jobs, vastly higher than the projected 7 million job loss, odds of an immediate stimulus package took a direct hit. It's not time to rule out additional measures, but direct funding to state and local governments will have to wait beyond the upcoming two week Congressional July 4th recess.

While next steps have become murky, the White House has signaled they believe some further action will be required, however they remain in a wait and see posture. This follows a Congressional Budget Office report that found additional aid to state and local governments would provide a financial boom for the economy, helping offset the \$350 billion decline in spending on goods and services from localities.

**\*\*The BDA's 2020 Policy Agenda can be viewed [here](#).**

### **Legislative Recap:**

#### **House to Release Financing Details for Transportation Package**

Last week, the House introduced a sprawling [surface transportation infrastructure package](#). The legislation, the [Invest in America Act](#), is part of the larger [Moving America Framework](#), a document released in January laying out the House Majority's goals for infrastructure investment.

#### **The initial draft does not include any bond provisions.**

Following release of the legislation, the BDA learned that the House Committee on Ways and Means plans to release a tax title for the bill and will host a hearing in the coming weeks to discuss tax relief during stimulus, reviving talks of bond provisions being included in the larger package. While details remain unknown, the Moving America Framework called for:

- The Restoration of Advance Refundings;
- Expanding the use of PABs;
- Increase the BQ debt limit; and
- Development a new BABs program exempted from sequestration.

**The BDA continues to [press for inclusion](#) of all noted muni provisions, and is partnering with our partners in the Public Finance Network to ensure Congressional leaders know the importance of bonds in infrastructure.**

The BDA is also working alongside the Council of Development Finance Agencies in support of the [Modernizing Agricultural and Manufacturing Bonds Act \(MAMBA\)](#). The bill, sponsored by Reps. Stephanie Murphy (D-FL) and Darin LaHood (R-IL), would modernize the Internal Revenue Code as it relates to small issue bonds, specifically the private activity bond rules for first-time farmers and manufacturing bonds.

Elsewhere in the House, Financial Services Committee Chairwoman Maxine Waters (D-CA) continued to feud with the Office of the Comptroller of the Currency, pushing back on the Acting Comptrollers' recent letter to the National League of Cities and U.S Conference of Mayors.

In the [letter](#), Mr. Brooks pressured state and local governments to reopen by criticizing cities for protracted stay-at-home policies that now pose risks to the economy that must be weighed against

the benefits.

#### [Chair Waters responded in kind:](#)

“With this inappropriate letter pressuring city and state officials to end important public safety measures put in place to combat the spread of the novel coronavirus, the new Acting Comptroller is transparently pandering to President Trump, who has made clear that he would prefer that we all pretend that there is no pandemic, that more than a hundred thousand Americans have not lost their lives already, and that many more are not at risk.”

### **Senate Remains at Standstill**

While the House moves forward with infrastructure stimulus packages, the Senate remains at a standstill and skeptical of the need for further action. McConnell, in conversations with the White House this week, indicated that any measure would have to be considered after the upcoming July 4th recess, pushing legislative action to at least July 20th.

The Majority Leader also expressed that he is not willing for the package to be any larger than \$1 trillion, although the President continues to express the desire for a more robust package that includes infrastructure.

Senate Committee on Environment and Public works echoed the Presidents sentiment that infrastructure should be a priority for this legislative session, however simultaneously bashed the House Democrats efforts.

The Chairman stated in a [recent op-ed](#):

“The House Democrats have put out nothing other than a partisan outline calling for massive government spending over the next five years. The dollar amounts included in the plan accompany a laundry list of liberal priorities.”

**The House and Senate remain far apart on both infrastructure and stimulus with very few provisions to find compromise. However, the BDA believes another stimulus measure is a near certainty, with limited funding for state and local governments.**

**The BDA believes Surface Transportation reauthorization will likely be punted to 2021, opening the door for inclusion of bond provisions in the final package.**

### **Federal Reserve Recap:**

#### **BDA Presses Fed to Expand Scope of Facilities**

While the Fed has begun activity in both the Secondary Market Corporate Credit Facility and the Municipal Liquidity Facility, the BDA has continued to pressure the Fed to expand the scope of activity. The BDA [submitted additional comments](#) to the Federal Reserve on their continued intervention in the capital markets to discuss market structure, and the need to expand their emergency programs to include all banks and dealers who provide liquidity to the market.

The Fed also received pressure from Capitol Hill to continue intervention in the municipal market.

Following BDA recommendations, and after the Fed slightly expanded program eligibility, a group of House legislators urged the Fed to [further expand the scope of the MLF](#).

## **Regulation Recap:**

### **FIMSAC Hosts Virtual Meeting**

The SEC FIMSAC hosted a virtual last week, the first meeting since the COVID-19 pandemic began. The Committee considered several issues of interest including recommendations regarding pre-trade transparency and the TRACE Pilot.

The agenda and BDA overview can be viewed [here](#).

### **Other Regulatory News**

- [BDA Submits Comments in Support of FIMSAC Rule 17a-7 Proposal](#)
- [MSRB Submits A-3 Comments to SEC](#)
- [BDA Survey Results: Muni MA Activity and the SEC Proposed Order](#)

### **Bond Dealers of America**

June 12, 2020

---

## **[Top US SEC Officials Urge Voluntary Municipal Securities COVID-19 Disclosure: Have They Overstated Their Case? - Norton Rose Fulbright](#)**

On May 4, 2020, the Chair and the Director of the Office of Municipal Securities of the US Securities and Exchange Commission issued a statement urging municipal securities issuers to disclose as much information as practicable regarding the current and potential future impact of COVID-19 on their financial and operating conditions, regardless of whether they are then issuing securities in the primary market. Providing as much current and forward-looking issuer- and security-specific information as is practicable, they state, will benefit municipal securities issuers. That conclusion is certainly debatable, and it is our view that such issuers should consult with their advisors before acting on the recommendations in the Statement.

[Read the full article.](#)

---

## **[The Fed's State and Municipal Lending Is a Bad Idea](#)**

The COVID-19 pandemic has caused sweeping changes in economics and politics. Many have been publicly analyzed and debated. But not all. In particular, the Federal Reserve's extraordinary new policies haven't received the scrutiny they deserve. Totalling a planned \$2.3 trillion in asset purchases and loans, the Fed's actions take monetary policy into uncharted territory. Although effective at stabilizing markets in the short term, Fed policy comes with significant long-term costs.

Case in point is the Fed's Municipal Liquidity Facility. Authorized by Congress under the CARES Act, this facility is intended to help "governments better manage cash flow pressures in order to continue to serve households and businesses in their communities." Through the Municipal Liquidity Facility,

the Fed makes direct loans to state and local governments, purchasing up to \$500 billion in debt. This represents a significant expansion of the Fed's emergency lending powers, as specified in Section 13(3) of the Federal Reserve Act. Traditionally, the Fed only extended emergency credit to non-banks in the event of serious distress in the financial system. While state and local government finances are important, it is very hard to make the case that they are an integral component of financial stability.

This expansion of the Fed's mandate comes with serious consequences. Many of them are bad.

First, the Fed's municipal and state lending results in a misallocation of credit. The whole point of the Fed's programs is that state and local governments can get loans on better terms than they could get elsewhere. This reallocates purchasing power away from other entities in the market to those whose bonds the Fed purchases. The cost to society is the difference between the value of the projects pursued by state and local government with those resources and the value of the projects other entities could have pursued with those same resources.

Second, Fed lending undermines fiscal federalism. History's greatest political minds, including the framers of the U.S. Constitution, regarded the "power of the purse" as the most significant government power. It's the political version of the Golden Rule: He who has the gold, makes the rules. For state and local governments, citizens within those jurisdictions are supposed to bear the costs of providing collective goods, such as emergency services and infrastructure. But the Fed's new programs set a troubling precedent: State and local governments can turn to central bankers for the funding they need. While governments could always borrow from those outside their jurisdiction, the Fed is special. Its monopoly on high-powered money production gives it greater financial wiggle room than other funding sources. As a result, governments will become more dependent on Fed loans, and less responsive to voters.

Third, there is a very real risk Congress will hijack the Fed and turn it into a de facto fiscal policy agent. There are signs that this is already happening. Sen. Charles Schumer (D-N.Y.) recently urged the Fed to grant New York's Metropolitan Transportation Authority (MTA) access to the Municipal Liquidity Facility. The Fed expanded the criteria for accessing the facility, allowing MTA and several others to take part. Due to the change in Fed policies created by the CARES Act, Congress has an incentive to use the Fed to make spending and budgeting decisions in ways that lack democratic oversight.

Markets are recovering from state-level lockdowns. Unemployment is falling. The stock market is rallying. The Fed's new policies undoubtedly helped. But in this case, the cure may be worse than the disease. The Fed's actions impede market allocation of resources, weaken the accountability of local governments and present new avenues for political capture by Congress.

Unless we address these problems soon, we risk the Fed becoming permanently ineffective and unaccountable. If this happens, the next time economic trouble comes knocking, the Fed won't be able to help us.

THE HILL

BY ALEXANDER WILLIAM SALTER, OPINION CONTRIBUTOR — 06/12/20

THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

*Alexander William Salter is an economics professor in the Rawls College of Business at Texas Tech*

*University, the Comparative Economics Research Fellow at TTU's Free Market Institute, and a senior fellow with the Sound Money Project. Follow him on Twitter @alexwsalter.*

---

## **Optimize Community QE - An Open Letter To Fed Chairman Powell**

Regular readers of these pages will know that we regularly report on new developments in connection with the Fed's nascent and potentially 'game-changing' Municipal Liquidity Facility (MLF), or Community QE. Thus far the trajectory of change since the MLF's introduction in early April has been in the direction of progressive liberalization. State and municipal eligibility criteria have loosened, eligible bond maturities have lengthened, and the date of the new window's closing has been postponed.

There nevertheless remain a number of MLF features that are fundamentally incompatible with the Facility's purposes. Conspicuous among these are the Facility's rate and rating requirements, several of its still overly narrow eligibility criteria, and its being housed in the New York Fed alone rather than being distributed over all of the regional Federal Reserve Banks (FRBs).

The first and third sets of flaws register a simple category error, in that they mistakenly treat States and their Subdivisions as though they were speculative Wall Street financial institutions that have gotten themselves into trouble, rather than de facto federal agencies taking the lead role in addressing the Covid pandemic across our entire continental republic. The second set of flaws sound more in degree than in kind – they simply screen out, notwithstanding their gradual liberalization since April, too many de facto federal instrumentalities for which the Facility is meant to provide federal funding.

[Continue reading.](#)

### **Forbes**

by Robert Hockett

Jun 14, 2020

---

## **Five Reasons Municipals Have Rarely Defaulted.**

Default rates by municipal bond issuers have been remarkably low over the years. It's an impressive track record, and it explains why defaults by municipal issuers Puerto Rico and Detroit have made front-page news when they happen—they're actually quite rare.

Since 1970, the 10-year cumulative default rate for investment-grade municipal bonds has been 0.1% (Display). Comparing muni default rates with those of investment-grade corporate bonds, which have defaulted at a rate of 2.3%, reinforces the reliability of municipal bonds.

Why is municipal-bond quality so high—and defaults so infrequent? We can find the answer by drilling into the tenets of fundamental analysis: understanding the quality and predictability of a bond's cash flows and the attributes of bond issuers that make investors more confident that they can deliver.

Here's a closer look at five reasons that muni defaults are rare:

### **1) Security: Muni Issuers Have the Power to Raise Taxes and Fees**

The two principal types of municipal debt, general obligation (GO) and revenue, have traits that better equip them to deliver steady cash flows.

GO muni bonds are backstopped by the "full faith and credit" of the issuing government. Whether a GO funds schools, transportation infrastructure or other essentials, the issuer typically has the power to raise taxes to make bond payments. Many states and municipalities need voters' approval even to issue GOs, and they can't declare bankruptcy—even in a crisis. In the private sector, most companies can't claim that type of customer backing or pricing flexibility.

Revenue bonds are backed by fees from public-service enterprises like utilities, toll roads and airports. Those fees are pledged to service debt, and in tough times, issuers can raise user fees to make debt payments. Most tax-exempt revenue bonds are at the top of an enterprise's capital structure. Typical issues include safety provisions like requirements to set rates in excess of budgeted expenses, restrictions on issuing more debt and requirements to fund reserves to cover unexpected events.

Compare a municipal-owned electric utility with one that's privately owned. Given all the protections in the bond issue, publicly owned utilities can set their own rates. Privately owned utilities, on the other hand, need permission from an independent oversight regulatory commission.

### **2) Cash Flow: A Steady and Reliable Revenue Engine**

Municipalities' power to tax or charge for public services translates into a reliable revenue engine that yields reliable, quality cash flows.

Taxes, for example, are applied across a diverse base of earnings and property values. This creates a steady revenue stream for GO municipal issuers that's very different from that of a corporate issuer dependent on discretionary spending. If one sector of the economy is hard hit in a recession, other sectors may be less so, allowing the core of the muni issuer's revenue stream to stay relatively steady.

In the current recession, muni credits are generally weaker, but default is still a distant risk, in our view. Tax revenues (income, sales and property) and user fees from essential services keep coming and remain diverse. That's very different from the private sector: when airline usage shrivels or people stop buying cars, companies' revenue streams dry up.

### **3) Reserve Funds: Flexibility to Navigate Economic Storms**

In a recession, cash is king, and states entered this economic crisis with record-level cash reserves—thanks to mandated-reserves requirements. Both GO and revenue bonds benefit from an embedded culture and legal structure that favors robust reserve funds to weather downturns. As we described earlier, many revenue bonds include mandates for specific cash-reserve levels.

For GO bonds, it's important to understand how municipalities handle their general fund budgets. We've just seen the longest economic expansion on record. What did governments do with these robust tax receipts? For the most part, they added to their rainy-day reserve funds (Display), which helped states and municipalities endure crises without defaulting.

Municipalities have a budgeting advantage over corporations that have to balance bondholder and

shareholder interests. Bond investors want cash held in reserve as an added cushion; shareholders want it distributed as dividends. Because municipalities don't have shareholders to satisfy, they're free to build reserves when times are good. Stronger reserves mean more wherewithal to avoid missing bond payments during downturns while waiting for revenues to rebound.

#### **4) Principal Repayment: Pay as You Go Reduces Debt and Refinancing Risk**

Municipal bonds' repayment structures are typically like those of home mortgages—scheduled payments include a mix of interest and principal repayment. As a result, the bond's principal shrinks every year, reducing the debt outstanding and deleveraging the issuer. This avoids the uncertainty of making a big one-time principal repayment, which could come at an inopportune time—like during a recession.

In contrast, many corporate bond issues are five years in duration, and principal often isn't repaid until the maturity date. When that bill comes due, issuers borrow again to repay the principal on the first bond and start interest payments on the new bond. In times of stress, this rolling borrowing can put corporate bond issuers at the mercy of the market.

#### **5) Essentiality: Services Citizens Can't Do Without**

Muni issuers' promise to pay bondholders is exceptionally strong because most muni bonds support services essential to public good. Almost all of the nearly \$4 trillion in outstanding municipal debt is tied to essential services such as education, public safety, electricity, water and waste treatment.

Communities rely on hospitals, toll roads and airports. It's hard to imagine the population cancelling these services in an economic downturn. And when things get really challenging, as they are now in the throes of the COVID-19 pandemic, the federal government can step in to keep the essentials operating. Most recently, the CARES Act dispatched unprecedented aid to hospitals, schools and other vital entities, with even more under consideration for state and local governments.

Collectively, these five characteristics have made municipal bond defaults a rare event, equipping them to withstand recessions, pandemics and other challenges along the way.

**by David Ambler, Matthew Norton of AllianceBernstein, 6/11/20**

*David Ambler is a Municipal Credit Research Analyst and Matthew Norton is Co-Head of Municipal Portfolio Management at AllianceBernstein (AB).*

The views expressed herein do not constitute research, investment advice or trade recommendations and do not necessarily represent the views of all AB portfolio-management teams. Views are subject to change over time.

© AllianceBernstein L.P.

---

## **[The Case for Microbonds.](#)**

### **A financial tool that could help cities achieve a sustainable fiscal recovery**

The current urban-financing crisis could finally make "community microbonds" a serious alternative to traditional municipal bonds. For several decades, municipal issuers have used minibonds—sold in

increments significantly less than \$5,000—to access a broader group of potential investors and avoid the fees associated with a standard bond issuance. Microbonds refer to bond denominations of \$100 or less, but there is no common industry standard for the term. In fact, some issuers elect to use the term minibond to refer to bonds denominated in increments as low as \$25.

Designed to be affordable, microbonds are sold in small denominations, opening the door to what advocates call “community-powered finance.” The community can select and fund local-scale projects, such as parks, public art, local clean energy, and affordable housing, while providing investment opportunities for historically marginalized populations. Low-cost interest-bearing instruments aid wealth creation by turning low-income consumers into investors.

Ben Bartlett, a long-serving city councilmember in Berkeley, California, is one of many local government leaders worried about municipal budget stress. He’s especially concerned about declining city revenues, degrading city infrastructure, and increased capital concentration. Bartlett, however, thinks that Covid-19 has “also accelerated many of the changes people have been discussing for years.” Futuristic innovations like telework and telehealth “have become the new norm.”

Bartlett is convinced that “coronavirus impacts will be felt in the world of money,” especially public budgets. He believes that the “solutions will not come from Washington, D.C. or New York City. We are in virgin territory here, and the innovations we need will only arise through local experimentation.” According to Bartlett, and some of his Berkeley city council colleagues, microbonds “offer a quick, flexible, and targeted mechanism for communities to rebound.” He believes that once the “all clear” is sounded, the “community itself is more likely to respond quickly and intelligently to the opportunity to rebuild than the traditional buyers of municipal bonds.” A significant attraction of microbonds, Bartlett holds, is that they “help communities put the resources where local voters and their local representatives see the most impact now.” Tax exemption has been another main attraction for investors in municipal bonds. Fortunately, the federal government has determined that the tax treatment for microbonds will be the same as the favorable tax treatment received by munis.

When selecting a project to finance through minibonds, issuers tend to focus on smaller, defined projects that have a tangible connection to the local investor base. The objective is to maximize local investor participation by selecting an easily identifiable project that would interest and benefit the community. Minibonds have been used for several decades by municipal issuers to access a broader group of potential investors and avoid the fees associated with a standard bond issuance. In 1990, Mission Viejo, California issued minibonds in denominations of \$500 to finance a portion of renovations to the city hall. The minibond issuance had 35 orders, ranging from \$500 to \$30,000, raising \$140,500 toward the project. The city ended up supplementing the financing with traditional municipal bonds sold through a public offering. In 1991, Anaheim issued \$3.4 million in minibonds. These were issued as zero-coupon bonds (meaning that the bonds were purchased at a discount and bond owners were paid the face value of the bonds at maturity). Unlike many other minibonds, these were not issued as part of a larger financing. Over the last half-decade, there have been minibond issuances in the cities of Vancouver, Washington; Burlington, Vermont; Lawrence, Kansas; Cambridge and Somerville, Massachusetts; and Madison, Wisconsin. Each of these cities is home, or near, to a major university or college. A key consideration for issuing minibonds is community engagement; one participant in the financing of these minibond issuances remarked, “communities that are innovative and engaged are usually college towns. They are the ones with the most participation.”

Recent minibonds have been sold through two primary channels: either directly from the municipal authority or electronically through an underwriter’s retail-distribution network. Due to the



complexity of developing an online ordering system, issuing directly from the municipal authority typically requires mailed-in or physical orders, the physical transfer of the bond certificates, and the submission of certificates by bond holders to the municipal authority to receive payment. The minibonds of the early 1990s were sold through this method. Denver's minibonds, which made headlines in 2014 for selling \$12 million in debt in 20 minutes, were issued directly by the city; orders were delivered online, by mail, and by hand delivery. Denver offered the bonds for sale online two hours before they began accepting mailed-in or hand-delivered orders. As a result, some residents expressed frustration that the bonds sold out before any physical orders were processed.

Until the pandemic hit, the assumption had been that municipal issuers were trustworthy—and that the projects for which they float bonds were worthwhile. Transparency and financial reporting requirements for regular muni bonds are now clearly inadequate. This has led to some very bad kinds of bond offerings, including pension-obligation bonds and capital appreciation bonds. These will haunt municipalities for many years to come. Some will ask whether, and how, financial transparency will be any better for microbonds, and who, if anyone, would rate them or oversee them. So far, nothing has been determined. Microbonds are a new category of borrowing, with no special rules (voluntary or mandatory) applying to them, yet.

In order to maximize community engagement, cities can restrict the bond sale to city or county residents, though this increases the chance of failing to raise enough money. To mitigate the risk of a funding shortfall, a city could consider a priority-sale period for city residents followed by a broader sale period to the general public—statewide or nationwide—to ensure that the full amount is sold. It's worth noting that if a city seeks to limit the maximum amount of the minibonds that can be purchased by any one investor—to avoid a situation where a trust or other institutional fund buys the bonds through a retail account—there is an increased risk of a funding shortfall.

At a moment when many cities face extraordinary fiscal pressures, microbonds can offer a creative means of raising money from local stakeholders, who are already invested emotionally and physically in the community.

## **City Journal**

Gordon Feller

June 8, 2020

*Gordon Feller is the founder of Meeting of the Minds. For several years, he served as a Global Fellow at the Urban Sustainability Lab of the Smithsonian's Wilson Center. He has worked to transform urban economic development in partnership with city governments, national governments, philanthropies, international agencies, and financial institutions. Follow him on Twitter at @GordonFeller.*

---

## **[No Written Plan Relief May Stymie Opportunity Zone Projects.](#)**

The IRS recently extended opportunity zone deadlines to provide relief to projects facing delays due to the COVID-19 pandemic, but the agency's silence on amendments to written plans may jeopardize ventures that unexpectedly need to change course.

The Internal Revenue Service recently issued guidance providing [automatic deadline relief](#) to qualified opportunity funds, allowing opportunity zone businesses an extra 24 months to move cash

into projects. Normally if a fund operates a qualified opportunity zone business, then no more than 5% of a qualified opportunity zone's assets can be held as cash or other financial property.

Final regulations provided a working capital safe harbor so QOZ businesses can hold more money for up to 31 months if they create and are "substantially consistent" in following a written plan, including a schedule of how money will be used in future development. The rules allow the government to extend that period by another 24 months if there is a federally declared disaster.

However, the IRS did not explicitly say whether a company can amend its written plan if a project has to make substantial changes due to the novel coronavirus, which causes the respiratory disease COVID-19, according to Steven R. Meier, a tax partner at Seyfarth Shaw LLP.

This is especially problematic for investors in hotels, restaurants and entertainment facilities that may want to develop multifamily units or distribution centers instead because the economic landscape has drastically changed since projects were originally put in place, Meier said.

"With projects that are underway and invested into the business, there remains a quandary as to how to deal with possibly having to radically adjust a business plan," Meier said. "It would have been nice for the IRS to acknowledge that plans that went into place in the middle of March this year are probably about as good as the paper they're written on."

Joseph B. Darby III, a tax partner at Sullivan & Worcester LLP, told Law360 that he has many clients who want to change their written plans, since the coronavirus pandemic has put a damper on opportunity zone projects currently in the works.

"Many people are just not sure what to do and whether they'll be able to proceed," he told Law360.

In many instances, the projects are not following a written plan or schedule due to construction delays or unavailability of workers, so many are considering whether to make adjustments or whether changing the plan will result in disqualification from the opportunity zone program's tax benefits, he said.

The final rules require a QOZ business to have a written plan that identifies the financial property that will be held to acquire, construct or substantially improve property in the zone. The plan must have a written schedule that is consistent with ordinary business operations, under which the property is used within 31 months, but that deadline has been extended by another 24 months because of COVID-19. The regulations also require that the business must be "substantially consistent" with the written plan and schedule.

Uncertainty remains in how the government will decide how a project can be "substantially consistent" with a written plan and its schedule, Darby said. If investors want to be successful as they figure out how to navigate business challenges created by the pandemic, it would be helpful to know what changes, if any, to a written plan are acceptable and what cannot be changed, he said.

Organizations such as the Opportunity Zones Working Group of Novogradac & Co. LLP have asked the government for temporary relief that would allow businesses to modify such plans. Many entities have had to change their plans dramatically in response to the COVID-19 crisis "so they can prosper in the post-pandemic world," the Novogradac group said in May.

A taxpayer-friendly position could say that if a plan was already written and was affected by COVID-19, modifications should be allowed, Darby said. This approach would be consistent with the final rules because they already allow a safe harbor extension by 24 months if there is a disaster, so it would also make sense to allow necessary plan and schedule modifications due to COVID-19, he

said.

Until more is known, Darby said, many of his clients are taking a wait-and-see approach, since they do not know what the IRS will decide or what the business climate may be like six months from now.

Meier said he had also seen many investors in hospitality projects that want to pivot, but they are worried about what will happen to their potential tax benefits if the project is not substantially consistent with the pre-COVID-19 written plan and schedule requirements.

While some projects located near a hospital or university will likely wait it out, since such businesses will likely go forward with construction, other projects that are more leisure-oriented may want to make fundamental changes to their plans to better adjust to dramatic changes in consumer behavior, he said.

If amendments are not allowed, then the purpose of the opportunity zone program — to encourage investment in economically depressed areas — is undermined, since without that flexibility, investors would face the choice of either going forward with a potentially noncompliant project or pulling out of the project entirely, he said.

People do not invest money in funds expecting the money to do nothing, so investors' interests in creating successful projects are aligned with the desire to create businesses that bring long-term value to low-income areas, Meier told Law360.

"If the IRS can write a regulation" on the working capital safe harbor, he said, "they can certainly write a modification to that regulation."

Edward A. Renn, a tax partner at Withers Worldwide, told Law360 that there might already be some leeway in making changes, because he had seen some opportunity zone projects change their plans before the novel coronavirus pandemic began.

"I think in the real world, those [written plans] are not as carved in stone as they're made out to be," he said. "I think people have amended those if their projects have gone faster or slower than they intended."

Given the intention behind the postponement guidance, it would be hard to imagine the government penalizing an opportunity zone project for not, for example, having the foundation of a building in New York set because Gov. Andrew Cuomo shut down the construction site for three months, Renn said.

"I really don't think you'll lose your qualification or tax-free rollout simply because you're behind on your schedule and this notice didn't give you this specific right to amend it," he said.

## **Law 360**

By Amy Lee Rosen · June 10, 2020, 6:59 PM EDT

-Additional reporting by David van den Berg, Joshua Rosenberg and Jaqueline McCool. Editing by Robert Rudinger and Neil Cohen.

---

## **GFOA PAFR Fellowship Program.**

GFOA has partnered with [ELGL](#) to create the PAFR Fellowship program to connect graduate students with local governments looking to create a Popular Annual Financial Report (PAFR) for submission to the GFOA award program.

### **About the PAFR Fellowship Program**

COVID-19 has made it difficult for graduate students to find meaningful summer professional work experiences (internships) – either due to hiring freezes or the inability to provide work projects that can be successfully completed while working remotely with limited supervision. This program connects graduate students with local governments that wish to develop a PAFR for submission to the GFOA award program.

ELGL and GFOA will work together to match up graduate students with local governments, and then support the students as they create a PAFR document. Local governments and students will complete an application to be considered for a match. Considerations like geographic location, organization size, and graduate student skills and abilities will be used to determine matches.

This program is “free” for local governments. Government’s pay the regular \$250 GFOA application fee for the PAFR program. GFOA then provides 100% of the fee to the graduate student as a stipend to produce the PAFR for the government. At the end of the program, the PAFR is submitted to GFOA for award consideration.

Applications are due July 3, 2020.

[For more information and to apply, please see ELGL’s website](#)

### **What is a PAFR?**

GFOA encourages governments to supplement their CAFR with simpler, “popular” reports designed to assist those who need or desire a less detailed overview of a government’s financial activities. These Popular Annual Financial Reports or PAFRs provide information to the public and assist in promoting transparency, building trust, and helping inform on a government’s financial condition.

[GFOA Best Practice on Popular Reporting of Financial Information](#)

### **GFOA PAFR Award Program**

The GFOA established the Popular Annual Financial Reporting Awards Program (PAFR Program) in 1991 to encourage and assist state and local governments to extract information from their comprehensive annual financial report to produce high quality popular annual financial reports specifically designed to be readily accessible and easily understandable to the general public and other interested parties without a background in public finance and then to recognize individual governments that are successful in achieving that goal.

[More information on Award Program](#)

### **Other Resources**

GFOA provides other resources to help governments develop a PAFR and recently developed a research paper as part of the Financial Foundations Framework.

## [How to Create an Excellent PAFR](#)

For more information on the Fellowship program, please contact Mike Mucha. For more information on GFOA's PAFR Awards Program, please contact Diane Griffin.

---

## [Marijuana Taxes Could Help Blunt NY's Pain: Kazatsky \(Radio\)](#)

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses how legal marijuana could help NY's fiscal pains. Hosted by Vonnie Quinn and Paul Sweeney.

Running time 04:57

[Play Episode](#)

### **Bloomberg Business**

June 12, 2020 — 10:42 AM PDT

---

## [Virus-Hit Cities in Hurricane Zone Get Moody's Warning on Risks.](#)

American states and cities are dealing with disease, economic collapse and civil strife in the streets. For those in the southeast, Mother Nature's coming next.

Moody's Investors Service says this year's hurricane season poses increased risks for state and local governments along the Atlantic and Gulf coasts that are still struggling to recover from the coronavirus health and economic crisis.

"The disruption, property damage, and costs of recovery from a natural disaster event in the coming months would compound governments' coronavirus health and fiscal challenges," Pisei Chea, an analyst at Moody's, wrote in a report co-authored by five other analysts published Tuesday.

The group said that if the virus does not ease by peak hurricane season in late summer, governments may need to evacuate certain areas and set up shelters that still adhere to social distancing measures, meaning potentially higher costs than past response efforts. Residents wary of the spread of Covid-19 may also choose not to evacuate, which may complicate rescue efforts. At the same time, potentially crowded shelters may lead to spread of the virus, according to the report.

Hurricanes have become more violent and more expensive because of climate change, which is a growing concern for investors in the \$3.9 trillion municipal bond market.

BlackRock, the world's largest asset manager, said in a May 30 [report](#) that investors "must consider the added risk of climate change" since it poses a "dual threat" to places and counties already struggling to recover from the pandemic.

By using climate data assessment, the firm found some counties are exposed to annualized gross domestic product losses up to 2.5% over the next 10 years above the GDP forecast without any pandemic risk. That leads to the risk for rising bond yields ranging from 25 to 80 basis points,

depending on the speeds of their recoveries, according to the firm's report. The areas that are exposed to both climate change and pandemic risk will see worse losses.

For example, Miami-Dade County in Florida is forecast to see 0.88% annualized loss of GDP over the next 10 years due to Covid exposure, according to BlackRock's estimates. That projected loss jumps to a combined 2.6% annualized loss when hurricane exposure is taken into account.

"Local finances become even more dire after considering the potential for climate change related risks over the next decade," wrote BlackRock's Amit Madaan and Michael Kent.

## **Bloomberg Green**

By Danielle Moran

June 10, 2020, 5:40 AM PDT

---

### **[College Bond-Sale Spree Draws in University of Michigan.](#)**

- **School sells some \$1 billion of debt for projects, refinancing**
- **Despite uncertainty, colleges are seizing on low rates**

The University of Michigan is the latest elite school to join the higher-education bond selling spree.

The university sold nearly \$1 billion of bonds, \$850 million of which was taxable, to pay for construction projects and refinance debt, according to preliminary pricing wires viewed by Bloomberg. The taxable securities were priced at yields from 1% to 2.56%, or 57 basis points to 102 basis points over Treasuries, depending on the maturity.

Colleges have issued nearly \$23 billion of debt this year, seizing on the decline in interest rates that's come since markets stabilized over the past two months. That's about seven times more than was sold during the same period a year earlier, according to data compiled by Bloomberg.

The borrowing comes amid uncertainty about what universities are facing in the fall after having to close campuses early this year due to the coronavirus. While that's raising the financial risks for some colleges, the most elite universities are being less affected, given their large endowments or ability to draw far more applicants than they can accept.

The University of Michigan plans to make a decision on its fall return date this month.

"It's pretty attractive borrowing costs for these universities to come in, issue taxable munis, lock in the debt and have full control over the use of proceeds," said Gabriel Diederich, a portfolio manager with Wells Fargo Asset Management. "These flagship universities that have name recognition. Sometimes the pencils are already sharpened for the deal."

Yields for top-rated 10 year municipal bonds have fallen to about 0.8%, down from as much as 2.87% in March at the height of the market volatility kicked off by the pandemic.

The University of Michigan, which has an AAA credit rating, is borrowing to finance the construction of an inpatient care facility, a parking facility and a transportation maintenance facility, along with expanding its engineering lab, reducing emissions at a power plant and refunding some existing debt, according to documents released ahead of the sale.

"The interest is broad-based and comes from many places including insurance companies, banks, pensions and foreign buyers," Diederich said before the pricing. "It's definitely name brand."

## **Bloomberg Markets**

By Fola Akinnibi

June 9, 2020, 10:56 AM PDT Updated on June 9, 2020, 12:56 PM PDT

— *With assistance by Danielle Moran*

---

### **California Bets on Trump's Help With \$54 Billion Budget Gap.**

- **Once worst-rated state righted itself but it can't fill hole**
- **Lawmakers say more federal aid is needed to prevent deep cuts**

In 2009, President Barack Obama's administration rejected a plea by top state officials to bail out California, whose yawning fiscal hole at the time prompted its comparisons to debt-riddled Greece.

The state needed to solve its problems itself, the feds said. And California did: once the worst-rated state, it slashed spending, paid off debt, raised taxes and overhauled legislative rules to curb political dysfunction hobbling it. Also key: socking away some of its revenue gains from the nation's record economic expansion into a rainy day account with the hope of avoiding crippling cuts in the next downturn.

Indeed, in January, California, with its highest credit rating in two decades, was expecting continued growth in jobs and revenue and mulling expanding services and moving even more cash into its reserves. But then the pandemic struck. In just two months California lost more jobs than it did through the Great Recession and now faces a \$54 billion shortfall through fiscal 2021 — more than three times its record savings account.

The speed and severity of the coronavirus-induced economic downturn, exacerbated by recent civil unrest, has policy makers in Sacramento and statehouses across the country calling on the federal government for more aid. And as the Monday deadline for lawmakers to pass a balanced budget approaches, California's Democratic leaders are faced with counting on help from President Donald Trump, a Republican who routinely disparages their policies.

"Do you make structural cuts in the budget, or do you just hope that the federal government will recognize the need to fund state and local governments at a time when they're really bearing the brunt of the responsibility?" said Howard Cure, head of municipal research at Evercore Wealth Management. "How do you make cuts in the budget under those circumstances when there's really a need for help?"

California is contemplating a combination of raiding reserves, cutting services, internal borrowing and accounting gimmicks to balance its books. That's similar to other states, some of which have already acted. Missouri slashed education funds, while Illinois, at risk of being the first U.S. state to be cut to junk status, passed a budget dependent on loans from the Federal Reserve and another potential Congressional rescue package.

"It's a mix of acting now and being in wait-and-see mode," said Josh Goodman, senior officer with

the Pew Charitable Trusts. "There's some real pain in the decisions that states are making."

## Job Losses Are Shifting to States, Cities After Business Rebound

That was seen in the most recent labor data, which showed that in the past two months, states and cities have cut more jobs than they did in the aftermath of the last recession. While the Trump administration is "unpredictable," Moody's Analytics expects it will ultimately approve a rescue package to assist state and local governments because of the consequences, said Sarah Crane, an economist at the company.

"It would have the potential to send us into a double-dip recession, if the money doesn't come through," Crane said. "We would think that the administration would try to hold on to their own jobs by doing what they can to preserve American jobs."

The deep financial hit has largely had little impact on the state's bonds, which have rebounded along with the rest of the market from the March selloff triggered by the pandemic. California debt due in 2032 is yielding about 1.3%, about 24 basis points more than top-rated debt. That spread, the main gauge of perceived risk, is down from as much as 108 basis points in March.

A Democrat-backed bill that would give states and cities more than \$1 trillion has stalled in Congress. California Governor Gavin Newsom said in May that money would reverse the need for around \$14 billion in cuts he's proposed for the year beginning July 1. Those include reducing pay for all state workers by 10% as well as less money for education and safety-net programs such as health care for low-income residents.

Last week, Democratic leaders of both legislative chambers said they've agreed on a budget framework that takes a different approach: it counts on federal aid and only triggers cuts in October if it doesn't materialize. Their plan, if Congress fails to act, relies on measures such as deferring payments and moving the June payroll date for state workers into the next fiscal year. They're negotiating with Newsom ahead of the Monday deadline.

Complicating the state's budget struggle is uncertainty from the pathogen: whether there will be a second outbreak; when a vaccine is developed; and if and how businesses will be transformed.

"It's really challenging to have this type of debate now when not only you're suffering so much from decline in revenue, but you just don't know or have any realistic idea when there's going to be a recovery," Cure said.

## Bloomberg Politics

By Romy Varghese

June 9, 2020, 6:00 AM PDT Updated on June 9, 2020, 7:54 AM PDT

---

## [Citigroup Sees Illinois Bonds Already Pricing In Worst Outcome.](#)

- **Bonds have bounced back from bottom of the March selloff**
- **Bank says cut to junk possible, but there's no risk of default**

When it comes to Illinois bonds, Citigroup Inc. says the worst-case-scenario has already been priced in.



The difference between the yields on the state's debt and top-rated securities — a key measure of risk — widened to a record high in May on speculation that the financial hit from the coronavirus will make it the first state to see its credit rating cut to junk. That selloff pushed its yields to junk-bond levels, surpassing those on some debt issued by still bankrupt Puerto Rico.

But Citigroup analysts Vikram Rai, Jack Muller and Vedanta Goenka said in a note to clients Monday that a default like Puerto Rico's is not a risk since the state has many ways to contend with its tax shortfalls. That includes borrowing from the Federal Reserve's municipal lending facility, as it did last week.

Illinois bond yields surged on risk of cut to junk

The analysts' comments reflect greater optimism on Wall Street as much of the nation begins to reopen, even though record unemployment and business shutdowns are leaving governments facing massive budget shortfalls.

Illinois's bonds, which tumbled more than any other state since the pandemic spread in the U.S., have since rebounded along with the rest of the \$3.9 trillion municipal market.

The 10-year bonds that Illinois sold in mid-May for a yield of 5.65%, or 452 basis points more than the benchmark, have since rallied. That bond last changed hands Friday at an average yield 4.2%, or a 340 basis-point spread.

"We believe that we could potentially see a downgrade to speculative grade though the GOs are already trading at HY spreads," the Citigroup analysts wrote. "A default, we believe, is out of [the] question and the state has already announced that it would avail itself of the Fed's MLF to address its cash flow needs. Thus, we believe that the recent tightening of spreads is reflecting the unpricing, if you will, of the worst possible outcome."

## **Bloomberg Markets**

By Danielle Moran

June 8, 2020, 10:30 AM PDT

---

## **[Building Cities With Online Platforms And Opportunity Zones.](#)**

If recent headlines have taught us anything, it is that economic support and investments can go a long way toward helping cities, businesses and individuals navigate any number of challenges (the pandemic is only among the most recent challenges).

Unemployment is at historic levels. Small businesses (and not a few large ones) are at risk of going under. Across urban and rural settings, communities are in need of investment.

To that end, according to Valla Vakili, managing director and head of the studio at [Citi Ventures](#), data can make all the difference in helping funds get where they need to go to revitalize those communities.

His conversation with Karen Webster took place after Citi Ventures added new features to the City Builder online platform — a digital offering launched at the end of last year that connects investors with "opportunity zones."

[Continue reading.](#)

ByPYMNTS

Posted on June 5, 2020

---

## **S&P: Pennsylvania Fiscal 2021 Short-Term Spending Plan Provides Some Breathing Room Ahead Of Substantial Fiscal Challenges**

HARTFORD (S&P Global Ratings) June 5, 2020—S&P Global Ratings believes the short-term general fund budget recently enacted by the Commonwealth of Pennsylvania (A+/Stable) provides some budgetary stability by addressing immediate funding demands. However, we expect the pandemic-driven recession will create a sizable budget gap for the commonwealth in fiscal 2021. Pennsylvania's budget and liquidity management will be crucial to maintaining the commonwealth's long-term credit quality.

Pennsylvania's temporary general fund spending plan for fiscal 2021 totals \$25.8 billion and funds public education (including pre-kindergarten, kindergarten through grade 12, and higher education) for a full 12 months, while most other agencies are funded for the five months ending Nov. 30, 2020. The budget sustains education funding at 2019-2020 funding levels, fully funds debt service, and makes pension contributions at actuarially determined levels. Approximately \$2.6 billion of federal Coronavirus Relief Fund (CRF) funding from the Coronavirus Aid Relief and Economic Security (CARES) Act is appropriated for fiscal 2021, which leaves about \$1.3 billion of CRF funding available.

We believe the short-term budget provides additional time to make informed fiscal decisions. Looking ahead, we expect Pennsylvania's estimated budget gap for fiscal 2021 will be sizable. Officials have projected up to a \$5 billion general fund shortfall on a combined basis for fiscal 2020 and fiscal 2021. This represents about 7.1% of combined fiscal-year expenditures, but we expect that the fiscal 2021 budget will shoulder the majority of the shortfall. The Department of Revenue reports that through May, collections were down \$2.6 billion (8.2%) for fiscal 2020, of which management estimates \$1.9 billion is attributed to delayed tax filing deadlines and \$700 million reflects reduced economic activity. Officials expect the commonwealth's revenue forecasting for fiscal 2021 will be updated before a long-term budget is needed at the end of November. However, the timing of a revenue forecast update is unknown.

It's unclear how Pennsylvania intends to solve the projected budget gap. But management reports it's considering various options. Heading into the downturn, Pennsylvania's rainy-day reserves were a low \$342 million or 1.0% of budgeted appropriations. In our view, the commonwealth's history of prolonged budget impasses, limited willingness to raise taxes, and the budget's relatively minor level of discretionary spending could also limit options for solving the gap. For example, in 2018, the commonwealth helped solve a \$2.2 billion budget shortfall (7% of general fund expenditures) by issuing \$1.5 billion of deficit bonds backed by tobacco master settlement payments.

We believe active management of Pennsylvania's liquidity will remain a key credit factor because officials anticipate the commonwealth's liquidity needs will substantially increase in fiscal 2021—assuming declining revenues due to the pandemic and level expenditures. Management is currently holding internal discussions regarding options for obtaining additional liquidity, including internal and external sources. Pennsylvania has not borrowed externally since fiscal 2011 when it

issued tax anticipation notes to mitigate cash flow imbalances. As of May, there was no balance outstanding against the state's current \$2.0 billion line of credit with the treasury's short-term investment pool.

The extent of Pennsylvania's budgetary challenges will depend on the severity and duration of the pandemic's effects on the economy. S&P Global Economics forecasts a 5.3% contraction in the U.S. economy this year (see "An Already Historic U.S. Downturn Now Looks Even Worse," published April 16, 2020, on RatingsDirect). Officials report that economy activity has begun to resume with the vast majority of Pennsylvania's counties expected to be involved in some phase of reopening by June 5, 2020. We incorporate the commonwealth's history of acrimonious budget negotiations, chronic structural imbalance, and stressed liquidity position into our 'A+' rating on Pennsylvania and expect these credit factors to persist as the commonwealth faces new budgetary hurdles in an uncertain economic environment.

This report does not constitute a rating action.

S&P Global Ratings, part of S&P Global Inc. (NYSE: SPGI), is the world's leading provider of independent credit risk research. We publish more than a million credit ratings on debt issued by sovereign, municipal, corporate and financial sector entities. With over 1,400 credit analysts in 26 countries, and more than 150 years' experience of assessing credit risk, we offer a unique combination of global coverage and local insight. Our research and opinions about relative credit risk provide market participants with information that helps to support the growth of transparent, liquid debt markets worldwide.

---

## **[S&P Charter School Brief: New York](#)**

As of June 8, 2020, S&P Global Ratings maintains eight public ratings on New York charter schools. New York adopted charter school legislation in 1998, with the first charter school opening in New York City the following year. Per the state education department, as of April 2020, 315 charter schools currently operate in the state, with an additional 36 scheduled to open in the 2020-2021 or later school years. Charter schools in New York City comprise the vast majority (over 80%) of the state total. New York charter schools served over 150,000 students in the 2019-2020 school year (up from 1.7% in 2010); this equates to approximately 6% of the total kindergarten through 12th grade (K-12) state public school enrollment; the state's charter enrollment is second only to Los Angeles Unified School District in a comparison by district. State charter per pupil funding levels are the highest in the country, with comparatively generous provisions for the special education category.

[Continue reading.](#)

---

## **[Where to Find the Best Municipal-Bond Fund Buys.](#)**

There is good news and bad news from that relatively obscure corner of the investing world, closed-end municipal bond funds.

Their share prices have recovered from a shocking collapse back in March that took place in tandem with the plunges in the equity and corporate credit markets. But while the major stock indexes such as the S&P 500 have rebounded from their earlier losses, muni closed-end funds have recouped only

about half of theirs.

The good news is that, as a result, they still offer high yields, especially compared with much of the Treasury market and money-market funds, which are on the verge of paying bupkus (that's a technical term) because of the Federal Reserve's aggressive actions to counter the slide in the markets and the economy from the coronavirus crisis.

[Continue reading.](#)

## **Barron's**

By Randall W. Forsyth

June 10, 2020 11:28 am ET

---

### **[A Muni-Bond Fund That Lets You Sleep at Night.](#)**

Duane McAllister may have been born to be a municipal-bond fund manager.

During his childhood, his family owned a construction company in northwest Illinois that installed water mains and constructed highways—the exact type of projects he now invests in as the senior portfolio manager for the \$1.1 billion Baird Short-Term Municipal Bond fund (ticker: BTMSX). His first job after graduating in 1989 with a bachelor's degree in finance from Northern Illinois University was with Northern Trust's muni-bond team. At the time, he would have rather joined the bank's active taxable fixed-income team.

"I thought, 'I'll have this market figured out after two or three weeks because obviously munis are so simple.' So here I am, more than 30 years later," he jokes.

[Continue reading.](#)

## **Barron's**

By Debbie Carlson

Updated June 11, 2020 / Original June 10, 2020

---

### **[MSRB Proposes Amendments to Board Selection Process.](#)**

The MSRB [proposed rule amendments](#) to [Rules A-3](#) ("Board Membership") and [A-6](#) ("Board Committees") to improve MSRB governance and transparency. (See also [previous coverage](#).)

The proposed amendments will, among other things:

- lengthen the required separation period to five years for public representatives who have prior industry associations;
- reduce the Board size to 15 members through a transition plan that includes an interim year in which the Board will have 17 members;

- establish a requirement that at least two members of the 15-member Board be municipal advisors;
- impose a six-year term limit for Board members; and
- require that committees responsible for governance functions be chaired by public representatives.

The effective date for the proposed rule change is October 1, 2020.

## **Cadwalader Wickersham & Taft LLP**

June 8 2020

---

### **[Pros and Cons of the 180-Day Opportunity Zone Deadline Extension.](#)**

On June 4, the IRS issued a new notice that provides a lot of additional coronavirus relief for Opportunity Zone investors and Opportunity Zone funds. Will this relief pose short-term challenges for Opportunity Zone capital raising? And might it cause a tsunami wave of investment toward the end of this year? Click the play button below to listen to this special episode. Episode Highlights  
How ...

[Read More »](#)

June 8, 2020

---

### **[Why Attend the Opportunity Zone Expo, with Rich Zhang.](#)**

Last year, the Opportunity Zone Expo hosted six live, in-person events. But due to the ongoing coronavirus pandemic, their 2020 conference will be entirely online. Learn how you can still benefit from attending, who you will meet, and how you can save 20 percent on last-minute tickets. Rich Zhang is brand manager for the Opportunity Zone Expo. Click the play button below to listen to ...

[Read More »](#)

June 10, 2020

---

### **[Novogradac 2020 Opportunity Zones Virtual Conference.](#)**

**Virtual | July 15, 2020 - 12:00pm to 5:30pm**

As the nation rallies together to control the spread of COVID-19, Novogradac has decided to pivot our Opportunity Zones Conference that was to be held in Long Beach, Calif. on July 15-16 to a virtual conference on July 15. This new virtual experience will include valuable and insightful sessions that will address how current events affect the opportunity zones incentive, and how OZ investment can contribute to recovery efforts.

Each session will feature:

- a live Q&A with esteemed OZ experts to answer your questions.
- attendees will also be able to enter a networking hub to participate in chat rooms covering important topics
- the Novogradac Nexus exhibit hall to meet with our valued sponsors.

Novogradac is designing this new experience to be as informative as our live events. The Events Desk is available to answer any questions by email or by calling us at 415-356-7970. We look forward to seeing you at our premiere Novogradac Virtual Opportunity Zones Conference!

[Click here](#) to learn more and to register.

---

## **How Investors Can Evaluate Muni Bonds in the COVID-19 Economy.**

**Investors and their advisors need to be extremely thorough in the current environment. Technology can help.**

With more than 85,000 issuers and approximately 3 million CUSIPs, the municipal bond market can be challenging to navigate in even the calmest economic conditions. At a time like this, when the COVID-19 pandemic has caused severe disruption, volatility and uncertainty, investors and the financial advisors who serve them need to be extremely thorough when evaluating municipal bonds to add to their portfolios.

### **Looking Into Issuers & Pledges**

Bonds can be repaid from many different sources including property taxes, sales taxes, hotel bed taxes, personal income taxes, mortgage revenues, lease payments for use and occupancy of long-lived government assets, and fees for services such as water and sewer.

These repayment sources can come from leases, essential services like water or electricity, or taxes, such as a state sales tax. General obligation bonds (GOs) have stronger protection measures in place for bondholders because they are backed by the full faith and credit of the issuer to tax state or municipality residents to raise money as necessary to pay the debt. Conversely, revenue bonds are backed by pledges of revenue from specific projects, such as hospitals, universities, bridges and toll roads.

All other things being equal, unlimited tax GOs or essential service revenues like water and sewer are generally safer investments. Investors should note that some general obligation bonds can have statutory limitations on their taxing powers, such as a cap on property taxes or the ability to resolve historical delinquencies. Essential service revenue bonds can be subject to dilution of a bond pledge when additional parity debt is authorized and sold. It is important to understand the effect these limitations can have on the creditworthiness of the bond.

A typical strategy for conservative municipal bond investors is to focus on bonds supported by general obligations or essential services and issued by states or municipalities with AAA ratings. While these are certainly healthy characteristics, advisors and investors should also consider additional factors. For example, how diversified is the economy of the state or municipal issuer? Can it successfully withstand extreme market volatility of the type we are currently witnessing? What is the median income of the people who live there? Are there geographic or environmental risks associated with the issuer? How big is the issuer's market position? (The larger an issuer's market presence, the wider the audience of prospective buyers, giving their bonds a greater liquidity

profile.)

Crucially, are the revenue pledges/obligations of the issuer included as a covenant in the investment contract?

These are all prudent questions to ask when vetting possible municipal bond investments.

## **Duration and Risk**

During times like this, when people are concerned not just about the overall economy but also their physical well-being, investors can naturally gravitate towards investments with less volatility. Municipal bonds, like any fixed income security, are exposed to interest rate risk and vary in duration. With a fixed coupon bond, the longer the time until bond maturity, the more susceptible investors are to interest rate changes that will affect the value of their investment.

Laddering the municipal bonds by final maturity within portfolios may help investors with longer investment horizons help reduce interest rate risk. If, for example, an investor has \$1 million to invest in municipal bonds, their advisor can work with them to identify a diverse mix of bonds with shorter durations of two to three years, and longer durations of 10 or 15 years.

While interest rate moves don't affect the principal, it does affect the secondary market value if bonds need to be sold prior to maturity. Additionally, a bond ladder is exposed to "opportunity cost" or "reinvestment risk" — the capability to reinvest the principal when it comes due at the same or higher interest rate.

By constructing a portfolio composed of municipal bonds with different durations, investors can arrange maturities as they need their original investment returned and mitigate some duration risk.

## **How Technology Solutions Can Help Muni Bond Investors**

The size of the municipal bond universe, and scale of recent market volatility and uncertainty, can make investment selection and management difficult for advisors and investors. Fortunately for them, modern technological innovations can simplify the process significantly.

By partnering with a fintech provider whose fixed income solutions can filter municipal bonds by type of infrastructure (energy, roads, airports, etc.), obligations and pledges, and more, advisors and investors can view a streamlined list of safe and well-priced bonds at their fingertips via electronic alerts. Advisors and investors should also check to see that any fintech vendor they use can compare bonds from different market sources in order to identify the best-priced securities.

When a fixed income investment platform provider combines technology innovation with a team of experienced capital markets professionals, the vendor can help advisors and investors access, and sift through, past official statements or continuing disclosures from issuers — a vital service for determining an issuer's creditworthiness before investing, and ensuring obligations are covenants in underlying investment contracts. This combination also allows advisors to thoroughly document the process for achieving best execution on every trade.

As long as investors and their advisors have the right mixture of strong market expertise, robust due diligence methodology and innovative technology, they can harness many promising opportunities in the municipal bond market — and utilize these investments to help them navigate the extreme volatility and uncertainty stemming from the COVID-19 pandemic.

## **ThinkAdvisor**

By Jason Ware | June 10, 2020 at 09:57 AM

Jason Ware Jason Ware is managing director and head of institutional trading at 280 CapMarkets, a fintech firm transforming fixed income through technology.

---

## **What's Happening In The Muni CEF Space?**

### **Summary**

- Munis are down a bit from a few weeks ago while equity markets have zoomed higher.
- Most of the decline is due to “headline risk,” namely comments from politicians discussing bankruptcy.
- State finances are weak, for sure, but are unlikely to need bankruptcy as a means of mending them.
- Muni CEFs saw a huge rebound in NII and large distribution increases thanks to lower leverage costs.

[Continue reading.](#)

### **Seeking Alpha**

Jun. 9, 2020

- 
- [9th Annual Brookings Municipal Finance Conference.](#)
  - [GASB Issues Guidance on Cloud Computing and Similar Subscription-Based IT Arrangements.](#)
  - [BDA Survey Results: Muni MA Activity and the SEC's Proposed Exemptive Relief](#)
  - [CFPB Issues Proposals and Updated Guidance Ahead of LIBOR Discontinuation: McGuireWoods](#)
  - [Fed Expands Scope of Eligible Issuers for Municipal Liquidity Facility.](#)
  - [Treasury Publishes FAQs – Coronavirus Relief Fund Payments for State, Local, and Tribal Governments – Ballard Spahr](#)
  - [Illinois Fed Deal Bodes Well for Future Transactions.](#)
  - [Fed's Municipal-Bond Backstop Is Still Too Punishing.](#)
  - And finally, Great Moments in Judicial Overreach is brought to us this week by [Lime Rock Park, LLC v. Planning and Zoning Commission of Town of Salisbury](#), in which no less an authority than the frickin' Supreme Court of Connecticut concluded that, “the term ‘weekday’ included Saturdays.” Say what? For more on this, see *Wonderland, Alice In*.

---

## **Fed Expands Municipal Bond Program, Opening Door to Some Smaller Cities.**

**At least two cities or counties in every state will be able to issue to the central bank's program, meant to help municipal bond markets.**



WASHINGTON — The Federal Reserve said on Wednesday that it would allow states to designate some cities, counties and other debt issuers, like mass transit systems, to raise funds by selling debt to the central bank's municipal bond-buying program.

The Fed's program, first announced on April 9, was previously able to buy debt only from cities with populations of 250,000 or more and counties with populations of at least 500,000. Those larger cities and counties, along with some entities that work across state lines, remain eligible to sell notes of up to 36 months to the central bank's facility.

The change means that states that do not have sufficiently large cities or counties — or that have only one — will be able to designate up to two city or county issuers to use the program. Governors from each state will also be able to designate two bond issuers whose revenues come from operating government activities, like public transit, airports or toll facilities.

[Continue reading.](#)

## **The New York Times**

By Jeanna Smialek

June 3, 2020

---

### **Fed Expands Municipal Liquidity Program to Include Transit, Airports, Utilities.**

WASHINGTON — The Federal Reserve said on Wednesday it will allow governors of U.S. states to designate transit agencies, airports, utilities and other institutions to borrow under its municipal liquidity program as the central bank tries to mitigate economic fallout from the coronavirus pandemic.

Governors will be able to designate two issuers in their states whose revenues are generally derived from operating so-called government activities, the Fed said in a statement.

The central bank also said it is expanding its program to allow all U.S. states to be able to have at least two cities or counties eligible to directly issue notes to the municipal liquidity facility regardless of population.

Currently only U.S. states and cities with a population of at least 250,000 residents or counties with a population of at least 500,000 residents have been able to make use of the \$500 billion short-term borrowing program.

The Fed has come under pressures to expand its population criteria from lawmakers whose states have no local governments that met the population thresholds.

New York's hard-hit Metropolitan Transportation Authority last month asked Fed Chair Jerome Powell for direct access to the program.

Even with the expansion of potential users, demand may be low given the cost.

"It's been less a question of eligibility and more of a question of pricing," said William Glasgall,

director of state and local initiatives at the Volcker Alliance.

Recent sample purchase rates from the New York Fed range from 1.51% for the highest-rated governments to 3.84% for those with the lowest investment-grade ratings.

On Tuesday, Illinois became the first state or local government to tap the Fed's program with a \$1.2 billion borrowing. Analysts have said the program, announced in April, was set up to be the lender of last resort and would make the most sense for lower-rated governments.

**By Reuters**

June 3, 2020

(Reporting by Lindsay Dunsmuir and Howard Schneider; Additional reporting by Karen Pierog in Chicago; Editing by Chris Reese, David Gregorio and Will Dunham)

---

## **[Fed Expands Municipal-Lending Facility to More Localities.](#)**

### **Illinois plans to issue \$1.2 billion in one-year notes Friday to become the first borrower to access the central bank's program**

The Federal Reserve said it would again broaden the number of local governments eligible for a new lending program as Illinois announced it would be the first borrower to access the facility.

The central bank said Wednesday it would allow all 50 states to designate two cities or counties to sell debts directly to the central bank's program, creating an option for states with less populous municipalities to participate. Many state and local governments are facing cash crises as the coronavirus pandemic has crushed both their tax intake and driven an increase in their spending.

The central bank also said state governors will be able to designate an additional two issuers whose revenues are derived from operating activities, such as airports, toll facilities, utilities or public transit, to be eligible to use the facility on their own.

The changes could allow more than 380 issuers, up from around 260 before the latest changes, to access the emergency-lending program, which was first announced in April.

So far, however, few have shown interest in borrowing through the Fed, which has positioned itself as a high-interest lender of last resort.

Illinois becomes the first to tap the program. It is the country's most indebted state.

Illinois said it would issue \$1.2 billion in one-year notes Friday to tide it over until income taxes arrive late in July. The state, which is rated just above junk status, is planning to borrow through the Fed at an interest rate of 3.82%. The rate is more than 10 times what one-year A-rated bonds were going for Wednesday, according to Refinitiv.

"When you can't get anybody else to lend you money, you've got to go to Papa," said Ben Watkins, director of Florida's Division of Bond Finance.

Municipalities can issue up to three-year debt under the program originating in federal coronavirus aid legislation. Congress gave \$454 billion for the Treasury to use to backstop losses in Fed lending

programs, and the Treasury has committed \$35 billion of that money for a central bank effort to backstop municipal debt.

The Fed previously made the program available to all 50 states, the District of Columbia, and one borrower for each county of at least 500,000 people and city of at least 250,000. Those thresholds had already been revised once, down from earlier cutoffs of 2 million and 1 million.

The changes will extend participation in the facility to one extra municipality in six states, including Alabama and Hawaii, that currently have just one eligible municipal issuer, and they will allow two municipal issuers in 15 states, including Idaho and Vermont, that had none eligible before.

The announcement of a muni-buying program from the Fed injected confidence into a faltering market. The interest rate on an A-rated 30-year general obligation bond was 2.14% Wednesday, compared with 2.51% on April 8, the day before the Fed formally announced the muni-lending program.

Both Congress and the Federal Reserve are pumping trillions of dollars into the economy to fight the economic damage caused by the coronavirus. WSJ explains where all that stimulus money is coming from. Photo Illustration: Carlos Waters / WSJ

But the facility itself could be useless to many state and local governments whose ability to borrow for operating costs is limited by local law or state constitution. Illinois lawmakers tweaked that state's law this spring to facilitate borrowing from the Fed facility.

"Balanced budget requirements, legal restrictions on the length for which notes can be outstanding, and prohibitions on counting long-term debt proceeds as current revenue could limit the utility of the Fed's efforts," said Clayton Gillette, a professor at New York University School of Law.

Also making state and local governments wary is the high level of uncertainty about how much revenue to expect. Fitch Ratings cautioned in a report Wednesday that governments borrowing in anticipation of delayed revenues could be disappointed if those revenues are lower than expected when they finally do come in.

Wisconsin capital finance director David Erdman said the state doesn't plan to issue debt for operations, but if it did, he expects it could borrow more cheaply in the market than through the Fed facility.

"But as we've learned from everything that's happened so far in 2020, you really don't know what tomorrow brings," he said.

## **The Wall Street Journal**

By Heather Gillers and Nick Timiraos

Updated June 3, 2020 3:17 pm ET

Write to Heather Gillers at [heather.gillers@wsj.com](mailto:heather.gillers@wsj.com) and Nick Timiraos at [nick.timiraos@wsj.com](mailto:nick.timiraos@wsj.com)

---

### **[Fed Expands Scope of Eligible Issuers for Municipal Liquidity Facility.](#)**

The Federal Reserve today announced that they will again expand the scope of cities that will be

able to borrow directly from the Municipal Liquidity Facility (MLF). This comes after pressure from Capitol Hill concerning the ability for smaller and rural localities to access the program.

**The updated fact sheet can be viewed [here](#).**

**\*\*BDA Advocacy on all stimulus related legislation and programs can be viewed [here](#).**

### **Municipal Liquidity Facility Updates**

- The Fed will still purchase short-term debt from any state, as well as counties with a population of at least 500,000, cities with a population of at least 250,000 and certain multi-state issuers.
- Now, governors in states that have fewer than two cities or counties that meet those population thresholds will have the power to designate municipalities as direct borrowers from the facility.
- Governors will also have the power to make two issuers in their state eligible for the lending program if their revenue is “generally derived from operating government activities,” like public transit entities or airports.

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

### **Bond Dealers of America**

June 3, 2020

---

### **[BDA Calls on Fed to Include all Banks and Dealers who Provide Liquidity in Emergency Programs.](#)**

Today, the BDA submitted additional comments to the Federal Reserve on their continued intervention in the capital markets to discuss market structure, and the need to expand their emergency programs to include all banks and dealers who provide liquidity to the market.

**The letter can be viewed [here](#).**

**\*\*All BDA COVID-19 correspondence can be viewed [here](#).**

The letter, while commending Chairman Powell and the Federal Reserve for taking necessary actions to swiftly assist capital markets, calls on the Fed to be more aware of current market structure:

- The BDA notes that the 24 Primary Dealers with whom the Fed currently trades make up a much smaller share of the trading market;
- Federal regulators have worked hard over the last decade to spread risk more evenly around the financial system and they have been successful; and
- The Fed should look past outdated market structure strategies that rely on a limited number of participants and instead take full advantage of our robust capital markets.

### **Bond Dealers of America**

June 2, 2020

---

## **Fed's Municipal-Bond Backstop Is Still Too Punishing.**

**Given the history of state and city defaults, the central bank's interest rates look steep.**

When the Federal Reserve first unveiled its backstop for the \$3.9 trillion municipal-bond market in early April, it drew swift backlash for setting arbitrary population cutoffs that excluded many crucial U.S. cities. Within about a month, the central bank significantly lowered its thresholds.

On Wednesday, it went even further, allowing all 50 states to have at least two cities or counties eligible to directly issue notes to the Fed's Municipal Liquidity Facility, regardless of their size. The central bank also said governors can designate two revenue-bond issuers, like public transit agencies or airports, as eligible borrowers. Apparently, Fed Chair Jerome Powell and his colleagues are trying to make sure that these funds can reach the smaller and poorer communities that need them the most.

Lost in this conversation: The Fed has set interest rates that are overly punitive anyway.

[Continue reading.](#)

### **Bloomberg Opinion**

By Brian Chappatta

June 4, 2020, 2:30 AM PDT

---

## **Wall Street Vet Guides Fed Plan That Rescued Muni-Bond Market.**

- **Even before making any loans, backstop ended a massive selloff**
- **Fed taps former Bear Stearns, JPMorgan banker as adviser**

In the days after America's state and local government bond market nearly froze during a record-setting crash set off by the coronavirus, the Federal Reserve hired Kent Hiteshew to make sure it doesn't happen again.

The 65-year-old former JPMorgan Chase & Co. banker immediately began working the contacts he'd built during nearly three decades on Wall Street and a stint in President Barack Obama's Treasury Department.

The Fed was moving aggressively to prop up other debt markets being hammered, too, as the economic standstill set off panic on Wall Street.

Yet the mere prospect of the central bank's first intervention ever into the \$3.9 trillion municipal market — authorized by the stimulus plan enacted in Congress — was enough to stop a mass exodus by investors who were yanking tens of billions of dollars out of mutual funds. Even before its details were announced on April 9, prices rallied. Bond deals shelved during the crisis were sold as buyers came back, and investors have been returning cash to mutual funds as the losses that piled up in March disappeared.

Congress has so far failed to extend more help to states, cities and counties facing massive budget

shortfalls as tax revenue disappears. As a result, the only lifeline to come from Washington may be the Fed program Hiteshew is helping to guide.

But it's also a limited one. While the central bank moved aggressively to buy up corporate bonds, the Fed hasn't been buying municipal debt on the open market. Instead, it opted to make \$500 billion available for government loans due within three years. It has made it clear that it's a credit line of last resort, one to turn to only if markets seize up again or skittish investors demand excessively high interest rates from states and municipalities. It's set to lapse at the end of the year.

"None of us know today whether the recovery will be V-shaped or take much longer, or how deep it will be," Hiteshew said during a conference event held last month by the Government Finance Officers Association. "The last thing we want to see is have state and local governments' balance sheets loaded up with deficit financing that can hinder their ability to provide the essential services and infrastructure financing that we as a nation depend on going forward."

### **First Customer**

That's meant that the Fed's municipal-lending program has had little direct effect, aside from restoring investors' confidence that it will step in to halt another liquidity crisis.

Illinois, whose bond yields have surged on the risk it could be the first state ever cut to junk, this week became the first to borrow from the Fed. It paid a rate of 3.82% for a \$1.2 billion one-year loan. Wall Street analysts have speculated that only struggling municipalities will borrow because those with AAA ratings can borrow for just 0.09% in the public market. The Fed is charging penalties of 1.5 percentage points to 5.9 percentage points over a market benchmark on its loans, depending on the grades assigned by the major rating companies.

That's drawn criticism from some on Wall Street and in Washington that it should be doing more. Analysts at Citigroup Inc. have said the Fed should extend the program to include buying long-term debt, which would give governments more time to recover from the economic downturn.

"The way they've done it is just simply not enough," said U.S. Senator Bob Menendez, a Democrat from New Jersey who sits on the banking committee.

The Fed has said it is monitoring the market and could step in further if needed. It has already shown a willingness to alter the municipal lending program.

### **Extending Reach**

Hiteshew, who started his career at Morgan Stanley in 1988 before moving on to Bear Stearns Cos. and JPMorgan, was hired as an adviser to the Fed for six months. He spent the early weeks of his job on the phone with credit-rating analysts, Wall Street bankers, investors and groups that represent local government officials.

In late April, after the program drew pushback for allowing only the biggest cities and counties to borrow — freezing out some hard hit cities with large black populations — the Fed lowered its population thresholds to give it broader reach. This week, it went even further, allowing governors in the least populous states to pick up to two municipalities that could borrow if they still weren't big enough to qualify.

It also extended the lifeline to agencies like public transit operators or airports — with a limit of two per state — to help alleviate the cash shortfalls as air travel and commuting plunges. That will likely help New York's Metropolitan Transportation Authority, the subway operator that's looking at

borrowing from the Fed to help cover a potential deficit of \$8.5 billion.

Former colleagues credit Hiteshew for his deep market knowledge and skill at building consensus. When he led the U.S. Treasury's Office of State and Local Finance from 2014 to 2017, he helped create support in Congress for legislation allowing Puerto Rico to go bankrupt to provide an orderly way out of its debt crisis.

"Kent is someone who understands his mandate, the limits of the authorities that the institution can exercise, but also the full weight and breadth of the available authorities," said Antonio Weiss, a counselor to then-Treasury Secretary Jack Lew who oversaw the Puerto Rico rescue. "His creativity and technical expertise will help the Federal Reserve unlock the full extent of its powers in addressing the crisis that states and municipalities face. But it will be within the limits of the mandate, not outside."

## **Rebound from Crisis**

The Fed's backstop so far appears to have been enough to return the municipal-bond market to normalcy. By promising to prevent a flood of short-term debt sales by governments seeking to bridge temporary cash shortfalls, it has driven interest rates down steeply. Top-rated two-year bonds are yielding about 0.17%, down from as much as 2.78% in mid-March.

Investors have added money to municipal debt mutual funds since mid-May, with \$1.2 billion flowing in during the week ended Wednesday, according to Refinitiv Lipper US Fund Flows. The interest rates on long-term bonds have also plunged, driving the Bond Buyer 20-year index to the lowest since at least 1960.

That may undercut, at least temporarily, the impetus to make long-term loans.

"It's not free money," said Thomas Green, a managing director and public finance banker at Citigroup.

Hiteshew is "setting it up to be helpful to those who need it and that's a helpful thing from the Fed's point of view," he said. "They don't tend to want to get entangled in state and local affairs if they can avoid it."

## **Bloomberg Markets**

By David Voreacos and Amanda Albright

June 5, 2020, 6:03 AM PDT

---

### **[Fed Expands Muni Loan Program to Include Smaller Borrowers.](#)**

- **Emergency program can support up to \$500 billion in lending**
- **Illinois says it is first to tap facility with \$1.2 bln credit**

The Federal Reserve is expanding a \$500 billion emergency lending program for state and local governments to include smaller borrowers, following concern that some needy communities might miss out.

"Under the new terms, all U.S. states will be able to have at least two cities or counties eligible to

directly issue notes” to the Fed’s Municipal Liquidity Facility, “regardless of population,” the U.S. central bank said in a statement Wednesday.

“Governors of each state will also be able to designate two issuers in their jurisdictions whose revenues are generally derived from operating government activities (such as public transit, airports, toll facilities, and utilities) to be eligible to directly use the facility,” the Fed added.

The municipal facility, which is backed by funds from the U.S. Treasury Department and can support up to \$500 billion in credit, is one of nine Fed emergency lending programs aimed at mitigating the economic impact of the coronavirus pandemic.

## **Smaller and Poorer**

Fed Chair Jerome Powell and his colleagues worry that severe revenue hits facing state and local governments could make the economic downturn worse if local leaders are forced to cut services and lay off workers. They’ve also taken criticism from those who say the facility’s limits might prevent it from channeling funds to smaller and poorer communities where the need is greatest. Some officials have also pointed at Congress for more fiscal help.

The move comes against a backdrop of protests in cities across the country following the killing of George Floyd, an unarmed black man, by a white Minneapolis police officer that has intensified the national debate over racial inequality.

Before Wednesday’s expansion, the program was open to state issuers, the District of Columbia, U.S. cities with populations of at least 250,000 residents, counties with populations of at least 500,000 and certain other multi-state entities.

Muni yields have plummeted since the Fed stepped in. Since the Fed announced the program on April 9, renewed investor appetite for municipal debt has pushed yields on securities issued by the most highly-rated borrowers to nearly zero, removing for many the need to turn to the central bank for help.

“The program may help relieve some concerns in the municipal market by transferring some near-term liquidity risks to the medium-term, and that may lead investors to view municipal credit challenges in terms of downgrades rather than defaults,” said Robert Amodeo, head of municipals at Western Asset Management Company.

On Tuesday, the state of Illinois became the first borrower to tap the facility, announcing plans for a one-year, \$1.2 billion loan at a 3.82% interest rate to cover shortfalls resulting from an extension of this year’s deadline for filing income tax returns.

The Fed’s new [term sheet](#) for the program says that governors can designate revenue bond-issuers in their state that are eligible to use the program. That may help New York’s Metropolitan Transportation Authority, which last month asked the Fed to allow it to borrow directly through the program rather than through the state. The MTA estimates its deficit for 2020 may grow to as much as \$8.5 billion as ridership sinks due to the pandemic.

Aaron Donovan, an MTA spokesman, declined to comment Wednesday on the most recent changes to the Fed program.

## **Bloomberg Economics**

By Matthew Boesler and Amanda Albright’



— With assistance by Michelle Kaske, and Martin Z Braun

---

## **[UPDATED: Treasury Publishes FAQs - Coronavirus Relief Fund Payments for State, Local, and Tribal Governments - Ballard Spahr](#)**

The CARES Act was signed into law by President Trump on March 27, 2020. The CARES Act established a \$150 billion Coronavirus Relief Fund (Fund), through which the U.S. Department of Treasury (Treasury) will make direct payments to each state, eligible units of local government, the District of Columbia, U.S. Territories (the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands), and Tribal Governments. The direct payments can be used this year to help with state and local government expenses incurred in connection with the COVID-19 pandemic. Eligible state, territorial, local and tribal governments were required to apply for direct payments from the Fund by April 17, 2020.

Treasury published the [Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments](#) on April 22, 2020 (Guidance) for recipients of direct payments from the Fund. The Guidance sets forth the Treasury's interpretations on the permissible use of Fund payments. Treasury published answers to frequently asked questions concerning the Fund to supplement the Guidance on May 4, 2020 and updated the [frequently asked questions](#) on May 28, 2020. The FAQ provides additional guidance regarding eligible expenditures and the administration of Fund payments.

The CARES Act only permits direct payments from the Fund to cover those costs that (i) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; (ii) were not accounted for in the budget most recently approved as of March 27, 2020 (the date the CARES Act was enacted) for the government entity; and (iii) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020. The Guidance offers Treasury's interpretation of these limits and provides nonexclusive lists of examples of both eligible and ineligible expenditures. The FAQ clarifies that governments are responsible for determining what expenses are necessary and will not need to submit expenditures for Treasury's approval. The FAQ also provides answers to specific questions relating to Treasury's lists of eligible and ineligible expenditures in the Guidance.

Treasury provided additional guidance on the following topics, among others, in the FAQ:

- Types of employees whose payroll may be covered by moneys received from the Fund (Fund Payments) – a state, territorial, local, or tribal government may presume that payroll costs for public health and public safety employees are payments for services “substantially dedicated” to mitigating or responding to the COVID-19 public health emergency.
- Transfers of Fund Payments to other government units – states receiving payments may transfer funds to a local government if it qualifies as a necessary expenditure incurred due to a public health emergency and meets other statutory requirements. Since local governments with populations of 500,000 or less were not eligible for direct payments from the Fund, states should transfer a portion of the Fund Payments they received to such local governments. The FAQ recommends using the per capita allocation formula in the CARES Act, under which a state should distribute 45% of the Fund Payments it received to local governments within the state with a

population of 500,000 or less.

- Ability to use Fund Payments in conjunction with other CARES Act funding or federal funding for COVID-19 relief – expenses that have been or will be reimbursed under any federal program (including reimbursement pursuant to the CARES Act of contributions by states to state unemployment funds), are not eligible uses of Fund payments.
- Use of Fund Payments to support unemployment insurance funds and costs – States may use Fund Payments to support unemployment insurance funds separate and apart from the State’s obligation to the unemployment insurance fund as an employer to the extent costs incurred by the unemployment insurance fund are incurred due to COVID-19, and may also use Fund Payments for unemployment insurance costs incurred by the State as an employer if such costs will not be reimbursed by the federal government otherwise under another program.
- Inability of governments to use Fund Payments for government revenue replacement or capital improvement projects – Fund Payments may not be used for government revenue replacement, including meeting tax obligations or paying unpaid utility fees, or for capital improvement projects if they are not necessary expenditures incurred due to COVID-19. However, a government could provide grants to electricity account holders facing economic hardship to allow them to pay their utility fees and continue to receive essential services, if the government determined this to be a necessary expenditure.
- Return of unspent Fund Payments to Treasury – recipients must return to Treasury unspent Fund Payments or amounts received from the Fund that have not been used in a manner consistent with the Guidance and section 601(d) of the Social Security Act. If Fund Payments are not used in a manner consistent with the Guidance and/or section 601(d) of the Social Security Act, Treasury would seek to recoup the funds from the government that received the Fund Payment from Treasury. Accordingly, governments that transfer a portion of their Fund Payments should ensure that the recipient government uses the Fund Payments appropriately.
- Deposit of Fund Payments in interest bearing accounts – permitted as long as the recipient uses the interest earned or other proceeds of the investment only to cover expenditures incurred in accordance with the Guidance and section 601(d) of the Social Security Act.
- Retention and disposition of assets purchased with Fund Payments – governments may retain assets purchased with Fund Payments if the purchase was consistent with the Guidance and section 601(d) of the Social Security Act. If the assets are disposed of before December 30, 2020, the proceeds are subject to the restrictions on the eligible use of Fund Payments.
- Audits – Fund Payments may be used to cover the expenses of an audit conducted under the Single Audit Act, subject to the limitations in the Uniform Guidance. Fund Payments are considered “other financial assistance” under the Uniform Guidance (2 C.F.R. Part 200) rather than grants. The Catalog of Federal Domestic Assistance (CFDA) number for the Fund is 21.019, pending completion of registration.

**by the Finance Group**

**June 2, 2020**

**Copyright © 2020 by Ballard Spahr LLP.**

**[www.ballardspahr.com](http://www.ballardspahr.com)**

---

**[UPDATED: New York Federal Reserve Expands Eligible Issuers and Provides Indicative Pricing and Sample Transaction Documents for Municipal Liquidity](#)**

## **Facility - Ballard Spahr**

The Federal Reserve Bank of New York (the New York Fed) has announced an expansion of its \$500 billion Municipal Liquidity Facility to allow participation by designated cities and counties that do not meet the population thresholds required for direct participation (cities with populations in excess of 250,000 and counties with populations in excess of 500,000). In addition, up to two designated revenue bond issuers in each state may participate directly by issuing notes to the Facility.

### **What is a designated city or county?**

Governors of states with fewer than two eligible cities and/or counties may designate up to two cities and/or counties (on a combined basis) to participate in the Facility. If a state has one city or county that is eligible to participate on the basis of its population, the governor of that state may designate one additional city or county, for a total of two eligible issuers. In that case a governor may choose either (i) the most populous city in his or her state that has fewer than 250,000 residents or (ii) the most populous county in his or her state that has fewer than 500,000 residents.

If a state has no cities or counties that meet the required population thresholds, the governor of that state may designate two cities and/or counties in any of the following combinations: the most populous city and most populous county; the most populous city and second-most populous city; or the most populous county and second-most populous county.

The New York Fed published a table showing the maximum number of cities and counties (on a combined basis) that each governor may designate. States that already have two cities and/or counties that are eligible to participate based on their population size may not designate additional cities or counties for participation.

### **What is a designated revenue bond issuer?**

Each governor of a state may designate up to two revenue bond issuers (each a Designated RBI) in his or her state for participation in the Facility. The Mayor of Washington, D.C. may designate one revenue bond issuer. The New York Fed's guidance defines a revenue bond issuer as "a State or political subdivision thereof, or a public authority, agency, or instrumentality of a State or political subdivision thereof, that issues bonds that are secured by revenue from a specified source that is owned by a governmental entity." Notes issued by a Designated RBI will be expected to be parity obligations of existing debt secured by a senior lien on the gross or net revenues of the Designated RBI.

### **How does the designation occur?**

When submitting a notice of interest to participate in the Facility, each designated city, county, and revenue bond issuer must provide evidence that it has verified with the governor of its state that it will be designated. At the time of closing, the designated entity must also provide a certification from the governor of its state reflecting the designation.

### **What are the sample rates for purchases of municipal securities?**

The New York Fed published an index of sample interest rates for purchases of municipal securities by the Municipal Liquidity Facility (the Facility). The rates are provided as indicative rates as of June 1, 2020, and will be updated weekly. The New York Fed advised that the indicative rates are not intended to be a measure of market conditions and actual transactions will be priced individually.

and may differ from the published rates.

### **Are there sample transaction and application documents?**

As described in prior guidance from the Federal Reserve, interested issuers will be required to complete a Notice of Interest (NOI) on a form published on the New York Fed's website. The Facility's Administrative Agent will send an email confirmation to the issuer when the NOI package has been approved, along with an invitation to complete an application. A sample application and certain form transaction documents have been posted on the New York Fed's website for informational purposes, to provide issuers with a better understanding of the process and requirements of the Facility. The sample documents include a Note Purchase Commitment (for use in competitive sales), a Note Purchase Agreement (for use in competitive sales and direct purchases), a Continuing Disclosure Undertaking, and forms of certificates to be provided by an issuer. To date, only Illinois, the state with the lowest credit rating, has borrowed through the Facility, with an issuance of \$1.2 billion anticipated to close on June 5.

For our summary of the Federal Reserve Board's initial announcement of, and prior updates to, the Facility, see "The Fed Throws a Cash Flow Lifeline to State and Local Governments", "Updates to the Federal Reserve Board's New Municipal Liquidity Facility" and "Federal Reserve Provides Pricing and Other Updates to Municipal Liquidity Facility."

**by the Public Finance Group**

**Copyright © 2020 by Ballard Spahr LLP.**

www.ballardspahr.com

**June 4, 2020**

---

### **[Are Municipalities Jeopardizing Their Municipal Bonds By Failing to Take Needed Action to Avoid a Crisis?](#)**

**Based upon our professional experience, we fear that the failure of municipal entities, which includes cities, towns, counties, hospital districts, water districts, etc., to take immediate action in light of the consequences of the coronavirus pandemic will seriously jeopardize the ultimate payment of outstanding municipal bonds.**

As professionals whose careers have spanned decades of dealing with issues associated with bankruptcy, turnaround and insolvency situations, we believe that we are in the midst of a significant crisis with respect to the integrity of municipal bonds. Based upon our professional experience, we fear that the failure of municipal entities, which includes cities, towns, counties, hospital districts, water districts, etc., to take immediate action in light of the consequences of the coronavirus pandemic will seriously jeopardize the ultimate payment of outstanding municipal bonds. Since much uncertainty still remains with respect to the level of federal support municipalities may garner, it is unlikely the support will be adequate to offset the significant revenue shortfalls that municipalities have incurred and will continue to incur until economic activity returns to its pre-COVID 19 levels. Elected officials and their administrative executive teams must act now to not only assess their current financial situation, but they must also initiate contingency plans to curtail an insolvency situation and mitigate the impact of the shortfalls. The organizations with the most proactive, experienced and creative teams are most likely to prevail and survive.

Since this may be the first time that the finance team members for the municipalities have ever faced a situation of this magnitude, many municipalities and other organizations need to benefit from the inclusion of experienced turnaround and restructuring professionals to bolster their teams and rely on the expertise of these professionals to assist in navigating through the crisis. With the recent announced furloughs of police, fire and other municipal employees by the city of Miramar within Broward County, and with the Chapter 11 filing of the municipal bond financed student housing project in Gainesville, we believe that these actions are the proverbial tip of the iceberg of the financial tsunami that will impact municipalities, hospital districts, school districts and other Florida projects financed with municipal bonds. Bond rating agencies are making daily announcements concerning the downgrading of previously highly rated (AAA) municipal bonds as a result of the pandemic.

It has been well publicized that municipalities are being severely impacted as a result of the coronavirus pandemic by the concurrent reduction of tax and other revenues and the increased expenses necessitated by maintaining certain essential services, and providing additional services residents and constituents. Since it appears that any help by way of a Congressional enactment may be stalled as a result of the partisan political wrangling, it is absolutely necessary that municipal bond financed entities need to take immediate proactive steps in order to avoid catastrophic results. Since many retirees and pension funds rely on the integrity of municipal bonds, it is incumbent upon municipal leaders to immediately think outside of the box and not consider business as usual in order to solve these once-in-a-lifetime problems.

Too often, because of perceived constraints that would limit the engagement of outside help, municipal employees are left to solve unique and extraordinary problems on their own, often without adequate expertise. As a result, as was seen in the Chapter 9 municipal bankruptcy filings of Jackson County (Birmingham) Alabama, Detroit, Michigan and Orange County, California, when municipal entities wait too long in order to deal with substantial revenue shortfalls, it is the employees, retirees, communities and the bondholders that suffer the consequences.

There is an unfounded belief held by many that municipal bonds are “guaranteed,” and even in a bankruptcy case, they must be satisfied in full. Unfortunately, that is not the case. Except for certain types of revenue bonds where the revenue can be used to satisfy principal and/or interest of the bond, general obligation municipal bonds are treated just like any other unsecured claim in a bankruptcy proceeding, and history has shown that the holders of these bonds have fared poorly after long delays in municipal bankruptcy proceedings.

Too often, when business executives and municipal leaders are faced with situations that are critical in nature but outside their scope of knowledge, they react instinctively, but that instinct may not be the proper solution when dealing with the current financial distress with no immediate resolution.

Many years ago, Congress enacted Chapter 9 of the Bankruptcy Code provide a vehicle for municipal entities, other than states, to adjust their debts when revenue is insufficient to meet the critical needs on an ongoing basis. However, as was seen in the Detroit Chapter 9 bankruptcy case, the strict rules of the bankruptcy law provide what many believe to be an imbalance or unfairness in the way that different constituent groups of creditors and bondholders are treated. The same is true for those who are the beneficiaries of pension benefits and healthcare rights. Filing of a Chapter 9 proceeding should be a last resort by a municipal entity, utilized only after all possible other actions have been exhausted.

This mandates that municipal entities seek competent professional legal and financial advice from outside professionals prior to the situation reaching a critical stage. For example, financial advisers can review and restate financial plans and forecasts, running a multitude of scenarios and sensitivity

analyses and can help management take actions to improve liquidity while taking a critical view to all assets and the ability to profitably monetize such assets. Financial advisers can also model the impact of cost-containment actions such as delays or pauses to capital improvement projects or planned program expansions as well as halting all contractor/temporary workers, etc. From a legal perspective, it is critically important that elected officials and senior staff for the municipalities fully understand and have access to legal advice to properly weigh the legal alternatives and their possible consequences. For instance, seeking protection under Chapter 9 of the Bankruptcy Code may be an excellent strategic opportunity for a municipality in order to be fair to creditors and bondholders, but seeking bankruptcy relief should never have to be done without sufficient advance strategic planning and adequate consideration.

Experienced advisers can bring proven and creative solutions to address revenue shortfalls of a magnitude that nobody could have predicted. When early intervention occurs, in working with outside professionals, the municipal entity's management team can affect the necessary financial restructuring without having to resort to their dramatic and cost mandates required by the Bankruptcy Code in the Chapter 9 proceeding.

Creditors, taxpayers and bondholders alike should urge elected and appointed municipal officers and employees to immediately take the proactive steps necessary to obtain adequate assistance before it is too late.

#### **law.com**

By Charles M. Tatelbaum and Shelby Faubion | June 04, 2020 at 10:12 AM

**Charles M. Tatelbaum** is a director of the Fort Lauderdale law firm of Tripp Scott where he chairs the creditors' rights and bankruptcy practice group. He has been concentrating his law practice in the area of complex business litigation, creditors' rights and bankruptcy for more than 50 years.

**Shelby Faubion** is a resident of Fort Lauderdale and a managing director at Larx Advisors, Inc. Faubion leads the firm's South Florida practice, providing turnaround and restructuring, financial accounting and due diligence and merger and acquisition integration services. Faubion has over 20 years experience providing a variety of financial, accounting and risk management services within public accounting and industry.

---

### **[Best's Special Report: Pandemic Creates a Severe Test for Municipal Bond Market](#)**

Given the severe medium-term impacts on the municipal bond markets driven by the pandemic, U.S. insurance companies with more significant exposures, particularly revenue bonds for the more vulnerable sectors such as transportation and retail, are more likely to feel the negative market effects, according to a new AM Best special report.

The significant decline in revenue of states and cities during the COVID-19 pandemic likely will affect municipal bondholders. The Best's Special Report, titled, "Severe Test for the Municipal Bond Market" states that insurers' municipal bond exposures are significant. Additionally, more than two thirds of the municipal bonds held by insurers are from 15 states, including states hard hit by the pandemic, such as New York, New Jersey, Illinois, Massachusetts and California. Of the three major insurance segments, property/casualty insurers have the greatest municipal bond exposure,



although it has decreased by 20% since 2016, when the Tax Cuts and Jobs Act made the tax-exempt status of this asset class less advantageous. Nevertheless, the segment's exposures remain considerable, as municipal bonds constitute nearly 14% of the property/casualty segment's invested assets, compared with 12% and 4.1% for the health and life/annuity segments, respectively. The life/annuity segment's municipal bond exposures represent 42% of their capital and surplus, exceeding that of other two segments. Companies rated by AM Best account for nearly 90% of the insurance industry's municipal bond holdings.

Given their relative value and tax-exempt characteristics, municipal bonds will continue to play a role in an insurer's strategic asset allocation. However, selecting appropriate exposures will be critical to insurers' ability to manage through this tumultuous cycle. "The expertise and risk management practices of insurers and their investment managers will be tested," said Jason Hopper, associate director, industry research and analytics. "Insurers that have a deep understanding of the municipal bond markets and well-defined risk thresholds based on solid credit risk fundamentals will perform better during and after the pandemic crisis."

All asset classes have been affected by the pandemic, providing yet another illustration of rising correlations during times of stress. AM Best will continue to monitor the overall impact of deteriorating conditions on insurers' ability to maintain adequate capital appropriate for their business and investment risks.

To access the full copy of this special report, please visit  
[http://www3.ambest.com/bestweek/purchase.asp?record\\_code=297861](http://www3.ambest.com/bestweek/purchase.asp?record_code=297861).

To view a video discussion with Hopper about the report, please go to  
<http://www.ambest.com/v.asp?v=municipalbonds620>.

AM Best is a global credit rating agency, news publisher and data analytics provider specializing in the insurance industry. Headquartered in the United States, the company does business in over 100 countries with regional offices in New York, London, Amsterdam, Dubai, Hong Kong, Singapore and Mexico City. For more information, visit [www.ambest.com](http://www.ambest.com).

## **Business Wire | June 4, 2020**

Copyright © 2020 by A.M. Best Rating Services, Inc. and/or its affiliates. ALL RIGHTS RESERVED.

---

### **[With Stadiums Closed, Municipalities Struggle With Billions in Debt.](#)**

Two decades of using borrowed money to pay for new stadiums is coming back to haunt many cities across the country.

At Gila River Arena in Glendale, Ariz., home of hockey's Arizona Coyotes, the coronavirus pandemic forced the cancellation of eight NHL games, a Celine Dion concert and a professional bull-riding tour, but it didn't change the schedule for the city's \$10.7 million 2020 debt payment for the venue.

"Are we happy about the slowdown in the revenues that we're going to see in the foreseeable future? No. But we won't be cutting services," said Glendale City Manager Kevin Phelps. The city owes another \$12.7 million for Camelback Ranch-Glendale, where Major League Baseball's spring training shut down in March.

Coronavirus lockdowns have emptied arenas and stadiums indefinitely, shuttering professional sports and concert tours alike, and have significantly reduced taxes. When cities issue bonds and use the proceeds to build stadiums, they pledge to make yearly bond payments on the debt, often counting on revenue from sales, hotel or rental-car taxes to cover the payments.

Public officials have borrowed billions of dollars to build stadiums for major teams. Since 2000, more than 40% of almost \$17 billion in tax-exempt municipal bonds sold to finance major-league stadiums were backed by levies on hotels and rental cars—making tourism taxes the predominant means of public stadium finance, according to the Brookings Institution.

The borrowers envisioned the sports facilities as a form of economic development that would attract fans from near and far, raising cities' national profile and boosting their revenue beyond what was needed to pay back the bonds. The pandemic has turned that calculus on its head, crushing tourism proceeds and turning stadiums into a strain on city budgets—when cities are already hemorrhaging revenue from coronavirus shutdowns.

The National League of Cities, an advocacy group, projects that American cities, towns and villages will experience a combined shortfall of roughly \$360 billion through 2022, raising questions about decisions to allocate public money to sports franchises.

Municipalities' struggle with tourism-linked debt marks the latest strain on the municipal bond market, where millions of investors traditionally put their money as a safe place for retirement. Much of outstanding municipal debt is backed by payments such as property taxes and sewer fees, leading many to consider the securities nearly as safe as Treasuries.

"Investors are looking at what they're holding and the security they have," said Howard Cure, director of municipal bond research at Evercore Wealth Management. "The more exposure to tourist taxes, the more concerned they are."

Prices on a sampling of 20 bonds backing professional and recreational sports facilities are trading at a median 6% lower than they were before mid-February, according to a Wall Street Journal analysis of data from ICE Data Services. The S&P Municipal Bond Index, in contrast, has rebounded almost to its mid-February level.

Maryland Heights, Mo., bonds backing the Centene Community Ice Center, used by the National Hockey League's St. Louis Blues, have fallen from 109 cents on the dollar at the beginning of March to 68 cents on May 21, the last time the bond was traded. The city uses revenue from the facility, which in normal times hosts athletic activities and programs, to cover most of the debt payment of \$3.6 million a year.

Finance Director Dave Watson said the city has significant reserves and expressed confidence in the facility's long-term success. "If hockey stays popular, the facility will be fine," he said.

The city, which has a total general-fund budget of \$25 million and has seen dips in its casino and hotel revenue as a result of the pandemic, could end up shelling out up to \$625,000 toward the debt payment under an agreement to backstop shortfalls.

The risk that empty stadiums will become a revenue drain on cities and counties is greater in some places than others.

Miami-Dade County, which hosted the Super Bowl earlier this year, has already collected nearly twice the dollar amount in sports and tourism tax revenue needed to cover this year's \$15.1 million debt payment on Marlins Park, the home of the Miami Marlins baseball team. Most of that money



came in before shelter-in-place rules went into effect.

But even if debt payments are covered, tourist taxes are still likely to take a hit.

Jackson County, Mo., is still determining what the temporary closing of stadiums will mean for the county's tax revenue.

"There is no question that we are going to take some sales tax hit from these facilities not being in operation," said Caleb Clifford, chief of staff to the county executive.

The county devotes a third of its total sales tax—the county's largest single source of income—plus an additional \$3.5 million in property taxes to debt payments for and management of the Harry S. Truman Sports Complex, where the Kansas City Royals and the Kansas City Chiefs play.

Elsewhere, stadium debt similarly takes up an outsize proportion of tax dollars. In Glendale, a city of 250,000 residents, around 66% of the city's public debt is tied to the city's stadiums and arenas, according to Moody's Investors Service. The hotels, restaurants and stores typically comprise a major source of revenue for repayment of the bonds.

Glendale expects to patch budget holes this year with one-time revenue from new construction and the sale of city property and may have to draw about \$1 million from its rainy-day fund next year, Mr. Phelps said.

Mr. Phelps said that the debt load from Gila River Arena and Camelback Ranch is "probably higher than it should be" but that the facilities represent a long-term investment in the city's future, while the pandemic is a short-term crisis. The 2023 Super Bowl and the 2024 NCAA Final Four are both set to take place in Glendale.

No stadium bonds involving major professional sports leagues have defaulted in recent memory, but there are signs of strain.

In April, the Oakland Athletics withheld a \$1.2 million rent payment to Oakland Coliseum as it furloughed staff members and cut salaries.

Moody's has placed bonds backing Mercedes-Benz Stadium, home of the Atlanta Falcons, on review for downgrade, while S&P Global Inc. has lowered its outlook to negative on that venue and the BB&T Center, where the Florida Panthers hockey team plays.

Ratings firms evaluate municipal borrowers' creditworthiness and risk of default or nonpayment. While defaults in the municipal market are rare, a lowered outlook from a ratings firm means the bonds are at increased risk of a downgrade, which can drive up the cost of new debt for the borrower and drive down the market value of bonds for the investors holding them.

A default on a community athletic center and ice hockey facility in Minnesota eight years ago shows the long-lasting and costly consequences stopping payment on a sports venue can have for local budgets.

After revenue fell far short of what was needed to cover debt payments and operations at the local sports complex, Vadnais Heights faced the prospect of significantly increasing taxes and fees on residents, according to Kevin Watson, the city administrator.

Vadnais Heights chose to stop making payments on the two-year-old center, plunging the city into three years of litigation with the complex's operator, which ended with the city paying \$75,000 in

settlement costs. Moody's downgraded Vadnais Heights' credit to junk, where it remained for two years. Such a rating makes investors wary of buying a city's debt and means borrowing is difficult and expensive.

Vadnais Heights' credit rating has since been revised to investment grade, and Mr. Watson said the city's finances are strong.

That kind of scenario, in which a sports facility becomes so much of a burden on local residents that a city or county stops paying, is what is worrying investors about bonds backed by hotel or rental-car taxes.

Julio Bonilla, a fixed-income portfolio manager at asset management firm Schroders, said bonds sold to build stadiums are among the more vulnerable in the nearly \$4 trillion municipal bond market.

"Those issuers who are like built-it-and-they-will-come, whether it's convention centers, museums, you name it—you really have to question the viability of something like that," Mr. Bonilla said.

## **The Wall Street Journal**

by Sebastian Pellejero & Heather Gillers

Write to Sebastian Pellejero at [sebastian.pellejero@wsj.com](mailto:sebastian.pellejero@wsj.com) and Heather Gillers at [heather.gillers@wsj.com](mailto:heather.gillers@wsj.com)

---

## **[As Covid-19 Closes Stadiums, Municipalities Struggle With Billions in Debt.](#)**

### **Pandemic crushes tourism and turns sports venues into a strain on local budgets**

Two decades of using borrowed money to pay for new stadiums is coming back to haunt many cities across the country.

At Gila River Arena in Glendale, Ariz., home of hockey's Arizona Coyotes, the coronavirus pandemic forced the cancellation of eight NHL games, a Celine Dion concert and a professional bull-riding tour, but it didn't change the schedule for the city's \$10.7 million 2020 debt payment for the venue.

"Are we happy about the slowdown in the revenues that we're going to see in the foreseeable future? No. But we won't be cutting services," said Glendale City Manager Kevin Phelps. The city owes another \$12.7 million for Camelback Ranch-Glendale, where Major League Baseball's spring training shut down in March.

[Continue reading.](#)

## **The Wall Street Journal**

By Sebastian Pellejero and Heather Gillers

June 4, 2020 5:30 am ET

---

## **S&P: Activity Estimates For U.S Transportation Infrastructure Show Public Transit And Airports Most Vulnerable To Near-Term Rating Pressure**

### **Key Takeaways**

- Based on our analysis of various factors influencing future activity levels for each U.S. transportation infrastructure subsector we believe the public transit and airport sectors are generally the most vulnerable to downward rating pressure in the near term.
- Our current 2020 and 2021 baseline activity estimates relative to pre COVID-19 levels show annualized declines of approximately 55% and 30% for public transit; 50% and 25% for airports; 45% and 15% for parking; 25% and 10% for toll roads; and 20% and 10% for ports. However, due to the high degree of uncertainty about the rate of spread and peak of the coronavirus outbreak, the recession and their combined impacts on transportation infrastructure, our activity estimates will change as more data become available.
- Rating actions of one or more notches are likely for those credits we believe will experience materially lower, uncertain, or volatile activity in the medium to long term. Conversely, modest downward rating actions or none at all are possible for those credits we believe demonstrate recovery to financially sustainable but lower activity in the near term.
- Due to the challenges posed by the pandemic-induced recession and concerns of COVID-19 outbreaks and associated impacts, we believe activity levels could be unpredictable or materially depressed beyond 2020. Consequently, many of the negative outlooks on debt ratings of transportation issuers with this exposure are likely to remain on negative outlook beyond this year.

[Continue reading.](#)

4 Jun, 2020 | 19:55

---

## **S&P: Top 10 Investor Questions On Our Ratings Process**

S&P Global Ratings strives to provide the financial markets with timely, transparent, and forward-looking credit ratings. Through this unprecedented time, we continue to engage with borrowers, investors, and other market participants to better understand the credit effects of the coronavirus-related economic shock. Financial markets function best when participants have as much up-to-date information as possible. Through our surveillance, we continue to update our forward-looking credit ratings to incorporate new information relating to the COVID-19 outbreak. We have also been publishing and making freely available our research commenting on the effects of the pandemic on credit to help market participants better understand our thoughts and views.

Here, S&P Global Ratings answers the top 10 investor questions we've received regarding the analytical decision-making process.

### **Does S&P Global Ratings rate through the cycle?**

"Rating through the cycle" can be a misleading phrase that means different things to different people. If it's meant to suggest that S&P Global Ratings will wait for a change in conditions to play out before we adjust our credit views and change ratings, that's not what we do. Any time our fundamental forward-looking view of credit quality changes-regardless of where we are in an economic or credit cycle-we want our ratings to reflect that. We think markets function best when participants have as much up-to-date information as possible, and that includes credit opinions that evolve to reflect changes to market-related or issuer-specific credit factors. We note that regulations

also require credit rating agencies to adjust ratings when their assessment of credit risk changes, in line with their published methodologies.

Our credit ratings have performed well historically as effective measures of relative creditworthiness. Our ratings default and transition studies covering the last 40 years have shown that, across cyclical economic downturns, higher ratings have generally shown lower default rates, and vice-versa. Higher-rated corporate issuers tend to have some combination of more-resilient business models, lower leverage, greater financial flexibility, and more ample sources of liquidity.

### **Is there a “right” time to change ratings?**

As required by regulation, we change ratings if and when our view of credit risk changes, based on our analysis of relevant information and in line with our published methodologies. Sometimes these changes are the result of inherently unpredictable events and developments or significant shifts in the market conditions or issuer-specific credit factors.

Given the movement in economic and credit cycles, we expect credit ratings to change over time, as the creditworthiness of rated issuers and obligations rises and falls. That said, the same economic cycle, or period of stress, may have very different effects on the ratings of different issuers, depending on our view of how the cycle affects the creditworthiness of each. While all issuers and issues we rate are exposed to default and downgrade risk, those with comparatively lower ratings generally experience higher levels of downgrades, and in some cases defaults, than higher-rated entities, during periods of economic or financial stress.

In addition to a rating change, our analysts may also use, when appropriate, an outlook change or CreditWatch placement to identify the potential direction of a credit rating-providing markets with another indicator to better understand the evolution and credit context of a specific entity.

### **Does S&P Global Ratings need to change its ratings methodology to address this unprecedented situation?**

We calibrate our criteria with the aim that it supports the issuance and surveillance of forward-looking credit ratings that are effective measures of relative creditworthiness across a variety of economic situations. For more information on how we look at stress scenarios in the context of our ratings criteria, please see “Understanding S&P Global Ratings’ Rating Definitions,” published June 3, 2009.

This doesn’t mean that our view of an industry or sector, for example, won’t change. Given the movement in economic and credit cycles, we expect ratings of issuers and obligations to change as their creditworthiness rises and falls. And as economies recover from the current crisis, we anticipate that many sectors may face new challenges, and our ratings (adjusted or otherwise) will continue to seek to incorporate our forward-looking opinion of those challenges and their potential effects on creditworthiness.

### **Before the current crisis, were ratings too high?**

Credit ratings aren’t point-in-time assessments of creditworthiness, and aren’t designed to be static. As forward-looking opinions on, and relative rankings of, creditworthiness, ratings are designed to be dynamic and evolve to reflect changes to market conditions or issuer-specific credit factors. Our ability to have our ratings reflect on an ongoing basis more current information helps to make our credit ratings relevant to the markets.

It’s also important to note that among nonfinancial corporate borrowers globally, the median of new issuer ratings had declined two notches, from ‘BB-’ at the onset of the Global Financial Crisis in 2008, to ‘B’ by the beginning of this year. While downgrades did occur in the intervening decade-

plus, nearly 85% of new nonfinancial corporate ratings have originated at speculative-grade since 2017. As a result, one-third of corporate issuers in the U.S. and one-quarter in Europe are rated 'B' or below, indicating greater vulnerability to changes in economic and financial cycles (see "Historically Low Ratings In The Run-Up To 2020 Increase Vulnerability To The COVID-19 Crisis," published May 28, 2020).

When economic conditions change, we may change our assessment of creditworthiness for the issuers most affected. The economic effects of the pandemic, along with depressed oil prices, have driven recent changes to our ratings as part of our ongoing surveillance. The effects have varied across sectors, reflecting the fact that some are more exposed to the effects of these conditions.

Changes in ratings throughout an economic cycle—either upward or downward—are an indication that ratings are doing what they are designed to do. S&P Global Ratings has been publishing and making freely available our research on the credit effects of the pandemic to help market participants better understand our thoughts and views.

### **How do analytical teams develop their views on individual ratings within the scope of S&P Global's overall macroeconomic forecasts?**

Our economists set our high-level global and regional base-case macroeconomic forecasts—that is, what we see as the most likely macroeconomic outcomes given the information available at the time—with input from the ratings analysts. Our economists typically update these forecasts at least each quarter. In turn, ratings analysts consider these forecasts as inputs for their sector base-case forecasts.

During relatively benign periods of an economic cycle, our macroeconomic base cases may change incrementally as new information becomes available. These adjustments typically don't have much of an effect on ratings. During such times, entity-specific changes (e.g., acquisitions, divestitures, debt-financed share buybacks), or collateral performance (e.g., a material increase in defaulted loans, significant changes in delinquency rates, or reductions in net cash flows) tend to have a larger influence on ratings.

When economic cycles enter periods of stress, such as those that have been triggered by the coronavirus pandemic, changes to our base case macroeconomic assumptions can become relatively larger drivers in our assessment of creditworthiness. The effects of these changing assumptions are rarely even across industries or sectors—and so our ratings analysts consider how these changes will affect credit in their sectors broadly, and among the issuers in those sectors specifically.

When our macroeconomic base-case forecasts shift in a meaningful way, this can be a driver of ratings changes, especially those at the lower end of the ratings scale. We publish our macroeconomic forecasts regularly, so that markets can understand what high-level assumptions factor into our ratings. We also typically publish sector base cases—such as our forecasts for oil prices, auto sales, or for revenue per available room for the hotel sector—as well as our financial forecasts for individual companies.

### **At present, are you able to get sufficient information from company managements without meeting in-person to continue your surveillance of credit ratings?**

We have more than 1,500 analysts around the world who conduct surveillance on industries and issuers daily. In doing so, during the course of a year they typically meet with managements, investors, and regulators, attend industry conferences, and research developments in their sectors. All of this provides them a unique ability to offer a differentiated view of credit risk.

While our analysts haven't been able to meet with managements in-person due to the pandemic,

we've been able to rely on technology to maintain contact with managements. In addition, through our continuing ratings surveillance, our analysts receive ongoing financial information from issuers and various industry sources to formulate and support our forward-looking credit opinions.

**How do you ensure that your view on each asset class is informed by behavior of other related asset classes-e.g., the link between corporates and CLOs or banks and structured finance?**

S&P Global Ratings established regional Credit Conditions Committees (CCCs) just after the Global Financial Crisis. These committees meet quarterly and on an ad hoc basis to review macroeconomic conditions in each of four regions-North America, Europe, Asia-Pacific, and Emerging Markets ex-Asia. The committees are made up of our economists, research teams, and ratings analysts from across all our ratings practices (e.g., corporates, structured finance, sovereigns) with discussions centering on identifying credit risks and their potential ratings effects in various asset classes, as well as financing conditions for businesses and consumers.

Through the current crisis, the CCCs have been meeting more frequently to monitor the effects of the pandemic on economies and markets. We routinely cascade the outcome of deliberations to ratings staff, as well as to the marketplace, through publications, slide decks, and webcasts.

**What in S&P Global Ratings' view constitutes a default?**

Generally, we can split "default" into two broad camps: 'D' (default) and 'SD' (selective default). We assign a 'D' rating when we believe an issuer will fail to pay all or substantially all of its debts as they come due. We assign an 'SD' rating when we believe the entity has missed payment on a specific issue or class of debt but will continue to make timely payment on other issues. We typically don't consider an issuer to have defaulted if we believe payment will be made within five business days, or, in cases of a grace period longer than that, if we believe payment will be made within the stated grace period or 30 days-whichever is earlier.

Sometimes, entities in distress look to restructure their debts, offering lenders less than originally promised. The prospect that lenders could fare even worse in a conventional default may motivate them to accept such offers. S&P Global Ratings treats these as defaults, assuming that two conditions are met: that the offer implies lenders will receive less than originally promised, and that the offer, in our view, is distressed, rather than purely opportunistic.

**What about a government's call for debt moratoria, letting issuers defer payments of bank loan interest or principal?**

In cases of government-initiated payment moratoria for corporate and government borrowers, we will consider whether lenders and investors benefit from systemic intervention designed to support and stabilize the financial system-for example, when it provides lenders relief from provisioning, capital guidelines, or liquidity guidelines. We may view the benefits of such intervention as providing lenders adequate offsetting compensation for payment deferrals on bank loans.

If a country's banking and financial system tangibly benefit from such measures as part of a government's support, we would view it as adequate offsetting compensation for lenders-and, thus, wouldn't typically regard an entity's deferred payment as a default.

This would hold true for bilateral bank loans or club transactions (credit lines or loans where a bank or a group of banks is/are the holder) within a single jurisdiction. However, we would likely take a different view if the deferral applied to payments on capital-market instruments because, unlike banks, capital market investors typically don't benefit directly from systemic intervention to the same extent as banks do. Nor would this apply when payments are waived or have been forgiven, meaning they are no longer payable, which we would generally view as default (see "Rating

Implications Of Exchange Offers And Similar Restructurings, Update,” published June 4, 2020).

### **Don't downgrades just exacerbate the pressures (on liquidity, etc.) that issuers face?**

Ratings are just one of many inputs that investors and other market participants can consider as part of their decision-making process. Our credit ratings are forward-looking opinions about credit risk, based on quantitative and qualitative analysis of available information, in accordance with our published criteria. As such, our ratings take into account, on a continuing basis, relevant changes in the economic cycle as well as other events that could affect credit risk, in accordance with our published criteria.

As discussed, regulation requires credit rating agencies to change their ratings when their assessment of credit risk changes. We can't ignore changes that weigh on an entity's creditworthiness because of the potential effects a downgrade may have. In fact, the International Organization of Securities Commissions Code of Conduct for ratings agencies states that rating agencies should not delay or refrain from taking a rating action based on its potential effect on an issuer or other market participants.

---

## **[S&P COVID-19 Activity In U.S. Public Finance - Updated as of 6/3/20](#)**

[Read the Updated S&P Report.](#)

---

## **[Fitch: Deficit Borrowing in Crisis Recovery Neutral to Negative for U.S. States & Locals](#)**

Fitch Ratings-New York-03 June 2020: More frequent use of non-structural measures such as deficit financing to offset the rapid and severe decline in revenues triggered by the coronavirus pandemic and related containment measures is likely for state and local governments, according to Fitch Ratings. Whether such measures will affect an issuer's credit quality will depend on the ability to regain financial resilience once recovery takes hold and on any long-lasting impact on gap-closing ability (comprised of revenue-raising ability, expenditure flexibility and reserves) and the long-term liability burden (debt and pension obligations relative to personal income). For rating stability, budgeting decisions must both effectively address the near-term crisis and be sustainable through future economic cycles.

If deficit financing is used as part of a comprehensive plan to protect fiscal stability and does not meaningfully affect the burden of long-term liabilities on an entity's budget and overall resource base, Fitch will view it as neutral to credit quality. However, Fitch envisions negative rating impact if the ability to rebuild financial resilience post-debt issuance is unclear — for example, the issuer becomes reliant on debt for operating needs on a regular basis or is not able to begin replenishing reserves once the recovery is under way — or if the debt makes the long-term liability burden more restrictive.

Short-term borrowing for timing mismatches between receipts and disbursements typically does not affect Fitch's view of long-term credit quality and is not considered deficit financing. However, Fitch does not believe that short-term borrowing will be an effective mitigant to the pandemic-related revenue declines because lost revenues are unlikely to be fully recouped over the term of the borrowing, making long-term deficit financing more likely.

Since the onset of the pandemic early in 2020, U.S. state and local governments have developed and revised budgets in anticipation of immediate and significant declines in revenues that are now beginning to show. Given the rapid and dramatic shift in revenue receipt — many entities that are now seeing severe declines experienced above-budget revenues prior to the onset of the pandemic — near-term measures to preserve liquidity and maintain essential services are necessarily different from those used in an expansion or even a moderate downturn.

Tools available vary depending on legal and practical constraints and include revenue-raising measures, expenditure reductions, use of reserves and long- and short-term borrowing. Long-term borrowing for operating needs, or deficit financing, is rare among the typically highly-rated issuers in Fitch's portfolio of U.S. state and local governments as it is perceived by many issuers as a last resort due to the costs to future budgets and potential impact on ratings.

While deficit financing is likely to remain uncommon among U.S. state and local governments, it is used regularly by other sub-national governments internationally as a means to address fiscal and economic downturns. For example, Canadian provinces, which are highly-rated by Fitch and operate in a federalism framework with some similarities to U.S. states, have regularly issued operating debt to manage service reductions and provide economic and fiscal stimulus during downturns and then paid it down during economic expansions. Canadian provinces typically bear more responsibility for service delivery and economic oversight than U.S. states.

New York City (Issuer Default Rating AA/Negative), Illinois (BBB-/Negative) and New Jersey (A-/Negative) are among the largest Fitch-rated state and local governments considering sizable deficit financings in order to address the anticipated severe fiscal implications of the coronavirus pandemic. Fitch will review each issuer's budget mitigation actions individually and will assess deficit financing in the context of the entity's overall strategy for addressing the current unprecedented situation. We recognize the difficult trade-offs most issuers now face between increasing their debt burden and employing other budget-balancing tools including tax increases or reductions in key services. Each decision will affect longer-term economic and fiscal recovery, and Fitch will assess the impact of these decisions on credit quality accordingly.

Contact:

Amy Laskey  
Managing Director  
+1-212-908-0568  
Fitch Ratings, Inc.  
300 West 57th Street  
New York, NY 10019

Eric Kim  
Senior Director  
+1-212-908-0241

Michael Rinaldi  
Senior Director  
+1-212-908-0833

Arlene Bohner  
Managing Director  
+1-212-908-0554



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

Additional information is available on [www.fitchratings.com](http://www.fitchratings.com)

---

## **LEASES - ALABAMA**

### **[Kennamer v. City of Guntersville](#)**

**Supreme Court of Alabama - May 29, 2020 - So.3d - 2020 WL 2781243**

City resident who objected to city's granting of a property lease to a developer brought action against city, mayor, city council, and developer in which he sought a declaratory judgment that the lease was void.

The Circuit Court dismissed action. City resident appealed.

The Supreme Court held that that retail businesses were to be included in the development was not a reason to find that city, by granting the lease, exceeded its authority under State Constitution's provision allowing a municipality to lease real property for the purpose of any commercial facilities of any kind.

The Supreme Court, when considering appeal from dismissal of city resident's action for a declaratory judgment that property lease that city granted to condominium developer was void, would not consider resident's argument that operating a condominium development did not fall within the State Constitution's provision allowing a municipality to lease real property for the purpose of any industrial, commercial, research, or service facilities of any kind; resident did not present such an argument in the circuit court, and resident did not offer such an argument in his initial appellate brief.

That retail businesses were to be included in development arising from property lease that city granted developer was not a reason to find that city, by granting the lease, exceeded its authority under State Constitution's provision allowing a municipality to lease real property for the purpose of any commercial facilities of any kind.

---

## **ZONING & PLANNING - CONNECTICUT**

### **[Lime Rock Park, LLC v. Planning and Zoning Commission of Town of Salisbury](#)**

**Supreme Court of Connecticut - May 22, 2020 - A.3d - 2020 WL 2642798**

Racetrack owners appealed town planning and zoning commission amendments to the town's zoning regulations restricting motor vehicle racing activities.

The Superior Court granted citizens council's motion to intervene, and, following court trial, sustained the appeal in part and dismissed it in part. All three parties appealed, and the Supreme Court transferred the appeals.

The Supreme Court held that:

- Racetrack owner's predecessor in interest did not permanently waive the right of its successors in interest to seek any modification of stipulations which led to zoning amendments regarding racing;
- Racing statute was prohibitory and did not preempt town from enacting more restrictive regulation prohibiting racing on Sundays;
- Term "weekday," as used in town zoning amendments permitting muffled racing on weekdays, included Saturdays;
- Zoning amendment governing unmuffled racing activities did not constitute a "noise control ordinance" within the meaning of the Noise Pollution Control Act; and
- Requirement that only the holder of a special permit for racing could petition to change zoning amendments was arbitrary.

---

## **ZONING & PLANNING - MAINE**

### **[Friends of Lamoine v. Town of Lamoine](#)**

**Supreme Judicial Court of Maine - May 19, 2020 - A.3d - 2020 WL 2537351 - 2020 ME 70**

Objectors brought action challenging town board of appeals' reversal of town planning board's denial of gravel pit operator's application for permit, under site plan review ordinance, to allow expansion of existing gravel extraction operations.

The Business and Consumer Court vacated board of appeals' decision, after which the Court amended judgment in part, 2019 WL 2814499, and denied motion for reconsideration, 2019 WL 3761969. Operator appealed.

The Supreme Judicial Court held that:

- As a matter of first impression, the time for objectors to appeal was governed by statute covering land use decisions of bodies other than boards of appeal;
- Operative municipal decision for purposes of judicial review on the merits was planning board's decision;
- Planning board's initial decision and not its decision on remand from board of appeals was decision for merits review; and
- Substantial evidence supported planning board's finding that operator failed to demonstrate lack of adverse impact upon groundwater.

---

## **ZONING & PLANNING - OHIO**

### **[State ex rel. Armatas v. Plain Township Board of Zoning Appeals](#)**

**Supreme Court of Ohio - May 19, 2020 - N.E.3d - 2020 WL 2529048 - 2020 -Ohio- 2973**

Landowner petitioned for writ of mandamus to compel township zoning inspector to issue written decision about declining to enforce zoning regulation concerning hedges against neighbor and to compel township board of zoning appeals to hear appeal of written decision, after landowner's first mandamus action seeking enforcement of zoning regulation was dismissed due to existence of adequate remedy at law.

The Court of Appeals granted summary judgment for inspector and board. Landowner appealed.

The Supreme Court held that:

- Judgment in first action was a final judgment on the merits for res judicata purposes;
- Second action involved same parties or their privies;
- Second action raised claims that were or could have been litigated in first action; and
- Second action arose out of same transaction or occurrence that was subject of first action.

Judgment in landowner's first mandamus action seeking to compel township zoning inspector to enforce zoning regulation concerning hedges against neighbor was a final judgment on the merits, as was needed to apply res judicata doctrine to bar landowner's second mandamus action, even though court did not address issue of whether neighbor's trees violated zoning regulation, where court dismissed complaint in first action due to existence of an adequate remedy at law in the form of an administrative appeal, making it unnecessary for court to reach landowner's substantive argument.

Landowner's second mandamus action involving township zoning inspector's declining to enforce zoning regulation concerning hedges against neighbor involved the same parties or their privies, as was needed to apply res judicata doctrine to bar second action with respect to inspector, even though first mandamus action was against inspector and township board of trustees and second action was against inspector and township board of zoning appeals, where res judicata was applied only to claim against inspector.

Landowner's second mandamus action involving township zoning inspector's declining to enforce zoning regulation concerning hedges against neighbor raised claims that were or could have been litigated in first mandamus action, as was needed to apply res judicata doctrine to bar second action, where material facts had not changed, and landowner simply was pursuing a new legal theory in an attempt to resurrect his right to an administrative appeal of inspector's decision.

Landowner's second mandamus action involving township zoning inspector's declining to enforce zoning regulation concerning hedges against neighbor arose out of same transaction or occurrence that was subject of first mandamus action, as was needed to apply res judicata doctrine to bar second action, where first action failed because another remedy, in the form of an administrative appeal, was available for landowner to challenge inspector's decision, township board of zoning appeals dismissed, as untimely, an administrative appeal that landowner eventually filed, and landowner sought, in second mandamus action, an order that he believed would facilitate a timely appeal.

---

## **ANNEXATION - OREGON**

### **[City of Corvallis v. State](#)**

**Court of Appeals of Oregon - May 13, 2020 - P.3d - 304 Or.App. 171 - 2020 WL 2478669**

City filed declaratory judgment action against state, Governor, and other state officials, seeking to have statute, requiring cities to annex territory within their urban growth boundary without submitting the proposal to the electors of the city, declared unconstitutional on its face or as applied.

Another city later intervened as plaintiff. The Circuit Court granted the state defendants' motion for summary judgment and motion to strike certain declarations from the summary judgment record, and denied cities' cross-motions for summary judgment. Cities appealed.

The Court of Appeals held that:

- Statute was not unconstitutional on its face under the state constitution's home-rule provisions;
- Letter sent to cities by Department of Land Conservation and Development (DLCD), notifying cities of new statute, did not constitute an executive enforcement action which could serve as prerequisite for cities to bring as-applied challenge to constitutionality of the statute;
- Landowners' filing of annexation petitions did not constitute enforcement of statute, and thus, did not satisfy prerequisite for bringing an as-applied challenge to the constitutionality of the statute;
- Trial court's error, if any, in excluding declarations from summary judgment record was harmless;
- Statute did not conflict with cities' charter provisions, and thus, statute was not unconstitutional as applied to cities;
- City charters' language of "unless mandated by state law" did not violate the state constitution's rule against prospective delegation of legislative authority; and
- Trial court's grant of summary judgment was defective, and thus, remand was warranted for entry of a judgment that declared the rights of the parties.

---

## **PROMESA - PUERTO RICO**

### **[Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC](#)**

**Supreme Court of the United States - June 1, 2020 - S.Ct. - 2020 WL 2814298 - 20 Cal. Daily Op. Serv. 4745**

Financial Oversight and Management Board for Puerto Rico filed a petition under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) in debt adjustment proceedings for the Commonwealth of Puerto Rico.

Creditors filed motion to dismiss, asserting that Board members were not appointed in accordance with Appointments Clause.

The United States District Court for the District of Puerto Rico denied the motion. Creditors appealed. The United States Court of Appeals affirmed in part and reversed in part. Certiorari petitions filed by the Board, the United States, and creditors were granted.

The Supreme Court held that:

- The Appointments Clause applies to Officers of the United States who carry out their powers and duties in or in relation to Puerto Rico; but
- Local officers that Congress vests with primarily local duties in Puerto Rico are not Officers of the United States; and
- Board members were not Officers of the United States.

When Congress creates local offices using its unique constitutional power to legislate for the District of Columbia or the Territories, the officers exercise the power of the local government, not the federal government.

While the Appointments Clause restricts the appointment of Officers of the United States with duties in or related to the District of Columbia or the Territories, it does not restrict the appointment of local officers that Congress vests with primarily local duties.

Board members of Financial Oversight and Management Board for Puerto Rico, who were appointed pursuant to Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which provided that the President could appoint Board's seven members without the advice and consent of

the Senate, were not “Officers of the United States,” within meaning of Appointments Clause; Board’s statutory responsibilities consisted of primarily local duties, namely, representing Puerto Rico in bankruptcy proceedings and supervising aspects of Puerto Rico’s fiscal and budgetary policies.

---

## **POLITICAL SUBDIVISIONS - TEXAS**

### **[Daniel v. University of Texas Southwestern Medical Center](#)**

**United States Court of Appeals, Fifth Circuit - June 2, 2020 - F.3d - 2020 WL 2843511**

Nurse-employee brought action against employer, University of Texas Southwestern Medical Center (UTSMC), alleging claims for retaliation and disability discrimination under the Americans with Disabilities Act (ADA).

The United States District Court for the Northern District of Texas dismissed. Nurse appealed.

The Court of Appeals held that UTSMC was “arm of the state” of Texas entitled to Eleventh Amendment immunity.

University of Texas Southwestern Medical Center (UTSMC) was “arm of the state” of Texas entitled to Eleventh Amendment immunity; public university systems were designated by Texas statute as state agencies, UTSMC received state funding, and although it also received private funds, there was no showing that judgment against UTSMC would not be paid by state-allocated funds, Texas mandated that UTSMC follow statutory accounting and financial reporting requirements, UTSMC had statewide presence, and UTSMC did not exclusively manage the use of its property.

---

## **EMINENT DOMAIN - VIRGINIA**

### **[Hooked Group, LLC v. City of Chesapeake](#)**

**Supreme Court of Virginia - May 28, 2020 - S.E.2d - 2020 WL 2766125**

Commercial landowner brought action declaratory judgment against city, alleging that city’s closure of one of two roads by which property was accessible constituted a taking, entitling it to compensation.

The Chesapeake Circuit Court sustained city’s demurrer and dismissed landowner’s claim. Landowner appealed.

The Supreme Court held that:

- City’s closure of road did not deprive landowner of reasonable access to property, and thus did not constitute a taking, and
  - City’s closure of road did not materially impair direct access to property, so landowner’s loss of access was not compensable under statute.
- 

## **PUBLIC RECORDS - WASHINGTON**

## **Denney v. City of Richland**

**Supreme Court of Washington - May 7, 2020 - 462 P.3d 842**

Firefighter brought action against city, alleging violation of Public Records Act based on alleged withholding of investigative complaints that firefighter made about on-the-job harassment and discrimination.

The Superior Court granted summary judgment to city. Firefighter appealed. The Court of Appeals dismissed appeal as untimely. Firefighter sought discretionary review, which was granted.

The Supreme Court held that:

- A summary judgment order fully resolving all legal claims can constitute a final decision beginning the 30-day appeal period, even if it does not resolve cost or fee award, but
- Firefighter's misinterpretation of rules to determine that summary judgment order was not a final decision was excusable error justifying treatment of appeal as timely.

Firefighter's misinterpretation of appellate procedure rules to determine that trial court's summary judgment order was not a final decision, and thus that it did not trigger 30-day appeal period, due to fact that order did not resolve issue of attorney's fees, was excusable error justifying treatment of firefighter's untimely appeal as timely, in firefighter's action against city alleging violation of Public Records Act; confusion had been introduced into rules by civil rule directing the attorney for prevailing party to "prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision."

---

## **House Introduces Surface Transportation Package Bond Provisions not Included in Initial Draft.**

Today, the House Committee on Transportation and Infrastructure introduced the [Invest in America Act](#), a reauthorization bill focused on surface transportation and environmental impacts. The bill is part of the original [Moving America Framework](#), the House Democrats January infrastructure outline, however this package includes no bond provisions as the original framework provided.

The BDA continues to work with our partners on the Hill to ensure they know the importance of municipal bonds in any infrastructure package. **This includes last week engaging with the House Committee on Ways and Means and submitting a [principles document](#) to the Committee asking them to follow the Moving America framework and include municipal market priorities such as:**

- The Restoration of Advance Refundings;
- Expanding the use of PABs;
- Increase the BQ debt limit; and
- Development a new BABs program exempted from sequestration.

### **Bond Dealers of America**

June 3, 2020

---

## **Ohio Considers Muni Bonds to Bolster Unemployment Trust Fund.**

- **Bill would let state choose selling bonds or federal loans**
- **Pandemic shutdown has led to massive job losses this year**

Ohio could sell municipal bonds to as an option for replenishing its depleted unemployment trust fund in times of economic stress, a group of state lawmakers proposed.

Ohio state Representative Craig Riedel is working on a Republican-sponsored bill that would allow the sale of bonds backed by state employers' unemployment insurance premiums if it's cheaper than the federal government loan program. The move comes as record jobless claims, fueled by the coronavirus pandemic that shut down large swaths of the U.S. economy, have stressed unemployment insurance trust funds.

"Currently, in Ohio the only option we have when the trust fund goes to zero is we have to borrow from the federal government," Riedel said in a telephone interview. "If this bill is passed it would give Ohio a second option."

Discussions over the bill come as the dire jobless picture in America saw its first signs of reversal. U.S. payrolls rose by 2.5 million in May, beating forecasts for decline and coming after a drop in the prior month that called back to the Great Depression. Still, 21 million Americans are unemployed and the benefits being paid out are rapidly draining state trust funds.

Ohio's unemployment fund was ill prepared for the surge in claims caused by the virus. At year's open it had a \$1.3 billion balance, a level deemed inadequate for entering a recession, according to the U.S. Department of Labor.

"In recovery periods, revenues into the program exceed outlays to pay benefits. In the case of Ohio, they didn't really have much of a recovery," said Wayne Vroman, an economist with the Urban Institute. "They burned through the trust fund between March and April."

The historic jobless claims have affected state unemployment trust funds across the country. New York, California, Illinois and Texas have all stretched their accounts thin and have requested loans from the federal government.

Ohio expects to empty its fund in a little over a week. Last month it requested \$3.1 billion in borrowing authority from the Department of Labor, according to Bret Crow, a spokesman for the state's Department of Job and Family Services.

Tapping the bond market is a move that was used by Texas, Pennsylvania, Michigan, Illinois, Colorado, Idaho, Nevada and Arizona during the last recession, Vroman said. Currently, interest is waived for federal loans, but it is unclear whether that will continue into 2021 and beyond, said Riedel.

The proposed legislation will just give the state more options to choose from going forward, Riedel added. The interest rates for the federal loans are a bit above 2% during normal times. Rates in the municipal market can be slightly higher, but there is a longer period of repayment and are they often issued with a premium, Vroman said.

"Ohio could've raised employer taxes in good times, but they didn't do it," Vroman said. "Now they're facing a more difficult situation because the economy is in bad shape."



## **Bloomberg Markets**

By Fola Akinnibi

June 5, 2020, 12:16 PM PDT

---

### **[New York's MTA Gets Direct Access to Fed's Lending Program.](#)**

- **State allows mass-transit agency to tap MLF program directly**
- **MTA faces potential \$8.5 billion deficit by the end of 2020**

New York's Metropolitan Transportation Authority will be able to access the Federal Reserve's \$500 billion lending program for states and local governments, giving the mass-transit agency another avenue to raise cash as it faces a potential \$8.5 billion deficit this year.

The MTA is the largest U.S. mass-transit system. Ridership has sunk on its subways, buses and commuter rail lines as people avoid public transportation and work from home. The agency faces a deficit of as much as \$8.5 billion through December. Last month Pat Foye, MTA's chairman and chief executive officer, sent a letter to Fed Chairman Jerome Powell requesting to tap the municipal lending program directly.

The Fed Wednesday expanded the new program to include smaller borrowers and to allow governors to pick two issuers whose revenue comes from operating government activities — such as mass-transit, airports and toll roads — to access the MLF program directly. New York has designated the MTA as one of them.

"We thank the state for its designation of the MTA as an eligible issuer to the Federal Reserve's Municipal Liquidity Facility program," Foye said in a statement Thursday. "This is welcome news that will help improve our dire financial outlook by enabling us to refinance existing short-term debt."

The Fed created the lending program after concerns over the coronavirus shook the \$3.9 trillion municipal-bond market in March. Prices temporarily dropped by the most since at least 1980 and investors yanked record amounts out of mutual funds. The market has since recovered, helped by the possible intervention by the central bank.

## **Bloomberg Markets**

By Michelle Kaske

June 4, 2020, 8:02 AM PDT

---

### **[IRS Provides More Deadline Relief for Opportunity Zone Funds and Investors.](#)**

Investors looking to roll capital gains into qualified opportunity funds will now have until the end of the year to make those investments in some cases.

The IRS said in Notice 2020-39, 2020-26 IRB 1, released June 4, that taxpayers looking to take



advantage of Opportunity Zone benefits and whose deadline to invest was between April 1 and December 31 will have until the end of the year to invest in QOFs.

Investors normally have 180 days from the time they recognize an eligible gain to invest that gain in a QOF. In response to the economic slowdown caused by the coronavirus pandemic, the IRS initially provided broad relief in Notice 2020-23, 2020-18 IRB 742, that allowed investors whose 180-day deadline was set to expire between April 1 and July 15 to have until July 15 to make the investment.

The Opportunity Zone program, created by the Tax Cuts and Jobs Act, allows for the deferral, reduction, and in some cases elimination of capital gains tax by investing in qualified funds or businesses. The final Opportunity Zone regulations (T.D. 9889) include a 31-month working capital safe harbor under which an Opportunity Zone business can hold cash as long as it has a written plan in place.

Under reg. section 1.1400Z2(d)-1(d)(3)(v)(D), a business could get an additional 24 months if it's located within a federally declared disaster area as defined in section 165(i)(5). However, it wasn't clear whether all Opportunity Zone businesses were operating in disaster areas because of the pandemic.

The IRS said that as a result of President Trump's emergency declaration, "all qualified opportunity zone businesses holding working capital assets intended to be covered by the working capital safe harbor before December 31, 2020, receive not more than an additional 24 months to expend the working capital assets of the qualified opportunity zone business," as long as the regulatory requirements are met.

The guidance also extends relief for testing qualified assets of QOFs, along with extending the so-called 12-month reinvestment period for QOFs.

Michael J. Novogradac of Novogradac & Co. LLP said the IRS has addressed the three big issues that the Novogradac Opportunity Zones Working Group had asked it to address, including the 180-day time period to invest and the 30-month substantial improvement test. Some nuanced issues are still open, but several of those were indirectly addressed by the guidance, he added.

## TAX ANALYSTS

---

### **[Illinois to Sell Debt in First Deal with Fed's Muni Liquidity Facility.](#)**

CHICAGO, June 2 (Reuters) – Illinois announced on Tuesday an agreement to tap a new Federal Reserve borrowing program, marking the first state or local government to access funding to address revenue shortfalls due to the economic fallout from the coronavirus outbreak.

Facing high borrowing costs in the U.S. municipal market, Illinois, the lowest-rated U.S. state at a notch above junk, said it entered into an agreement to sell \$1.2 billion of one-year general obligation certificates directly to the Fed's Municipal Liquidity Facility (MLF).

The deal between Illinois and the MLF is expected to close on Friday. Sample purchase rates released by the New York Federal Reserve on Monday indicated a 3.83% one-year rate for issuers like Illinois that are rated BBB-minus and Baa3.

Illinois, which pays the largest yield penalty among states, had originally planned to sell the cash

flow debt in the market in early May, but postponed a competitive offering citing market conditions.

Legislation passed by Illinois state lawmakers last month allows for the direct sale of debt to the MLF, as well as up to \$5 billion in additional borrowing.

Besides Illinois, few governments have announced plans or have legislation pending to use the \$500 billion MLF for loans of up to three years. Analysts have said the program, announced in April, was set up to be the lender of last resort and would make the most sense for lower-rated governments.

(Reporting by Karen Pierog in Chicago Editing by Matthew Lewis)

---

## **[GASB Issues Guidance on Cloud Computing and Similar Subscription-Based IT Arrangements.](#)**

Norwalk, CT, June 5, 2020 — The Governmental Accounting Standards Board (GASB) today issued new accounting and financial reporting guidance for subscription-based information technology arrangements (SBITAs), which have become increasingly common among state and local governments in recent years.

[Statement No. 96](#), *Subscription-Based Information Technology Arrangements*, is based on the standards established in Statement No. 87, *Leases*. The GASB in Statement 96:

- Defines a SBITA as a contract that conveys control of the right to use a SBITA vendor's IT software, alone or in combination with tangible capital assets (the underlying IT assets), as specified in the contract for a period of time in an exchange or exchange-like transaction.
- Requires governments with SBITAs to recognize a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability (with an exception for short-term SBITAs—those with a maximum possible term of 12 months).
- Provides guidance related to outlays other than subscription payments, including implementation costs, and requirements for note disclosures related to a SBITA.

Although existing GASB literature addresses computer software that is internally developed or commercially purchased through perpetual licensing agreements, stakeholders have raised questions regarding cloud computing and other subscription-based forms of software applications and data storage. The new guidance should remedy existing inconsistencies in accounting and financial reporting for SBITAs.

The Statement is effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter. Early application is encouraged. In order to give state and local governments and other stakeholders additional time to deal with circumstances arising from the COVID-19 pandemic, this date is one year later than what the Board proposed in the Exposure Draft.

---

## **[Government Job Losses Are Piling Up, and It Could Get Worse.](#)**

Jobs with state and city governments are usually a source of stability in the U.S. economy, but the financial devastation wrought by the coronavirus pandemic has forced cuts that will reduce public services — from schools to trash pickup.

Even as the U.S. added some jobs in May, the number of people employed by federal, state and local governments dropped by 585,000. The overall job losses among public workers have reached more than 1.5 million since March, according to seasonally adjusted federal jobs data released Friday. The number of government employees is now the lowest it's been since 2001, and most of the cuts are at the local level.

"With that comes a decline in essential public services," Lee Saunders, president of the American Federation of State, County and Municipal Employees, said on a conference call with reporters this week. For instance, "911 calls are taking a long time to be answered."

Clean drinking water and trash pickups also are being affected in some places, he said.

Tax revenue from businesses walloped by coronavirus restrictions has plummeted, forcing cuts by cities and states that rely on that money. It's likely to get worse in the coming months unless Congress delivers additional aid to states and cities.

Several states are projecting tax revenue will be down 20% or more for the fiscal year starting next month, and governments are facing rising costs resulting from the virus and the police and National Guard response to protests over racial injustice and police brutality.

The layoffs and furloughs are coming amid calls for governments and school districts to do more to respond to the outbreak — from hiring workers to find those who had contact with people infected with the coronavirus to additional janitors needed to sanitize schools and make them safe for students and teachers to return.

"It's going to make it very, very difficult to reopen schools in the fall because you need more money, not less money to reopen," said Randi Weingarten, president of the American Federation of Teachers.

In the Chicago suburbs, Lyons School District No. 103 laid off health aides at its six schools. One of them, Maureen Jacobsen, said she was told the workers, who give students medicine and first aid for minor injuries, were being laid off in anticipation of a new requirement that each school has a nurse. A district official did not return a call Friday.

So at 58, Jacobsen is working on her resume for the first time in 21 years. She said the students at Robinson Elementary will be affected by not having her there to help them when school resumes next fall.

"When they go back, they're looking for the familiar," Jacobsen said. "I could tell you that I had 280 kids in my building, and I knew their names."

She may be on the leading edge of permanent layoffs for government employees.

The federal numbers do not provide precise breakdowns, but many of those out of government jobs so far have been temporarily furloughed. And some of the first to go were those whose absence would not be felt deeply when stay-at-home orders were in effect.

For instance, the Pittsburgh Parking Authority furloughed its three dozen enforcement officers and meter technicians. In Michigan, nearly two-thirds of state government workers have been furloughed through July. And in North Carolina, more than 9,000 state Department of Transportation employees have been told to take unpaid time off by June 26.

But union officials warn that the cuts could become deeper and permanent as budgets are ironed

out. New Jersey Gov. Phil Murphy said his state alone could lose 200,000 government jobs.

Some permanent cuts already have been made or proposed. Last week, the Pennsylvania Turnpike Authority voted to lay off 500 toll collectors as part of a move to make the road system cashless. And California Gov. Gavin Newsom is calling for 10% salary cuts for many state government employees.

Lily Eskelsen Garcia, president of the National Education Association, said the impact will be biggest in lower-income areas.

"A 30% cut in a poor school district's budget means you just lost your arts program, you just lost your sports program," she said. "We are going to have to lay off one teacher in each grade."

And the first workers to be cut also could be the most vulnerable.

"Very often the first people who will go will be all the administrative staff, the public works department and custodial staff and many, many people who are low paid, who are women, who are black and brown," said Hetty Rosenstein, New Jersey director of Communications Workers of America, the largest union of state government employees there.

Unions and bipartisan groups are pushing Congress to send state and local governments more help quickly. Following a \$2.2 trillion coronavirus aid package in March, the Democratic-led House last month approved an additional \$3 trillion bill, which includes \$1 trillion for governments. But Senate Majority Leader Mitch McConnell has said his chamber will not agree to such a large amount — or anything quickly — as the economy reopens.

For Ashley Sims, a library assistant in Louisville, Kentucky, being furloughed when libraries were closed did not cause a financial strain. With a \$600 weekly boost in unemployment benefits as part of a federal response to the crisis, she said her pay has been higher than when she was working.

But there are worries about permanent layoffs. Sims, who's president of the library workers union, said she may consider a voluntary layoff to save the jobs of some of her coworkers.

She said many who rely most on libraries are lower-income people and immigrants who can't afford computers and use them to search for work, among other tasks.

"It would be an incredible loss," Sims said. "Libraries are the lifeblood of communities."

**By The Associated Press**

June 6, 2020

---

Associated Press reporters Gary Robertson in Raleigh, North Carolina, and David Eggert in Lansing, Michigan, contributed to this article. Mulvihill reported from Cherry Hill, New Jersey. Follow him on Twitter at <http://www.twitter.com/geoffmulvihill>.

---

## **[Illinois to Sell Debt in First Deal With Fed's Muni Liquidity Facility.](#)**

CHICAGO — Illinois announced on Tuesday an agreement to tap a new Federal Reserve borrowing program, marking the first state or local government to access funding to address revenue shortfalls

due to the economic fallout from the coronavirus outbreak.

Facing high borrowing costs in the U.S. municipal market, Illinois, the lowest-rated U.S. state at a notch above junk, said it entered into an agreement to sell \$1.2 billion of one-year general obligation certificates directly to the Fed's Municipal Liquidity Facility (MLF).

The deal between Illinois and the MLF is expected to close on Friday. Sample purchase rates released by the New York Federal Reserve on Monday indicated a 3.83% one-year rate for issuers like Illinois that are rated BBB-minus and Baa3.

Illinois, which pays the largest yield penalty among states, had originally planned to sell the cash flow debt in the market in early May, but postponed a competitive offering citing market conditions.

Legislation passed by Illinois state lawmakers last month allows for the direct sale of debt to the MLF, as well as up to \$5 billion in additional borrowing.

Besides Illinois, few governments have announced plans or have legislation pending to use the \$500 billion MLF for loans of up to three years. Analysts have said the program, announced in April, was set up to be the lender of last resort and would make the most sense for lower-rated governments.

**By Reuters**

June 2, 2020

(Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis)

---

## **[BDA Survey Results: Muni MA Activity and the SEC's Proposed Exemptive Relief](#)**

Over the past month, the BDA conducted a survey in response to the SEC proposed exemptive relief for MAs. The survey asked firms how they plan to adapt their business model if the order is enacted in its current form.

**The results can be viewed [here](#).**

The survey addresses questions that have stemmed from the sweeping SEC proposal.

This includes:

- If proposal proceeds as-is, do you intend to register as municipal advisor and to begin to engage in municipal advisory activity?
- If currently a registered MA, do you intend to expand your municipal advisory activity?
- If your firm intends to become a municipal advisor, or expand its municipal advisory activities, as a result of any exemptive relief granted in favor of municipal advisors, how would you engage in the activity?
- If you engage in municipal advisory activities, do you restrict municipal advisory activities by dealer personnel as a means of avoiding conflicts?

The BDA appreciates your participation in this survey and we hope the information provided is useful.

---

## **Illinois Becomes First to Tap Fed Loans After Yields Surge.**

- **State is poised to borrow \$1.2 billion from central bank**
- **Illinois is at risk of being first U.S. state cut to junk**

Illinois, which has faced escalating penalties in the bond market as the coronavirus batters its finances, is poised to become the first state to borrow from the Federal Reserve's \$500 billion lifeline for local governments.

The state is planning to borrow \$1.2 billion from the central bank for one-year to cope with revenue losses brought on by the economic shutdowns caused by the pandemic and the delay of its annual tax-filing deadline.

The step comes after Illinois last month put off a planned auction of such short-term debt as the interest rates demanded by investors soared amid concern it could be the first state to have its bonds cut to junk. The deal was put on day-to-day status, and now the state is instead turning to the Fed. The central bank will charge an interest rate of 3.82%, more than a full percentage point less than it paid during a bond sale last month.

"The Federal Reserve Bank worked closely with our team to make this transaction possible through the Municipal Liquidity Facility, which is an important tool the state is using to answer the unprecedented economic challenges posed by the COVID-19 pandemic," Alexis Sturm, director of the Governor's Office of Management and Budget, said in the statement.

The closing is planned for June 5, and the borrowing will be repaid on or before June 5, 2021, according to the statement.

Illinois will be the first to tap the Federal Reserve's lending program, which was rolled out after the municipal-bond market was hammered by a liquidity crisis in March that raised the risk that some governments would be unable to borrow to close temporary budget shortfalls.

Since the announcement of the program, the market has rallied, driving yields on some of the safest securities to nearly zero.

But Illinois continues to face a steep penalty to borrow. That has left it among those that could benefit from the Fed's loans, since the penalty the central bank is charging is less than it would face in a public debt sale.

Illinois in April lowered its fiscal 2020 revenue projections by \$2.7 billion and its estimates for 2021 by \$4.6 billion after the stay-at-home order brought a near halt to economic activity. Illinois's \$138 billion of unfunded pension liabilities, lack of savings, and \$7 billion in unpaid bills has left it with a bond rating one step above junk.

On Monday, S&P Global Ratings, which has a negative outlook on the state, said Illinois's fiscal 2021 budget "continues to be precariously balanced, and does not include measures to meaningfully address structural instability."

Illinois's General Assembly during its short spring session in May amended the state's borrowing statutes to allow it to sell short-term debt to the Fed facility. Until now, the state's short-term borrowing required competitive bids.

The new provision also authorizes longer-term borrowing of up to \$5 billion, if merited, from the Fed.

Governor J.B. Pritzker, a Democrat, has been advocating for more aid from the federal government. Pritzker has said he's seeking more than \$7 billion in federal aid to make up for revenue lost amid the virus outbreak.

## **Bloomberg Economics**

By Shruti Singh and Amanda Albright

June 2, 2020, 2:40 PM PDT Updated on June 3, 2020, 8:20 AM PDT

---

### **Bond Market's Toughest Problems Go Unresolved.**

#### **Regulators leave issues of credit-rating conflicts and trade transparency largely untouched.**

The U.S. Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee met earlier this week by webcast. For those in the bond markets who might have missed it, it's worthwhile to briefly note the takeaways from the group's virtual get-together.

To make a long story short, regulators punted yet again on some of the credit market's thorniest issues. For one, don't expect significant changes anytime soon to longstanding complaints about conflicts of interest in the "issuer pay" model of the ratings business. Also, forget about experimenting with the right balance of liquidity and transparency in corporate-debt trading.

The idea that the credit-ratings industry needs an overhaul is hardly new. Earlier this year, a bipartisan group of U.S. senators wrote to the SEC asking why it didn't reshape the business after the 2008 financial crisis. I predicted in February that elected officials and the fixed-income advisory committee would take their time and raise a bit of a fuss but ultimately do little to fundamentally fix the perceived conflicts.

Sure enough, the preliminary recommendation from the credit-ratings subcommittee for how to mitigate conflicts of interest passed easily but offered almost nothing that would alter the current model substantively. The three recommendations boiled down to this: greater disclosure from the ratings companies; more insight into how issuers pick their preferred credit-rating firms; and a vote by investors in publicly issued bonds to ratify the rating agencies selected by each issuer.

The first two are straightforward enough — basically, just more paperwork on each side explaining the process. The bondholder vote, however, is a bit more puzzling:

The Subcommittee recommends that the SEC explore a "ratification" of issuer-selected NRSROs. Periodically, holders of publicly-issued bonds should vote to ratify — or simply confirm confidence in — the NRSROs chosen by each issuer. Like the vote to ratify the public auditor, the election would be a simple up/down vote. The risk of censure that these votes would place on credit rating agencies could provide additional discipline to the quality of their work.

To be clear, when discussing conflicts in credit ratings, it's always about the temptation for "grade inflation" and never the other way around. A company or municipality will shop around for the

highest ranking from the likes of S&P Global Ratings, Moody's Investors Service and Fitch Ratings and advertise it to investors to lower borrowing costs.

Current bondholders have virtually identical incentives to the issuer itself. Why would self-interested investors who are satisfied with their current position elect to "censure" a credit-rating firm for assigning a grade that's too high? In theory, such an action would cause the securities to drop in price. But I could certainly imagine a scenario in which bondholders would go after a ratings company for being too punitive — think a company that has investment grades from two rating companies but is considered junk by another.

The subcommittee, for its part, said it "recognizes that, even with the implementation of these recommendations, issues remain." Interestingly, it highlighted that "some investors own bonds that strictly meet their guidelines (e.g., investment grade, or "IG"), but which market participants know should be high-yield bonds." While that's probably just shorthand for market pricing, it's still a striking acknowledgment of the grade inflation that's an open secret in the current system.

Meanwhile, the Financial Industry Regulatory Authority made clear what was readily apparent months ago: Its plan to test whether delayed disclosure of large block trades in the corporate-bond market would boost liquidity has stalled. I wrote in January that the flurry of comment letters against the proposal, which were unyielding in their criticism, would likely leave Finra with no choice but to cast the proposal aside.

In something of an understatement, Tom Gira, Finra's executive vice president for market regulation and transparency services, noted that "it doesn't seem that we have the commenters' support here that would usually carry us forward on an important policy initiative." He said the regulator would study the market swings of the past few months to further inform its views of balancing bond-trading transparency and liquidity.

This is a thorny topic. On the one hand, fixed-income giants like BlackRock Inc. and Pacific Investment Management Co. clearly stood to gain more than smaller competitors from the plan, which would have given bond traders 48 hours to disclose block trades of more than \$10 million in investment-grade bonds and more than \$5 million in high-yield, instead of the current 15 minutes. As it stands, brokers might hesitate to make such large trades because others in the market will quickly know exactly how much changed hands and at what price.

Yet few investors would say the system is flawless. The huge fluctuations in exchange-traded funds tracking investment-grade and high-yield bonds during the worst of March's market tumult suggest there was little ability to trade large amounts of actual securities when needed. Finra's pilot program probably wasn't perfectly designed, and it could have made things weird for a short time, but it might have been worth it to bring empirical evidence to the debate about debt-market liquidity. Instead, traders are left with the same set of information as before.

Obviously, it's not worth messing with the bond markets "just because." Thanks in no small part to the Federal Reserve's recent interventions, they're functioning about as smoothly as ever. But these two topics are critical and have nagged investors for years. That there's still no clear path forward makes it seem as if these problems have no solution.

## **Bloomberg Opinion**

By Brian Chappatta

June 3, 2020, 2:30 AM PDT



---

## **Illinois Fed Deal Bodes Well for Future Transactions.**

The Federal Reserve's first short-term note deal with the state of Illinois is a good start to the federal program that could jump-start its use with more local governments.

Tuesday afternoon, Illinois became the first issuer to use the Fed's \$500 billion Municipal Liquidity Facility and as a large issuer, that could bode well for the program's short future.

"The MLF is being operated as if it's a start up asset manager so being able to do the credit analysis and the paperwork and everything else on the large state for a large amount of money is a good way to start out the facility," said Patrick Luby, senior municipal strategist at CreditSights.

A large trade of \$1.2 billion of one-year, general obligation notes will be a new experience for the Fed since this marks the first time it has bought municipal notes. Going through it first with a large issuer should make transactions move faster for other issuers going forward, Luby said.

The maximum amount of eligible notes Illinois can sell through the program is just over \$9.6 billion, and other states have caps set by the Fed as well. Illinois is choosing to start off borrowing much less than what is available to it.

Illinois has long planned to sell only \$1.2 billion certificates to make up for a revenue hit in the current fiscal year. The state legislature late last month approved up to \$5 billion of borrowing to aid the fiscal 2021 budget. The budget allows the state to go out to up to 10 years on the \$5 billion if the MLF extends its current 36-month term.

"If we see more large issuers come in and borrow and indicate that they don't need to borrow as much as their maximum, that might free up some lending capacity that the Fed might make available to other issuers," Luby said.

That could mean the Fed could decide to extend the eligibility of issuers able to take advantage of the program, Luby said. Currently, counties with a population of 500,000 and cities with 250,000 can use the program directly.

On Wednesday, the Fed announced it was expanding the facility by allowing all U.S. states to have at least two cities or counties eligible to directly issue notes to the MLF regardless of population, though the direct access population limits remain in place.

As the program continues to be used and the Fed gets a greater sense of the appetite for borrowing in it, they could decide to widen those parameters further, Luby said.

The Fed recently expanded the maturity of eligible securities to 36 months from 24 months, but Illinois is only borrowing for 12.

"The fact that Illinois is borrowing for a shorter time period than they could is encouraging," Luby said. "It suggests comfort that they will be able to refinance that on reasonable terms a year from now."

Illinois could not go out any further with the notes as it issued the certificates with a one-year term as they were selling under the state's short-term borrowing statutes which require that the debt be repaid in the next fiscal year.

Dealer groups were pleased to see the first transaction go through the MLF program and said Illinois' borrowing was exactly the kind of transaction MLF was designed for.

Illinois will pay a rate of 3.82%, based on MLF pricing guidance, based on a comparable maturity overnight index swap. The issue is expected to close June 5, according to state officials.

Interest rates are calculated through spreads to the curve depending on the issuer's credit rating, ranging from 150 basis points for a triple-A rated issuer to 590 basis points for below investment grade issuers. Pricing aligns with the Fed's notion that it plans to serve as a backstop for issuers.

Financing with the Fed could also bring states like Illinois with pension woes closer to their pension funding goals. With Illinois tapping into the MLF, the extra financing could help Illinois and other states' pensions in the long term to get close to a good funding level for pensions.

Michael Imber, former commissioner for the Connecticut Pension Sustainability Commission and managing director at Conway MacKenzie, said the MLF should not be used as a way to save pensions, calling it a partial bridge to help, but said pension systems still need transformational change.

Imber also noted Illinois' attempt to get to the market in early May. The state initially intended to competitively sell the \$1.2 billion in short-term notes last month, but did not go through with it.

The state could have sold the deal but faced a steep borrowing penalty ahead of the competitive sale, according to market participants.

"Their inability to get to the market in early May was a big wake-up call and I think that not just Illinois, but communities all over the country, have an opportunity to take advantage of the crisis," Imber said.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 06/03/20 01:18 PM EDT

---

## **[S&P: Illinois Fiscal 2021 Budget Anticipates, And Needs, Additional Federal Aid](#)**

BOSTON (S&P Global Ratings) June 1, 2020—S&P Global Ratings believes that Illinois' (BBB-/Negative) adopted budget continues to be precariously balanced, and does not include measures to meaningfully address structural instability. We consider the fiscal 2021 budget structurally misaligned, as along with an outstanding \$7.2 billion bill backlog, the pension and other postemployment benefit obligations are not funded based on actuarial recommendations. On a budgetary basis, the total resources exceed the total expenditures, but the revenue side anticipates an additional \$5 billion in either additional direct federal aid or borrowings through the Federal Reserve's Municipal Liquidity Facility (MLF). Whereas we believe that additional direct federal aid is possible, the amount, timing, and potential restrictions on use are unclear at this point, and so budgeting potential use introduces risk.

Should additional federal aid not be received or not be received to provide liquidity in time for budgetary use, the state passed legislation allowing for MLF borrowing, with potential repayment over up to a 10-year period, although the current MLF authorization allows only for 36-month

repayment schedules. Management indicates that the \$5 billion may not be borrowed at one time, but if needed, could be tapped in various borrowings from the MLF over the fiscal year. There is capacity in the MLF authorization legislation for an additional \$5 billion from Illinois, but such a borrowing simply shifts the repayment to future budget years, and the hope for additional aid is a precarious assumption. The state recently sold \$800 million in tax-exempt general obligation (GO) bonds on the open market, demonstrating some level of market access, and the MLF is designed to provide liquidity when other market conditions would be uncertain or costly.

The new budget has a \$39.0 billion operating component and then another \$3.9 billion in additional expenditures, including statutory transfers out, debt service, and other borrowing repayments (including those needed to fund operations in fiscal 2020). All spending considered, the \$42.9 billion budget is 5.8% larger than the fiscal 2020 budget. Illinois entered into this recession slowly working toward budget stability, but with little to no money in the budget stabilization fund (BSF). Where many other states had taken advantage of the long economic expansion following the Great Recession, Illinois faced political gridlock through multiple fiscal years, built a significant bill backlog, delayed action to reduce a sizable pension obligation, and could not accumulate a rainy day fund. We consider the state's current options available to address the pandemic to be limited, compared to those of other states.

In the 2021 budget, the revenue side introduces more risk. Compared with the draft executive budget presented in January, the adopted budget reflects over a \$4 billion decrease in recurring revenues, or 10.5% lower. The nominally largest revenue decrease is in the individual income tax line: the \$1.8 billion decrease is 8.8% off the January estimate. But the sales tax estimate decrease is a larger percentage decline, with the almost \$1.6 billion reduction reflecting a 17.5% decrease in assumed receipts for the fiscal year. These, and all other, revenue declines are offset through an increase of \$300 million in interfund borrowing, the previously mentioned \$5 billion MLF borrowing or federal aid receipts, and \$1.274 billion in potential new individual income taxes, should a constitutional amendment pass in November instituting a graduated income tax. The original estimate of additional revenue receipts attributable to the graduated income tax was \$1.435 billion, and so the state is reflecting a reduction caused by the recession.

So, in order to fully meet the total expenditure obligations in the budget, the state is relying on interfund borrowing, either federal aid or further federal borrowing, and the support of the electorate to vote to revise the tax structure to raise more revenue. Should any of those not materialize as expected, the state will need to look to more significant expenditure cuts through later legislative action. We believe the state has capacity to make cuts to close a gap, as there are no cuts in the current budget.

Illinois expects that the \$5 billion MLF borrowing would be tapped if direct federal aid is not sufficient in terms of timing or amount. Should the direct federal support not materialize as hoped, the security for the MLF borrowing is the state GO, and we would view this borrowing on parity with existing GO debt. Currently the outstanding GO debt has a relatively rapid maturity with 74% retired within the next decade, and so there is some replacement capacity, but by our calculations, Illinois already has the fifth-highest debt per capita in the nation. Debt service on existing debt declined from fiscal 2020 by 11% or \$211 million in the adopted fiscal 2021 budget.

The expenditure side of the fiscal 2021 budget holds most line items to the fiscal 2020 spending levels, but there are no layoffs or program eliminations being adopted to help balance the budget. Level funding, though, will extend personnel and purchasing controls put in place at the outset of the pandemic, into fiscal 2021. The school funding formula is set equal to fiscal 2020; however, this is \$350 million less than the state intended to fund for fiscal 2021 when it revised its school funding formula several years ago, and \$462 million or 5.2% less than the governor's original budget earlier

this year. The college and university system, although funded \$129 million less than in the January draft budget, is also level funded to the fiscal 2020 budget. So, the state is holding the districts to level funding assumptions, but with existing teacher contracts and other obligations, we do expect cuts to be passed down to the local school level decision-makers.

There are a couple of credit positives in the adopted budget. First, the statutorily set annual pension contribution is being fully met. As the statutory pension funding is designed to attain a 90% funded status in 2045, this is one of the least conservative funding methodologies in the nation among state peers, and so anything less than meeting this obligation would have been seen as a notable credit negative. Second, the state appropriated the necessary amounts to support the priority lien ratings we have tethered to the state, Build Illinois (BBB/Negative), Metropolitan Pier and Exposition Authority (MPEA) (BBB/Negative), and Illinois Sports Facility Authority (BBB/Negative), with additional provisions to support the MPEA operations.

As we have noted in past reports, Illinois has a history of leaving difficult fiscal choices to future budgets, and to the extent that expected federal aid does not materialize and the state does not adjust expenditures to reflect available resources, the fiscal 2021 budget could weaken the state's credit trajectory.

### **Fiscal Year 2020 Closeout**

The state expects a \$2.7 billion shortfall through the end of the fiscal year and is closing that gap predominantly through federal aid and borrowing. Not all of this is lost revenue, however, as income taxes will be due in the next fiscal year, on July 15, conforming with the federal change to the tax filing date. The largest component of the resources needed to close the fiscal 2020 gap is a \$1.2 billion borrowing likely through the MLF. The contemplated GO Certificate Series of June 2020 would need to be repaid in June 2021. This borrowing provides immediate cash flow support, but does create a cash flow pressure for the time of repayment. Additionally, the state is using other interfund borrowings to close out the fiscal year, including \$400 million through the Treasurer's Investment Pool. In times of fiscal challenge, we often see budget gaps closed with use of reserves, expenditure cuts and deferrals, new revenues, and debt. As Illinois entered the recession without reserves to tap, and believes state government services critical to responding to the pandemic, the solutions to date have all been on the debt and federal assistance side of the ledger.

The state has over the past three months received more than \$5 billion in federal aid. Much of that has restrictions on use, in that it has to be used to cover costs associated with fighting COVID-19. As the state's expenditures to date have not been to this level, and the state has until Dec. 31, 2020 to account for the spending, the receipt of these funds has been helpful in addressing the unbudgeted costs associated with the pandemic.

### **Unemployment Insurance Fund**

The state has been authorized by the federal government to borrow up to \$5 billion in May and \$6.4 billion in June to help pay claims or replenish unemployment insurance funds. This shows the severity of social distancing measures affecting the economy. Federal law mandates that if a state fails to fully repay a loan after approximately two years, the state unemployment tax credit on employers in that state decreases in each subsequent year in favor of a greater allocation of the tax rate to the federal government, until the state repays the loan. States also have the ability to issue bonded debt to repay such loans, and Illinois issued \$1.5 billion in the series 2012 A, B, and C bonds for this purpose. Therefore, the federal borrowing aids in immediate liquidity and supporting the ability to pay claims, and S&P Global Ratings does not consider this federal loan as debt, until it is repaid through a public bond sale, but it does introduce another potential longer term credit pressure.

We recently revised the outlook on the State of Illinois to negative. For further detail, please see our full analysis published April 28, 2020.

### **Related Research**

Illinois Fiscal 2019 Audit Shows Little Improvement, As Expected, May 8, 2020

State of Illinois, full analysis, April 28, 2020

This report does not constitute a rating action.

1 Jun, 2020

S&P Global Ratings, part of S&P Global Inc. (NYSE: SPGI), is the world's leading provider of independent credit risk research. We publish more than a million credit ratings on debt issued by sovereign, municipal, corporate and financial sector entities. With over 1,400 credit analysts in 26 countries, and more than 150 years' experience of assessing credit risk, we offer a unique combination of global coverage and local insight. Our research and opinions about relative credit risk provide market participants with information that helps to support the growth of transparent, liquid debt markets worldwide.

---

## **[S&P: California Governor's May Budget Revision Outlines School Cuts And Reserve Drawdowns](#)**

### **Highlights Of The Proposal**

- The May Budget Revision proposes large reserve drawdowns, but fiscal 2021 would still end with budgetary fund balances we would consider strong, despite large projected revenue drops.
- One-time budget adjustments would total a large \$19.3 billion in fiscal 2021, or 14% of expenditures, indicating a large structural gap will still need to be addressed in the fiscal 2022 budget, and reserves may be drawn down to low levels before recovery takes place.
- Large one-month one-time deferrals of school aid may close fiscal 2020 and 2021 budget gaps and prop up year-end 2021 budgetary fund balances, but they lower general fund liquidity when 'double month' school payments are made in July, and can create a continuing need for ongoing deferrals in following years.
- About \$14 billion of proposed spending cuts would not go into effect if the federal government provides by July 1 additional aid for lost tax revenue due to pandemic restrictions.
- The budget bill currently pending in the state senate, compared to the governor's May budget revision proposal, contains more spending, more optimistic Medicaid projections, some additional money from managed care providers, and if additional federal aid is not received, a later Oct. 1 'trigger date' that would produce lower reserves and larger one-month one-time school aid deferrals in July.

[Continue reading.](#)

3 Jun, 2020 | 15:35

---

## **[Protests Raise Latest Question Mark for Municipal-Bond Market.](#)**

The U.S. municipal-bond market has been largely unscathed by the wave of protests against police

brutality and racism, but the specter of delayed economic recovery will weigh on the outlook for munis, analysts said.

“We haven’t seen a market reaction, and it’s unclear what kind of economic impact will happen,” says Randall Gerardes, head of municipal strategy at Wells Fargo. Nevertheless, “civil unrest happening in major cities could have a limiting impact on how quickly the economic environment returns to normal.”

Since Memorial Day, when protests began in Minneapolis following the death of George Floyd in police custody, the iShares National Muni Bond exchange-traded fund (ticker: MUB), the largest ETF tracking muni-bond markets, is up 0.4%. The Minnesota Municipal Income fund (ETMNX) is up 0.16%, and the Nuveen Minnesota Municipal Bond fund (FYMNX) is up 0.39%.

As the protests continued, President Donald Trump threatened to deploy the U.S. military.

The protests could delay economic recovery at a time when beleaguered cities face financial woes. Nearly 90% of U.S. cities expect revenue shortfalls, The Wall Street Journal reported.

Meanwhile, the Congressional Budget Office said that gross domestic product isn’t expected to catch up to previously forecast levels until the fourth quarter of 2029.

“The recurring violent demonstrations and government reaction is an evolving situation,” writes Tom Kozlik, head of municipal strategy at Hilltop Securities. “Unfortunately, the increasing levels of social unrest across the country reallocated efforts and scarce resources away from the former focus of getting state, regional, and local economies back to some semblance of normalcy.”

For example, New York City plans to reopen by June 8, yet it also put in place a nighttime curfew that will last until June 7. “What that timeline looks like now is even more tentative,” Kozlik writes.

Given the unrest, local governments can’t afford to make many substantial cuts to core programs, even though revenues have been crushed.

Some relief will come from the Federal Reserve, which has started a new lending program for municipalities. Illinois announced Tuesday that it will sell \$1.2 billion of one-year general-obligation certificates to the Fed’s Municipal Liquidity Facility.

Still, the Fed may not be able to help smaller municipalities. This week, Senate Banking Committee Chairman Mike Crapo (R., Idaho) worried that the Fed’s municipal facility is still too restrictive.

Meanwhile, other federal help is difficult to imagine. Since the House passed the \$3 trillion Heroes Act in mid-May, there hasn’t been significant progress on potential relief to state and local governments, says Kozlik. On Friday, Senate Majority Leader Mitch McConnell (R., Ky.), who opposes sending more relief to states and municipalities, said the next coronavirus relief package will be the “final” one and described it as “narrowly crafted, designed to help us where we are a month from now, not where we were three months ago.”

Delays in reopening will hurt revenues further. With property at risk, there is also some academic evidence suggesting property values may be depressed. Meanwhile, violent protests can also cause a shortfall in municipal finances. After protests following the beating of Rodney King by four police officers in 1992, riots in Los Angeles had a lasting impact on the city’s economic performance, according to a 2004 study by Victor Matheson and Robert Baade.

In addition, lack of insurance coverage for smaller retailers will “cause delays and lengthen the

amount of time it will take for municipal entities to return to financial equilibrium,” Kozlik says.

## **Barron's**

By Leslie P. Norton

June 3, 2020 10:10 am ET

Write to Leslie P. Norton at [leslie.norton@barrons.com](mailto:leslie.norton@barrons.com)

---

### **[Video Webinar On-demand: See Expert Panelists from UBS, BAM, BNY Mellon, and MacKay Shields](#)**

Municipal bond prices are stabilizing after weeks of nearly-unprecedented volatility when investors fought to understand the impacts of the COVID-19 pandemic on states and local governments. In this web seminar, a group of market veterans will discuss current market conditions and the key questions municipal bond buyers should consider as they manage their investments in the coming months, including topics like:

- How has investor behavior changed since early March, and what conditions are driving investment decisions now?
- What sectors of the market are most exposed to the economic downturn unleashed by the COVID-19 pandemic and the resulting mitigation strategies?
- How will the Federal Reserve's new Municipal Liquidity Facility impact market liquidity and issuer credit quality?

[Click here to watch.](#)

## **municipalbonds.com**

by Camila Campos

May 29, 2020

---

### **[Invitation to MAGNY Webinar on ESG Risks: An Investor's Perspective](#)**

**You are invited to join this MAGNY webinar on Friday, June 12 at noon:**

#### **ESG Risks: An Investor's Perspective**

**Date:** Friday, June 12, 2020

**Time:** 12:00 pm

#### **Description:**

The next three decades will see the largest transfer of inter-generational wealth in history. In the U.S alone, it is expected that between \$30 and \$40 trillion of wealth will be transferred from Baby Boomers to Generation X and onto Millennials. Wealth managers will be dealing with a new

generation of investors who are far more values-driven than earlier ones. And research indicates that both women and millennials are more likely to invest consistently with their values. A survey by BlackRock found that 67% of millennials want investments that reflect their social and environmental values, while 76% of women said the same.

Hear the inside perspectives of institutional investors on what they focus on as it relates to environmental, social and governance activities of the entities in which they invest. They will provide a first-hand view of how ESG factors' importance has changed and what they expect going forward. They will discuss the contours of investors' concerns as it relates to the municipal market.

**Panelists:**

Ksenia Koban, Vice President, Payden & Rygel Investment Management

James Lyman, Managing Director, Neuberger Berman

Barbara VanScoy, Fellow, The Heron Foundation

**Moderator:**

Leonard Jones, Managing Director, Moody's Investors Service

**Cost:** This is a free event for NFMA Members

Registration via Zoom [here](#).

Contact E-mail: [programchair@magny.org](mailto:programchair@magny.org)

After registering, you will receive a confirmation email containing information about joining the webinar.

---

## **CFPB Issues Proposals and Updated Guidance Ahead of LIBOR Discontinuation: McGuireWoods**

On Thursday, June 4, the Consumer Financial Protection Bureau ("CFPB") issued guidance to address issues arising out of the pending discontinuation of LIBOR and the resulting need for creditors to transition to other benchmarks. As the CFPB has noted, at this time, the transition is expected after 2021, with the anticipated shift to the Secured Overnight Financing Rate ("SOFR") index supported by the Alternative Reference Rates Committee (ARRC), a public-private working group organized to address the transition. Ahead of an inevitable, challenging transition, the CFPB issued an extensive rulemaking proposal with request for public comment, a revised consumer handbook, and updated compliance guidance.

Notably, the CFPB has proposed several [amendments](#) to Regulation Z, which implements the Truth in Lending Act, to facilitate the LIBOR transition and "address the sunset of LIBOR." First, the CFPB proposed changes to open-end and closed-end credit provisions "to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards." In relation to the open-end provisions, the CFPB proposed several technical edits to certain comments and to replace LIBOR references with references to SOFR.

Further, the CFPB proposes the permissible transition of certain existing accounts by creditors to a replacement index, if certain conditions are satisfied, and also addresses change-in-terms notice provisions for home equity lines of credit (HELOCs) and credit card accounts. Lastly, the CFPB proposed to add an exception from the rate reevaluation provisions applicable to credit card



accounts.

While these proposals concern potential complications that may arise for creditors during the transition, the CFPB is also proactively identifying and addressing areas of potential confusion for consumers. The CFPB proposes that the final rule take effect on March 15, 2021, except for the updated change-in-terms requirements for HELOC and credit card accounts, which would apply as of October 1, 2021.

The CFPB has also examined the impact of the LIBOR transition on its Consumer Handbook on Adjustable Rate Mortgages ("[CHARM booklet](#)"). The revised booklet is intended to provide information to consumers and must be provided by mortgage lenders when a consumer applies for an adjustable rate mortgage ("ARM"). According to the CFPB, the CHARM booklet was revised to, among other things, "remove the historical comparison example that used LIBOR as an index for comparison." The CFPB noted the revised booklet also contains a useful comparison table, consists of fewer pages, and utilizes enhanced design elements while removing references to the LIBOR benchmark index. Creditors may, at their option, "immediately begin using the revised CHARM booklet, or a suitable substitute" in their efforts to comply with Regulation Z.

As an added measure, the CFPB issued updated guidance in the form of [LIBOR Transition FAQs](#) to address consumer financial products and services potentially affected by the transition. The FAQs discuss ARM products, HELOCs, and specific regulatory or statutory requirements creditors need to consider as they prepare to transition impacted consumers. To promote compliance during this evolution in the area of variable-rate products, the CFPB's guidance aims to address regulatory requirements for both existing accounts and new originations as the necessary steps are taken to discontinue use of LIBOR.

**By Edward M. Nogay, Bryan M. Weynand, Susan Rodriguez, Joseph J. Reilly & Donald A. Ensing on June 8, 2020**

**McGuire Woods**

---

### **[3 Lingering Opportunity Zone Questions Amid The Pandemic.](#)**

The COVID-19 pandemic has severely slowed the commercial real estate market as investors are skittish and banks are reluctant to loan, and while the IRS on Thursday provided important relief for investors in opportunity zone projects, questions and hurdles for such deals still remain.

One of the lingering questions about the opportunity zone program created as part of President Donald Trump's late 2017 tax overhaul is how to satisfy a requirement that at least half of employment at opportunity zone businesses take place within the zone, which at the moment is tricky given that so many people are working remotely amid the pandemic.

And while changes earlier this week from the IRS will help current investors and projects, challenging timeline requirements still exist for would-be investors. The program allows investors to defer payment of capital gains if those gains are put into an opportunity zone, and gains on the opportunity zone investment are also tax-free if the position is held for 10 years.

Here, Law360 looks at three lingering questions about opportunity zones amid the COVID-19 pandemic.

## **Will tax and employment concerns weigh on investors?**

The IRS on Thursday [granted several timeline extensions](#) for opportunity zone investors, and lawyers say that while the changes are important for current projects, tax and employment issues remain.

Investors using the program must put capital gains into an opportunity zone fund within 180 days of a sale, and the IRS on Thursday said if that 180-day point occurs or occurred between April 1 and Dec. 31, the deadline to invest in a fund is now Dec. 31.

Likewise, if projects between April and the end of year had hit the law's requirement that 90% of assets in a fund be in an opportunity zone project, projects get an exemption from that requirement until the end of the year. And the months between April and December also will not count toward the required 30-month timeline during which developers have to add improvements to properties, the IRS said Thursday.

Michael Krueger, a partner at Newmeyer & Dillion LLP, said that 90% rule has been challenging for companies to meet during the pandemic, given construction and government approval delays.

But one lingering issue, according to John Gahan, a partner at Sullivan & Worcester LLP, is the question of where employees at opportunity zone projects work. As the law is written, at least half of employees' hours at an opportunity zone business need to occur within the opportunity zone, and that's still a big unknown given that so many employees are working from home amid the pandemic.

"If there is one [thing] missing in the relief, it is how to incorporate where people work," Gahan said. "Anything more probably needs to come from Congress."

And tax questions also remain. As the program stands, deferred gains are to be taxed in 2026, and there's concern in the investor community about what tax rates may be in 2026, said Kate Kraus, a partner at Allen Matkins Leck Gamble Mallory & Natsis LLP.

"That could be much higher than 2019-2020 tax rates. This is something that the Treasury and IRS can't address. Congress would need to enact new legislation," Kraus said.

And while the new guidance from the IRS helps those who are already in the midst of projects, it doesn't necessarily make it any easier for investors who are on the sidelines and hoping to dive into opportunity zones.

"If you have not already harvested your gain, doing so now, your 180 days would have been in December anyway," Gahan said. "So it helps those who already have gain. Maybe those who sold stock during the early days of pandemic."

## **How will investors approach the substantial improvement requirement?**

Lawyers say the relief on the question of the 30-month clock for substantial improvements is helpful for current projects or projects that are in the works, although for would-be projects, that 30-month requirement still could pose timing problems, particularly in jurisdictions where entitlement is slow to come by.

The law requires developers to invest an amount in improvements equal to the value of the purchased building — but not the land — and to do so within 30 months.

While it's possible Congress could, say, lower that requirement to 50% of the building value, which would likely bring more investors to projects, Gahan said he doesn't expect to see calls for additional

guidance at this point.

But there's another way investors could get around that tricky 100% requirement.

If investors purchase opportunity zone properties from the government through a bankruptcy sale, they can bypass that substantial improvement requirement altogether. And Krueger expects more of such opportunities in the near term.

"In 12 to 18 months, when all of the moratoriums on foreclosures are expired and people stop kicking the can down the road, [real estate] is going to crash," Krueger said. "It's a very unique situation where you can acquire something from the government."

And since struggling malls are already Americans with Disabilities Act compliant and on transportation lines, those could be the kinds of properties that end up changing hands, and if opportunity zone investors pick them up, substantial improvements may not be required, Krueger said.

"What I envision, and what I recommend to the politicians, is take these malls back that are vacant, and turn them into what is needed. ... All of these malls are perfect locations for that," Krueger said. "The J.C. Penneys may now become Kaiser Permanente dialysis centers."

### **Will investors shift more focus away from real estate?**

While much of the focus of opportunity zones has been real estate, the law also allows for investment in companies, and that option may become more attractive as construction and the real estate market writ large continue to be major unknowns.

"Whether credit is available or whether there's labor, restrictions on labor, all of these things can have ... an impact on an opportunity zone project," said Matt Ertman, a partner at Allen Matkins. "It you can't get entitlements done within the timelines, you're going to have a tough time getting a project completed."

And as Silicon Valley investors and entrepreneurs find themselves with capital gains from sale of stock — the Nasdaq on Friday hit a record high — those investors may look to opportunity zone investments in other companies, as opposed to brick-and-mortar real estate, as a tax strategy.

Krueger said he even thinks company human resources departments should help employees find options for such investments.

"Property itself may not be the most attractive investment now. [Capital] may go back into the startup companies. It doesn't have to be real estate that you invest in in an opportunity zone," Krueger said. "What I am seeing is a large draw to disruptive technology. More fintech. More remote work, remote access. Those are more attractive."

"Commercial real estate for a large tenant that's going to put all of their employees in that one space, that's no longer a sure thing," he added.

By Andrew McIntyre · June 5, 2020, 5:34 PM EDT

-Additional reporting by David van den Berg. Editing by Rebecca Flanagan and Alanna Weissman.

**Law 360 Tax Authority**

---

## **9th Annual Brookings Municipal Finance Conference.**

**Monday, Jul 13, 2020 1:30 PM - Tuesday Jul 14, 2020 12:30 PM EDT**

The Municipal Finance Conference aims to bring together academics, practitioners, issuers, and regulators to discuss recent research on municipal capital markets and state and local fiscal issues. This year's conference is a joint venture of The Hutchins Center on Fiscal and Monetary Policy at Brookings, the Rosenberg Institute of Global Finance at the Brandeis International Business School, the Olin Business School at Washington University in St. Louis, and the Harris School of Public Policy at the University of Chicago. This year's conference will be exclusively online.

[Click here](#) to learn more and to register.

---

## **IRS Grants Pandemic Deadline Relief On Opportunity Funds.**

The novel coronavirus pandemic has prompted the Internal Revenue Service to grant automatic deadline relief to qualified opportunity funds and investors, including an extension of the 180-day investment period for some investors to Dec. 31 in a notice released Thursday.

Taxpayers for whom the last day of the period in which investments must be made in qualified opportunity funds, or QOFs, to satisfy the 180-day requirement falls on or after April 1 automatically get the extension to Dec. 31, according to Notice 2020-39. Taxpayers don't have to contact the IRS or send letters or other documents to get the relief, the notice said.

However, they must make a valid deferral election and file needed forms with a timely filed federal income tax return or amended return for the taxable year in which the gain would be recognized if [Internal Revenue Code Section 1400Z-2\(a\)\(1\)](#) didn't apply to defer recognition of the gain, according to Thursday's notice.

The opportunity zone program, established by the 2017 Tax Cuts and Jobs Act, is meant to bring monetary investments into lower-income communities to help spur economic development in them. Opportunity zones allow investors to reinvest capital gains within a 180-day window into designated low-income areas in return for certain tax benefits that grow the longer the money is invested in a QOF through Dec. 31, 2026.

Final regulations on opportunity zones came out in December that allowed for two methods of investing in the program. Under a one-tiered structure, a QOF directly holds qualified zone property. Investors in one-tiered structures must invest gains into a QOF within 180 days of the sale or exchange that gave rise to the gain, under the final rules. If investors have already successfully invested in a QOF, it must generally hold 90% of its assets in qualified property, as measured every six months, or face penalty, the rules said.

For QOFs whose last day of the first six-month period of the taxable year or last day of the taxable year falls between April 1 and Dec. 31, any failure by the QOF to satisfy the 90% investment standard is due to reasonable cause under [IRC Section 1400Z-2\(f\)\(3\)](#), the IRS said in Thursday's notice. Those failures will also be disregarded for purposes of determining whether the QOF or any otherwise qualifying investments in it satisfy requirements of IRC Section 1400Z-2 and its regulations for any taxable year of the QOF, the notice said.

The relief is automatic, but QOFs must accurately complete all lines on Form 8996, Qualified Opportunity Fund, filed for each taxable year except that the QOF should indicate “zero” where penalties are supposed to be recorded, the IRS said Thursday. The form must be filed with the QOF’s timely filed federal income tax return, according to the notice.

Richard LaFalce, partner at Morgan Lewis & Bockius LLP, said the notice should give opportunity zone investors the certainty they need to move forward.

“While the COVID 19 pandemic may cause investors and sponsors to reevaluate their plans for opportunity zone investments, any delay should not be driven by concerns regarding the ability to satisfy the OZ tax rules during the pandemic,” LaFalce told Law360.

The breaks the IRS provided in Thursday’s notice follow Sen. Tim Scott’s renewing his push for giving investors three additional months to put capital gains into qualified opportunity funds to encourage participation in the program during a Tuesday webcast hosted by Politico. In early May, Scott, R-S.C., also asked the IRS and the U.S. Department of the Treasury to ease the program’s requirement that QOFs have to invest at least 90% of assets in qualified opportunity zone property, at least through the end of the year.

The IRS didn’t immediately respond to a request for comment.

### **Tax Analysts**

*-Additional reporting by Amy Lee Rosen, Joshua Rosenberg and Stephen Cooper. Editing by Neil Cohen.*

---

## **[Updated IRS Opportunity Zones FAQs.](#)**

The following questions and answers (Q&As) were prepared in response to inquiries that have been proposed to the IRS. They are intended to provide a basic understanding and awareness of Opportunity Zones.

These Q&As do not constitute legal authority and may not be relied upon as such. They do not amend, modify or add to the Income Tax Regulations or any other legal authority.

[Access the FAQs.](#)

---

## **[Federal Reserve’s Municipal Liquidity Facility: Arizona Impact - Ballard Spahr](#)**

On April 9, 2020, the Municipal Liquidity Facility (MLF) was established pursuant to Section 13(3) of the Federal Reserve Act to assist States and certain local governments with their increased liquidity needs due to the coronavirus pandemic. In general, the MLF provides for the establishment of a special purpose entity to purchase up to \$500 billion of short-term securities (Eligible Notes) from U.S. states, counties with populations in excess of 500,000 and cities with populations in excess of 250,000 (referred to as Eligible Issuers) whose general obligations or issuer credit were rated, as of April 8, 2020, at least BBB/Baa3 by two or more major nationally-recognized statistical rating organizations. Eligible Notes are tax anticipation notes, tax and revenue anticipation notes, bond

anticipation notes and other short-term notes issued by Eligible Issuers, provided that the notes mature no later than 36 months from the date of issuance.

In Arizona, Eligible Issuers are the State, Maricopa and Pima Counties and the Cities of Phoenix, Tucson, Mesa, Chandler, Scottsdale and Glendale. And, for the purposes of the MLF, Eligible Notes would generally be tax anticipation notes issued by the State of Arizona pursuant to Article 1, Chapter 3, Title 35 of the Arizona Revised Statutes and tax anticipation notes, grant anticipation notes and revenue anticipation notes issued by a county or city pursuant to Articles 3.1, 3.2 and 3.3, respectively, of Chapter 3, Title 35 of the Arizona Revised Statutes.

State tax anticipation notes may be issued for a term of six months in an aggregate principal amount not exceeding 50 percent of the ad valorem taxes and 50 percent of the excise taxes not expected to be collected during the current fiscal year at an interest rate not exceeding 9 percent per annum.

In the case of tax anticipation notes of a county or city which is an Eligible Issuer, the principal amount of the notes cannot exceed 90 percent of the taxes that are not expected to be collected in the current year (for whatever reason), taxes thereafter received must be applied to pay down the note and the notes must mature on or before July 31 following the fiscal year in which they are issued.

Revenue anticipation notes may be issued and sold in advance of the receipt of revenues by a county or city which is an Eligible Issuer (other than ad valorem property taxes, grants, sales taxes, or transaction privilege taxes or State or restricted revenues) provided that the notes must mature not later than the fiscal year in which issued.

In addition, the MLF would permit Eligible Issuers to borrow funds to purchase similar notes from subordinate political subdivisions or other governmental entities in order to assist those entities with their liquidity needs. Although the State of Arizona has announced its own AZCares Fund, this represents a decision by the State to make \$441 million of the \$1.86 billion it received in Federal coronavirus relief funding available to some Arizona municipalities which do not qualify as Eligible Issuers.

The Federal Reserve Bank of New York has established the Municipal Liquidity Facility LLC, a Delaware limited liability company, as the special purpose purchaser of the notes. The LLC has issued a term sheet and FAQs [here](#). An Eligible Issuer can indicate its desire to participate in the MLF by filing a "Notice of Interest" with the Federal Reserve Bank of New York. The Notice of Interest can be found [here](#).

The Federal Reserve, and most commentators, regard the MLF as a lender of last resort, intended to fund Eligible Issuers that might not otherwise have access to the credit markets. Notably, the published interest rates at which the LLC will purchase Eligible Notes are based on a comparable maturity overnight index swap plus an applicable spread based on the rating of the Eligible Notes being purchased. For example, in the case of AAA/Aaa-rated Eligible Notes, the spread is 150 basis points; in the case of A+/A1-rated Eligible Notes, the spread is 240 basis points; and in the case of BBB/Baa3-rated Eligible Notes, the spread is 380 basis points.

For further information or assistance in analyzing or accessing the MLF, please contact Bill Hicks (602-798-5423), Michele Bax (602-708-5483), or Tyler Cobb (602-798-5420).

**by the Public Finance Group**

**June 5, 2020**

## **TAX - GEORGIA**

### **[Hojeij Branded Foods, LLC v. Clayton County](#)**

**Court of Appeals of Georgia - May 28, 2020 - S.E.2d - 2020 WL 2763498**

Operator of fast food concession stand at international airport brought action against city, county, and various city and county officials seeking a refund of ad valorem property taxes paid in two particular years based on precedent establishing that airport retail spaces were usufructs, rather than estates in real property.

The Superior Court granted defendants' motions to dismiss for failure to state a claim, based on sovereign immunity. Concession stand operator appealed.

The Court of Appeals held that statute governing tax refund claims against a county or city waived sovereign immunity for five years after payment of the tax, rather than three years.

Statute governing tax refund claims against a county or city waived sovereign immunity for five years after payment of the tax, rather than three years; statute allowed a taxpayer to file a claim directly with the county or city within three years after payment of the tax and barred commencement of a lawsuit thereafter until the earlier of 90 days or denial of the claim, but did not make filing such a claim a prerequisite to filing a lawsuit and did not otherwise indicate that the three-year period applied to such a lawsuit, and statute expressly provided that any lawsuit seeking a refund had to be commenced within five years after payment.

---

## **[A Path to Transit and Transportation Project Success in the Wake of the Pandemic: Nossaman Webinar Replay](#)**

For those of you involved in the transportation sector, we invite you to join us on Wednesday, June 3rd for a discussion on planning, procurement and financing strategies that can be implemented now to support timely project delivery in the wake of the COVID-19 pandemic. We are planning a very interactive webinar where ample time will be set aside to answer questions received from attendees both prior to and during the event.

Topics that will be covered include:

- How to prepare now to efficiently and effectively move projects forward
- Procurement and contracting strategies that enable owners to access future funding and move projects forward despite short-term funding issues
- NEPA, CEQA and environmental permitting considerations in the era of social distancing and shelter-in-place orders
- Real estate and construction considerations such as delays/Temporary Construction Easement expirations and appraisal/site inspection issues
- The environmental litigation outlook under California and federal law (i.e., delays due to limited court activities/court closures)



Our interdisciplinary panel will provide practical and timely information to assist you in this ever-changing business climate. We look forward to having many of you attend and to addressing your concerns related to this extremely important sector of our economy.

[Listen to Webinar Replay.](#)

By Brandon Davis, Liz Klebaner, Bradford Kuhn, David Miller on 06.02.2020

**Nossaman LLP**

---

## **Supreme Court Upholds Puerto Rico Financial Oversight Board.**

WASHINGTON — The Supreme Court on Monday upheld the oversight board established by Congress to help Puerto Rico out of a devastating financial crisis that has been exacerbated by the coronavirus outbreak, recent earthquakes and damage from Hurricane Maria in 2017. The justices reversed a lower court ruling that threatened to throw the island's recovery efforts into chaos.

In a unanimous holding, the court will allow the oversight board's work to pull the island out of the largest municipal bankruptcy in U.S. history to proceed. At one point, Puerto Rico faced more than \$100 billion in debt and unfunded pension obligations.

The case stemmed from a constitutional challenge to the oversight board's composition led by hedge funds that invested in Puerto Rican bonds. A lower court ruled last year that board members were appointed in violation of the Constitution because they were not confirmed by the Senate.

The president selects the board's seven voting members. They and one other non-voting member chosen by Puerto Rico's governor approve budgets and fiscal plans drawn up by the island's government. The board also handles bankruptcy-like cases that allow the island to restructure its debts.

In his opinion for the court, Justice Stephen Breyer wrote that the board's makeup is not controlled by the Constitution's provision on appointments, but by a different provision giving Congress significant control over U.S. territories, including Puerto Rico.

"The Board's statutory responsibilities consist of primarily local duties, namely, representing Puerto Rico in bankruptcy proceedings and supervising aspects of Puerto Rico's fiscal and budgetary policies. We therefore find that the Board members are not "Officers of the United States." For that reason, the Appointments Clause does not dictate how the Board's members must be selected," Breyer wrote.

Justices Clarence Thomas and Sonia Sotomayor, whose parents moved to New York from Puerto Rico, wrote separate opinions agreeing with Monday's outcome, though Sotomayor said she did so reluctantly.

"The Board's decisions have affected the island's entire population, particularly many of its most vulnerable citizens. The Board has ordered pensions to be reduced by as much as 8.5 percent, a measure that threatens the sole source of income for thousands of Puerto Rico's poor and elderly. Other proposed cuts take aim at already depleted healthcare and educational services. It is under the yoke of such austerity measures that the island's 3.2 million citizens now chafe," she wrote.



Congress passed the Puerto Rico Oversight, Management, and Economic Stability Act in 2016, creating the board and allowing the president to appoint members without Senate confirmation. The hedge funds sued and won a ruling in the Boston-based 1st U.S. Circuit Court of Appeals, which includes Puerto Rico. The board was allowed to keep functioning in the meantime.

Almost a year ago, the justices agreed to review the appeals court decision on a relatively quick basis, scheduling arguments for October. But it took the court nearly eight months to issue its own decision.

Many who oppose the board and resent the austerity measures it has imposed on the U.S. territory lamented Monday's ruling. Jenniffer González, Puerto Rico's representative in Congress, also seized it as an opportunity to push for statehood.

"This decision proves once again that if Puerto Rico wants to have control over local affairs, it must become a state," she said.

But the oversight board itself said it would continue its work "to help Puerto Rico recover from an unsustainable debt burden and decades of fiscal mismanagement." In a statement issued following the decision, the board said, "It is paramount that we turn the corner from this crisis as soon as we can."

**By The Associated Press**

June 1, 2020

---

## **Where Some Investors See Red, These 'Banks' See Green.**

States are tapping public financing institutions to advance a green agenda and create jobs as they plan their economic rebound from the coronavirus pandemic.

New Jersey adopted the idea in April, saying it will set up a green bank by the end of the year to finance environmentally friendly infrastructure. The state follows in the footsteps of Connecticut, New York and other states that provide loans and grants to fund carbon-cutting projects, such as community solar and energy efficiency retrofits.

As other lenders pull back during the economic downturn, taxpayer-backed green banks can aid recovery by keeping money flowing to construction projects, their supporters say. Green banks in New York and Connecticut, for example, have continued financing during the pandemic even as many homeowners and small businesses put projects on hold.

The New Jersey Economic Development Authority will seed its green bank — essentially a pot of capital, not an actual bank — with some \$12 million in annual revenue it collects from the Regional Greenhouse Gas Initiative, a carbon cap-and-trade program. The project will prioritize projects that offer employment training and create jobs.

"Access to affordable financing and job training will be instrumental in helping New Jersey build back better," said Pari Kasotia, Mid-Atlantic director for the nonprofit advocacy group Vote Solar. "By being able to invest in clean energy now, New Jersey's low-income and environmental justice communities will also be more economically resilient to the next crisis, thanks to lower energy bills."

While the banks aren't new — Connecticut launched the nation's first in 2011 — their numbers are growing. In 2019, the nine global members of the Green Bank Network committed a total of nearly \$15 billion, mobilizing \$50 billion in public and private capital. Now the coronavirus pandemic is giving them a chance to flex their muscle as other lenders rein in business.

Money is invested in projects that deliver environmental, health, social — and financial — returns. And the institutions are designed to demonstrate to Wall Street and local banks that an investment in clean energy can be a safe bet.

"At a time when we've had such a strong negative economic shock, all sources of capital are pulling back a little bit [but] green infrastructure is largely identified as a clear, safe and solid place to put money moving forward," said Brian Sabina, the senior vice president of economic transformation at the New Jersey Economic Development Authority.

In New York, Green Bank President Alfred Griffin said his team is modifying deals with loan recipients to keep people on payrolls and provide flexibility around construction timelines to deal with Covid-19-related supply chain issues.

"The primary focus is to get those businesses back up and get those people back on those jobs," Griffin said. "The needs of the market evolve, just like today, what we're seeing in this unprecedented period."

Bryan Garcia, president and CEO of the Connecticut Green Bank, said his group is resetting contract terms, restructuring borrower debt and allowing delayed payments. But the bank's loans generally are low-risk and borrowers — especially low- and moderate-income families — are making payments.

"We had expected them to be more delinquent," Garcia said, but "they're paying their bills because they've seen the energy burden reduction benefit and they don't want to lose it."

New Jersey's initial \$12 million investment might not sound like much — New York established its bank with \$1 billion in 2013 — but it will be "a ton of money" if it can lure private capital off the sidelines to launch new projects, said Jeffrey Schub, executive director of the Coalition for Green Capital, a nonprofit that advocates for the creation of green banks.

"It's obviously not enough to decarbonize the entire economy or reemploy the millions of New Jerseyans who are out of work, but it's the start you need to build off of because the hardest thing to find is the first investment of risk capital," Schub said. "It can be a way of priming the pump, getting private capital back into the market."

New Jersey could learn from New York and Connecticut's emphasis on investments in community solar for households that rent or just can't afford solar. Access to clean energy technology cuts utility costs and makes a market segment traditionally perceived as risky more attractive to private investors.

"At the end of the day, it is a wealth-building program," Garcia said. "It is reducing the amount of monthly budget a low-to-moderate income family spends on energy and allows them to save more of it and use it for other things."

But as states struggle to close budget gaps torn open by the coronavirus pandemic, green banks could be facing a challenge from some of the policymakers who created them.

Connecticut's green bank is funded by \$26 million from the state's clean energy fund and about \$4 million from Regional Greenhouse Gas Initiative proceeds. But in fiscal 2018 and 2019, state

lawmakers diverted \$28 million in clean energy funds and \$4 million in greenhouse gas funds that were planned for the bank.

Bank officials filled the gap by issuing bonds, cutting operating expenses and transferring staff to an associated but independent nonprofit.

"We're now on a path to organizational sustainability," Garcia said. "The interest income we're receiving from financing projects using the clean energy fund and RGGI allowance proceeds is close to covering our operating expenses."

New Jersey officials must decide how to set up its green bank to deliver the biggest economic bang for the buck to withstand changing political tides. Part of this will entail figuring out what kind of entity the green bank will be: a specialized state entity, like New York's, an independent, quasi-public institution like Connecticut's, or something else altogether different.

New Jersey "will move like heck to crowd in as much capital as we can to get projects going," Sabina said. "It's going to be important as part of the recovery."

POLITICO.COM

By SAMANTHA MALDONADO 06/02/2020 08:14 PM EDT

- 
- [BLX/Orrick 8th Annual Post-Issuance Compliance Workshop.](#)
  - [LIBOR Transition - Issue 5: Greenberg Traurig](#)
  - [GFOA Economic Indicator Dashboard.](#)
  - [NABL: Delay in Direct Pay Bond Payments](#)
  - [IRS Notice Extends Continuity Safe Harbor to Five Years for PTC, ITC Properties Affected by COVID-19-Related Delays.](#)
  - [Checklist - Disclosures for Health Care Providers With Outstanding Tax-Exempt Bonds.](#)
  - [Fed Publishes MLF Sample Purchase Rates.](#)
  - [MSRB Provides Temporary Fee Waivers for Transactions with the Federal Reserve's Municipal Liquidity Facility.](#)
  - [U.S. States, Cities May Snub Fed Lending Program Over High Rates.](#)
  - And finally, Paging Dr. Frankenstein. STAT. is brought to us this week by [J.K.J. v. Polk County](#), in which a supervisor testified that, "we felt that it was important that we recognize and support Allen's prior work history. He was a good employee. He was a go-to employee. We appreciated his efforts and his work, so we wanted to salvage him as an employee." The BCB offices were subjected to a horribly grisly misunderstanding when we directed a subordinate to salvage an employee. If only Larry didn't always take things so gosh-darn literally.

---

## LIABILITY - WISCONSIN

### [J.K.J. v. Polk County](#)

**United States Court of Appeals, Seventh Circuit - May 15, 2020 - F.3d - 2020 WL 2563256**

Former inmates filed § 1983 actions against county and jail corrections officer alleging that officer had sexually assaulted them during their incarcerations.

After actions were consolidated, jury returned verdict and awarded damages in inmates' favor. The United States District Court denied defendants' motions for new trials and county's motion for judgment as matter of law.

Defendants appealed. The Court of Appeals affirmed in part, reversed in part, and remanded.

The Court of Appeals, on rehearing en banc, held that:

- Officer acted with deliberate indifference to jail inmates' safety, in violation of their Eighth Amendment rights, and
- Evidence was sufficient to support county's liability under § 1983.

Evidence was sufficient to support determination that county jail corrections officer acted with deliberate indifference to jail inmates' safety, in violation of their Eighth Amendment rights by sexually assaulting them; sexual assaults imposed serious risk to inmates' health and safety, officer admitted that he knew he was putting inmates at risk and that his conduct violated jail policy and was criminal, and inmates testified that they did not consent to the sexual contact.

Evidence was sufficient to prove that county acted with deliberate indifference in failing to prevent and was moving force behind male guard's repeated sexual assaults against two female county jail inmates, supporting county's § 1983 liability; evidence showed that county had barebones sexual abuse policy and provided little training to guards on topic, inmates testified that they were dependent on male guards for safety and other needs, expert confirmed that such power dynamic created serious risk of abuse for inmates, jail captain admitted he knew of male guards' sexually inappropriate banter, and even after learning of instances of sexual harassment and touching by one guard, county did not improve policy, institute additional training, or inquire of inmates about abuse.

---

## **EMINENT DOMAIN - ALASKA**

### **[Alaska Laser Wash, Inc. v. Department of Transportation & Public Facilities](#)**

**Supreme Court of Alaska - May 8, 2020 - P.3d - 2020 WL 2299931**

Owner of car wash brought inverse condemnation action against the State, claiming business damages resulting from State's acquisition of car wash site as part of highway improvement project.

Following jury trial, the Superior Court denied State's motion for directed verdict, entered jury verdict in favor of owner, and awarded attorney's fees and costs to owner. State appealed, and the Supreme Court reversed, vacated, and remanded. On remand, the Superior Court awarded attorney's fees to the State as the prevailing party pursuant to pretrial offer of judgment, and car wash owner appealed.

The Supreme Court held that State was entitled to award of attorney's fees based on pretrial offer of judgment.

---

## **MUNICIPAL ORDINANCE - COLORADO**

### **[Aptive Environmental, LLC v. Town of Castle Rock, Colorado](#)**

**United States Court of Appeals, Tenth Circuit - May 15, 2020 - F.3d - 2020 WL 2503912**

Seller of pest-control services through door-to-door solicitation filed action alleging that town's ordinance imposing 7:00 p.m. curfew on commercial door-to-door solicitation violated its First Amendment rights and sought injunction against the curfew's enforcement.

Following a bench trial, the United States District Court permanently enjoined town from enforcing the curfew. Seller appealed.

The Court of Appeals held that:

- Seller established injury-in-fact required for Article III standing;
- Causal link existed between ordinance and injury-in-fact, as required for Article III standing;
- Seller established redressability requirement of Article III standing;
- Ordinance regulated commercial speech protected by the First Amendment;
- Town failed to demonstrate that ordinance directly advanced its interest in public safety, and thus that interest did not justify burden on First Amendment rights; and
- Town failed to demonstrate that ordinance directly advanced its interest in protecting privacy of its citizens, and thus that interest did not justify burden on First Amendment rights.

---

## **ANNEXATION - GEORGIA**

### **[City of Norcross v. Gwinnett County](#)**

**Court of Appeals of Georgia - May 11, 2020 - S.E.2d - 2020 WL 2313685**

Commercial property owner brought action against City and County, and asserted claims for inverse condemnation and nuisance and sought damages caused by damaged drainage system, declaratory and mandamus relief, and attorney fees and expenses, and County sought a declaration that city was responsible for repairing the drainage system.

The trial court granted summary judgment to county and denied summary judgment to city. City appealed.

The Court of Appeals held that county, rather than city, was responsible for maintaining drainage system following annexation by city.

County, rather than city, was responsible for maintaining drainage system following annexation by city; county was expressly granted easements over private property to the purposes of using, maintaining, and operating the drainage system, the conveyance instrument explicitly stated the county would maintain the system, and the easements were not abandoned, terminated, or legally transferred when city annexed business park on which the drainage system was located.

---

## **PROCESS - MARYLAND**

### **[Mayor of Baltimore v. Prime Realty Associates, LLC](#)**

**Court of Appeals of Maryland - May 12, 2020 - A.3d - 2020 WL 2460110**

City brought a receivership action against limited liability company (LLC) regarding property it owned that was unfit for human habitation, and LLC did not participate until after the receiver sold the property and the sale was ratified.

The District Court denied LLC's motion to vacate the judgment, ratified the final accounting, and

discharged the receiver. LLC appealed. The Circuit Court vacated the sale. City's petition for certiorari was granted.

The Court of Appeals held that:

- LLC's due process rights were not violated by substituted service of process, and
- As a matter of apparent first impression, rule that allows for substituted service on an LLC satisfies a litigant's due process rights.

Limited liability company's (LLC) due process rights were not violated by city serving LLC by serving State Department of Assessments and Taxation (SDAT), pursuant to substituted service rule; city attempted to serve LLC's resident agent at address on file with SDAT two times prior to initiating substituted service, LLC's failure to update its resident agent's address did not invalidate city's attempts of service or city's use of substituted service, and city's knowledge of post office box address, to which agent attempted to change his address, did not correlate to city having actual knowledge that agent's address on file was a "bad address."

---

## **COSTS - MISSOURI**

### **[Wilson v. City of Kansas City](#)**

**Supreme Court of Missouri, en banc - May 12, 2020 - S.W.3d - 2020 WL 2392483**

Former city employee brought action against city, alleging claims for disability discrimination and retaliation under the Missouri Human Rights Act (MHRA).

The Circuit Court entered judgment for former employee, and city appealed.

On transfer from the Court of Appeals, the Supreme Court held that:

- The MHRA did not operate to allow an award of litigation expenses as court costs to former city employee as a prevailing party, overruling *Jones v. City of Kan. City*, 569 S.W.3d 42, *Hesse v. Mo. Dep't of Corr.*, 530 S.W.3d 1, and *Williams v. Trans States Airlines, Inc.*, 281 S.W.3d 854,
- The Circuit Court was required to determine whether litigation expenses requested were reasonable out-of-pocket expenses an attorney in the local community would have normally charged to fee-paying client, before awarding them as attorney fees; and
- Former employee was a prevailing party for purposes of an attorney fee award under the MHRA.

---

## **EMINENT DOMAIN - NEW MEXICO**

### **[Taylor v. United States](#)**

**United States Court of Appeals, Federal Circuit - May 15, 2020 - F.3d - 2020 WL 2503275**

Owners of land near Air Force base filed suit against United States, claiming that Air Force effected regulatory taking of owners' property interest in their contract giving wind energy company exclusive option for easement for wind energy development when Air Force personnel allegedly caused company to terminate contract by suggesting that Federal Aviation Administration (FAA) would not issue "No Hazard" designation for airspace above owners' land, and that Air Force's flyovers of their land effected physical taking of their property interest in land and associated air space.

The Court of Federal Claims granted government's motion to dismiss for lack of subject matter jurisdiction and for failure to state claim. Landowners appealed.

The Court of Appeals held that:

- Regulatory taking claim was within subject matter jurisdiction;
- Air Force did not effect regulatory taking;
- Air Force did not effect physical taking; and
- Dismissal of complaint was not abuse of discretion.

*Penn Central* factor concerning character of government action weighed strongly against finding that regulatory taking was effected by Air Force causing wind energy company to terminate contract with owners of land near Air Force base due to Air Force suggesting to company that Federal Aviation Administration (FAA) would not issue "No Hazard" designation for airspace above owners' land; Air Force's suggestion to company did not have legal effect, did not impose direct legal obligation on any party, and was not form of coercive government action, but rather, was at most form of persuasion, convincing company of something assertedly relevant to its prospects for having air clearance for contemplated wind towers.

Air Force's flyovers of owner's land near Air Force base did not effect physical taking of their property interest in land and associated air space; although planes flew directly over owners' land, balance of remaining factors weighed against finding physical taking, including that owners only alleged that military aircraft regularly flew training routes at altitudes below 500 feet above ground level over their property, without alleging how often flights occurred, and owners failed to allege how flights directly, immediately, and substantially interfered with their quiet enjoyment and use of their land.

Landowners' regulatory taking claim arising out of Air Force allegedly causing wind energy company to terminate contract with owners whose land was near Air Force base, by Air Force personnel suggesting that Federal Aviation Administration (FAA) would not issue "No Hazard" designation for airspace above owners' land, was within Tucker Act jurisdiction of Court of Federal Claims, although Air Force's action also constituted tortious interference with contract, since landowners chose to challenge Air Force's action as taking of their property interest in contract, and Air Force's tortious conduct did not remove taking claim from Tucker Act jurisdiction.

Court of Federal Claims did not abuse its discretion in dismissing landowners' complaint, upon determining they failed to state physical takings claim based on Air Force's flyovers of their land near Air Force base, rather than granting owners leave to amend their complaint, since owners did not request leave to amend, not on their own, not with government's permission, and not with court's permission, even after dismissal.

---

## **PUBLIC RECORDS - OHIO**

### **[State ex rel. Ullmann v. Klein](#)**

**Supreme Court of Ohio - May 19, 2020 - N.E.3d - 2020 WL 2529050 - 2020 -Ohio- 2974**

Petitioner sought a writ of mandamus to compel city attorney to comply with two public records

requests. She also sought statutory damages and attorney fees.

The Supreme Court held that:

- Dismissal of petitioner's mandamus action seeking to compel city attorney to comply with two public records requests as moot was required;
- Petitioner was entitled to an award of statutory damages in the amount of \$1,000; and
- Petitioner was not entitled to an award of attorney fees.

---

## **GFOA Economic Indicator Dashboard.**

GFOA created the following dashboards to provide one location for local government finance officers to easily access an up-to-date array of data/trends/indices to help them forecast revenue, expenditures, debt issuance, employment and other short- and long-run economic factors impacting their constituents. They are divided into six different dashboards based on type of data: (1) Covid-19 Prediction Model; (2) Employment; (3); Market; (4) Housing; (5) Income and Personal Debt; and (6) Local Tax Revenue.

[Access the GFOA Economic Indicator Dashboard.](#)

---

## **Cities' Next Coronavirus Dilemma: Cut Essential Services or Take On More Debt**

### **Shutdowns dry up local revenues, leaving leaders with no good options to keep cities running**

Cities across the U.S. are hemorrhaging money as the coronavirus pandemic shut down commerce, entertainment and tourism activities that provide much of their revenue.

The shortfalls are hitting cities ranging from struggling towns to thriving metropolises. Nearly 90% of cities expect revenue shortfalls, according to a survey by two advocacy groups, the National League of Cities and the U.S. Conference of Mayors, which polled 2,463 cities and towns that are home to 93 million people.

Cities have long funded core services by capitalizing on their role as gathering places, charging to park in their downtowns, enter through their ports and eat in their restaurants. They are now having to keep running without any clear sign of when those revenues will return to normal levels.

[Continue reading.](#)

### **The Wall Street Journal**

By Heather Gillers

May 31, 2020 11:00 am ET



---

## **Fed Posts Fee Schedule for Municipal Liquidity Facility.**

The New York Federal Reserve Bank on Thursday posted a schedule of fees to be paid to BLX LLC, the administrative agent for its Municipal Liquidity Facility, the \$500 billion borrowing program for states and local governments hurt by the coronavirus outbreak.

The schedule can be found on page 32 of the [administrative agent services agreement](#). Other details for the program can be found [here](#).

### **Reuters**

May 28, 2020

(Reporting by Ann Saphir; Editing by Sandra Maler)

---

## **U.S. States, Cities May Snub Fed Lending Program Over High Rates.**

CHICAGO — High borrowing costs will limit participation in a \$500 billion U.S. Federal Reserve short-term borrowing program set up to address state and city revenue shortfalls due to the economic fallout from the coronavirus outbreak, analysts said.

While Illinois, the lowest-rated U.S. state at a notch above junk, passed a bill late last week authorizing borrowing up to \$5 billion through the Fed's municipal liquidity facility (MLF), legislation is pending in few other states.

Cooper Howard, director of fixed-income strategy at the Schwab Center for Financial Research, said sample purchase rates released by the New York Federal Reserve on Wednesday are much heftier than what highly rated governments can obtain in the U.S. municipal market.

The Fed "wants to be the lender of last resort," he said, adding that for lower-rated issuers like Illinois, the program makes more sense.

Sample rates for issuers rated BBB-minus or Baa3 like Illinois would range from 3.84% for a one-year loan to 3.85% for a three-year loan, according to the Fed. That is lower than the current 400 to 411 basis-point spread over Municipal Market Data's benchmark triple-A yield scale for Illinois bonds with maturities from 2021 through 2023.

A BofA Global Research report on Wednesday projected borrowing under the MLF with its current terms would only total \$90 billion.

"If the Fed wanted to provide more relief to municipals we believe the Fed could lower the rate on the facilities, purchase more in the secondary market, and extend the tenor of their activity," the report said.

Besides Illinois, New York, California and Hawaii have bills directly related to the MLF, according to the National Conference of State Legislatures. New Jersey Governor Phil Murphy is pushing state lawmakers for emergency bond legislation.

New York's hard-hit Metropolitan Transportation Authority, which oversees the New York City

subway and commuter trains serving the New York City area, last week asked the Fed for direct access to the program.

**By Reuters**

May 28, 2020

(Reporting by Karen Pierog; editing by Megan Davies and Leslie Adler)

---

## **Fed Publishes MLF Sample Purchase Rates.**

Today, the New York Fed published the first sample purchase rates for the Municipal Liquidity Facility, and plans to release new rates each week solely to provide indicative pricing information to market participants.

**The MFL Sample Purchase Rates can be viewed [here](#).**

### **Key Points:**

- **Actual transactions will be priced according to the specifics of each transaction and may differ from these rates; and**
- **The indicative rates are not intended to be a measure of market conditions and should not be used as reference rates for other transactions**

### **Bond Dealers of America**

May 27, 2020

---

## **Fed Continues ETF Buying, Signals Muni Lending Facility Imminent.**

The Federal Reserve's weekly balance sheet update showed its holdings of exchange-traded funds continued to grow over the past week, while also signaling that a lending program for states and municipalities would soon be operational.

Fed holdings of ETFs invested in corporate debt rose to \$2.98 billion as of May 26, according to the data released Thursday, up from \$1.8 billion a week earlier. The ETF purchases, which began on May 12, are part of an emergency lending program designed to backstop large corporate borrowers amid the coronavirus pandemic.

Total assets held in the special-purpose vehicle set up for that program, known as the Secondary Market Corporate Credit Facility, was shown as a much larger amount. But a note with the release explained that this reflected the U.S. Treasury Department's equity contribution to the facility to shield the Fed from losses, of which 85% must be invested in non-marketable Treasury securities and reported in the net holdings of the program.

The Fed also added a line item for another emergency lending program for state and local government borrowers, known as the Municipal Liquidity Facility, which has yet to launch.

“On May 26, 2020, the Federal Reserve Bank of New York received Treasury’s equity contribution for the MLF program,” the explanatory note said.

## **Bloomberg Markets**

By Matthew Boesler

May 28, 2020, 2:06 PM PDT

---

### **Bickering and Confusion Stall \$150 Billion Meant to Boost States.**

- **Lawmakers and governors wrestle for control as revenue plunges**
- **Federal rules and local politics induce spending sclerosis**

Weeks after states began receiving billions in federal Cares Act money in response to the Covid-19 crisis, lawmakers are fighting for control of it, interest groups are pushing for a piece of it, and governments are dragging their feet on spending it.

In a bailout that critics now say was badly designed, states with revenue strangled by lockdowns got at least \$1.25 billion apiece, but aren’t allowed to use the money for anything other than unbudgeted costs related to the pandemic, even in areas with relatively few Covid-19 cases.

Many are cutting budgets and anticipating dismissing public servants even as trade groups, farmers and activists lobby for investments in business and infrastructure. Proposals have ranged from nonstarters — like using pandemic relief dollars to build a new Alabama statehouse — to the worthy but pricey, like providing broadband to every Vermont student. Many states are simply delaying spending in hopes that the rules will change.

“On the one hand, we have this big pot of money, and on the other we are looking at cutting our budget by 8%,” said Amy Shollenberger, a lobbyist with Action Circles, which represents poor and rural residents of Vermont. The state’s Cares funding is a sum equal to almost one-sixth of the state’s entire budget, but can’t be used to fund it. “There’s a lot of tension on both sides of that.”

Some states are bailing out small business, farmers and nursing homes or considering building housing for the homeless. The windfall must be spent by Dec. 31 or returned.

“There’s a lot of advocacy happening to retroactively make the coronavirus relief fund more flexible,” said Michael Wallace, program director for community and economic development for the National League of Cities. “There’s a huge mismatch of resources to need right now.”

The Cares Act passed in March, sending \$150 billion to states, large local governments and tribes with little instruction on how to use it. The largest states got the most, including more than \$9 billion for California. But each got at least \$1.25 billion, regardless of how much it suffered from the pandemic.

For example, Alaska has 412 confirmed virus cases and 10 deaths. It got \$1.25 billion that it can’t use to plug its \$1 billion budget hole. The state is sending a large percentage of its Cares funding to cities and counties too small to qualify for direct federal relief; the U.S. Treasury permitted the use a month after the Cares bill passed.

But local governments are also limited to spending the money on pandemic costs, which has led to

complaints and confusion. In Louisiana, which also is sending money downstream, so many local government leaders flooded a state-hosted Zoom conference on the money that they crashed it.

## **Hasty Work**

The Cares Act came together quickly and messily in Congress, in an attempt to stimulate an economy ravaged by lockdowns and the resulting loss of jobs and tax revenue. Senate Republicans — particularly Majority Leader Mitch McConnell — insisted the money for states shouldn't be used to address budget woes. McConnell has said as recently as this week that he doesn't want to bail out governments that he said had been fiscally irresponsible or that underfunded their pensions.

He has suggested that states should be allowed to file for bankruptcy instead. That could be disastrous for the \$3.9 trillion municipal bond market, which pays for things like roads, public transportation and schools.

States across the U.S. are now looking at budget cuts. Michael Leachman, vice president for fiscal policy at the Center on Budget and Policy Priorities in Washington, estimates \$765 billion in revenue shortfalls through fiscal 2022 for all 50 states combined. Because states have to balance budgets every year, their only option is cuts, which will delay economic recovery, he said.

The Cares Act rules are encouraging strapped states to look at big-ticket spending that can be justified as pandemic related: overhauling nursing homes or prisons where the virus spreads, helping businesses, stocking up on masks and gloves, or expanding broadband for online school.

And legislatures and governors have been fighting for control of the money.

Some battles are partisan. Kansas's Republican legislature met all through the night last week to pass a bill limiting Democratic Governor Laura Kelly's powers, including her control of the money. In New Hampshire, Democrats went to court to stop Republican Governor Chris Sununu from spending Cares money on his own — and lost. Colorado Republican lawmakers accused Democratic Governor Jared Polis of a spending "power grab."

In two states, the grab for cash was internecine. Mississippi's Republican-led legislature passed a bill taking away Republican Governor Tate Reeves's control of the money, prompting an angry back-and-forth.

"I cannot do my job without the funds that the Trump administration secured for and expects governors to use," Reeves said at a May 1 press briefing, before eventually agreeing to a compromise.

So far, Mississippi lawmakers have allocated \$300 million for small business aid.

In Alabama, Republican Governor Kay Ivey first ceded authority to the Republican legislature, then took it back after lawmakers proposed spending \$200 million on a new statehouse. Her plans for the \$1.9 billion include \$300 million for rural broadband and \$200 million for the state's notoriously overcrowded Department of Corrections.

Other states are delaying spending, while lobbying federal officials for permission to spend the money on their budgets. Some of those officials appear to be listening. A group of Republican senators led by John Kennedy of Louisiana met with President Donald Trump this month to propose loosening the restrictions.

The U.S. House of Representatives passed a new \$3 trillion stimulus bill May 15 that would include

more than \$1 trillion for state and local governments with fewer strings than the Cares Act money. The Senate has yet to take it up, and many provisions are seen as anathema to Republicans.

The delays, bickering and confusion are likely to persist without more clarity or flexibility, said Josh Goodman, senior officer with the Pew Charitable Trusts.

“The biggest part of the conversation is what they can’t use it for,” Goodman said.

## **Bloomberg Politics**

By Fola Akinnibi and Margaret Newkirk

May 28, 2020, 4:30 AM PDT

— *With assistance by Vincent Del Giudice, Christopher Brown, and Laura Davison*

---

### **[How Should States, Localities Spend CARES Act’s Coronavirus Relief Fund?](#)**

The CARES Act includes a \$150 billion Coronavirus Relief Fund (CRF) to help states, populous cities and counties, tribal governments, and U.S. territories cover unanticipated costs from the COVID-19 pandemic and its economic effects. Working from Treasury Department [guidance](#) and an associated “[Frequently Asked Questions](#)” document on the CRF’s permissible uses, the fund’s recipients should maximize its impact to help meet the extraordinary fiscal challenges they face.

Unfortunately, Treasury’s guidance forbids using the funds to offset revenue losses due to the pandemic. That’s a serious problem since state, local, and tribal revenues have dropped precipitously and federal relief to date (including the CRF) is far less than needed. States alone face an astonishing \$765 billion in shortfalls through June 2022, and revenues for localities, tribes, and Puerto Rico and other territories are also way down. Policymakers should quickly approve much more fiscal relief and rescind the CRF restrictions.

That said, states, localities, tribal nations, and territories should make the most of the CRF to meet the immediate crisis. As with all spending choices, states and other fund recipients should consider, in responding to the crisis, [how to build](#) anti-racist, equitable, and inclusive communities and an economic recovery whose gains are broadly shared. Fund recipients should:

[Continue reading.](#)

## **Center for Budget and Policy Priorities**

by Michael Leachman

Vice President for State Fiscal Policy

MAY 28, 2020

---

### **[Coronavirus Will Have an Unequal Impact on School Budgets.](#)**

**Districts that can largely support themselves with local tax dollars are in a better position**

## **as the economic downturn continues.**

As the coronavirus-driven slowdown pummels state budgets, the education funding gains many school districts saw in recent years—or were about to see—are in peril.

In Hawaii, where public schools are run by the state, the governor has proposed a 20% cut in teacher pay starting next month. Kansas lawmakers are likely to suggest education cuts to close a \$650 million budget gap just a year after the state resolved a decade-long lawsuit over insufficient school spending. Wichita Public Schools, the state's biggest district, has already approved \$18 million in budget cuts, while projecting a total budget hit of nearly twice that amount.

But, as it has with other facets of life and policy, the Covid-19 slowdown is affecting school districts differently. In Boston, public schools actually expect a \$26 million spending boost for the upcoming school year. In Montgomery County, Maryland, County Executive Marc Elrich is contemplating raising taxes to pay for staffing increases, primarily for public schools.

[Continue reading.](#)

### **Route Fifty**

By Liz Farmer

MAY 28, 2020

---

### **TAX - MICHIGAN**

#### **[Honigman Miller Schwartz and Cohn LLP v. City of Detroit](#)**

**Supreme Court of Michigan - May 18, 2020 - N.W.2d - 2020 WL 2530162**

Law firm operating offices within and outside of city appealed the ruling of the Tax Tribunal, which upheld city's imposition of an additional tax assessment under the Uniform City Income Tax Ordinance (UCITO).

The Court of Appeals reversed. City's application for leave to appeal was granted.

The Supreme Court held that calculation of revenue from services encompasses all services performed within the city without regard to where those services are delivered.

For purposes of the Uniform City Income Tax Ordinance (UCITO), "performed," under the payroll factor for calculating the taxable net profit of a business for activities that are not exclusively conducted within a city, means to carry out an action, and accordingly, compensation for "services performed within the city" is calculated on the basis of the location at which the employee has carried out the service for compensation.

City income tax statutes establish the framework upon which city taxes of a business are to be calculated under the business allocation percentage method where the net profits of a business derive from activities conducted both inside and outside of the city; only that portion of net profits from business activities conducted within the city is subject to the city tax.

For purposes of the Uniform City Income Tax Ordinance (UCITO), "rendered" means to do a service for another, and not to transmit to another or deliver; thus, the calculation of revenue from services

under the revenue factor, for determining the taxable net profit of a business, encompasses all services performed, i.e., done or carried out, within the city without regard to where those services are delivered.

---

## **[IRS Extends Safe Harbor for Renewable Energy Projects.](#)**

Companies facing delays in putting their renewable energy projects into service will get an additional year of safe harbor time from the IRS.

In [Notice 2020-41](#), the IRS said it is providing an extra year to the four-year “Continuity Safe Harbor” offered in existing guidance related to the production tax credit for renewable energy facilities under section 45 and the investment tax credit for energy property under section 48 because some companies are facing supply chain delays related to the COVID-19 pandemic.

If projects are placed in service in five years, construction will be deemed continuous.

The IRS also said it is providing assurance for taxpayers who already started construction by incurring 5 percent of project costs, and made payments for services or property and reasonably expected to receive such services or property within 3 ½ months. The notice provides that if the services or property are received by October 15 the taxpayer’s expectations at the time of the 2019 payment are deemed reasonable.

The guidance is useful to companies developing renewable energy projects and producing electricity from sources such as wind, biomass, geothermal, landfill gas, trash, and hydropower. The safe harbor is also available for taxpayers using technologies such as solar panels, fuel cells, microturbines, and combined heat and power systems, the IRS said.

---

## **[IRS PLR: Investment in Opportunity Fund Deemed Timely.](#)**

The IRS ruled that a taxpayer’s investment in a qualified opportunity fund was deemed timely filed because the taxpayer reasonably relied on a qualified tax professional and the government’s interests would not be prejudiced by granting the relief.

[Read the IRS Private Letter Ruling.](#)

---

## **[A Looming Financial Meltdown For America's Schools.](#)**

Austin Beutner looked haggard, his face a curtain of worry lines. The superintendent of the second-largest school district in the nation sat at a desk last week delivering a video address to Los Angeles families. But he began with a stark message clearly meant for another audience:

Lawmakers in Sacramento and Washington, D.C.

“Cuts to funding at schools will forever impact the lives of children,” Beutner said less than a week after California’s governor called for emergency cuts in education spending. The harm children face

from these cuts, Beutner warned, “is just as real a threat to them as is the coronavirus.”

[Continue reading.](#)

IOWA PUBLIC RADIO

By CORY TURNER • MAY 26, 2020

---

## **NABL: Delay in Direct Pay Bond Payments**

NABL members are receiving inquiries from their clients regarding delays in timely payment of refundable tax credit payments for direct pay bonds, including build America bonds.

As we understand it based on the information posted on the Internal Revenue Service (IRS) website, direct pay subsidy payments are delayed because the forms on which they are processed (i.e., the 8038-CP) are paper returns with no electronic alternative and the IRS is currently unable to process individual paper tax returns. As a result, requests from issuers with direct payments will be delayed until processing centers are able to reopen and in some cases direct payments may not be received until after the corresponding interest payment date.

You can find updated information on the IRS website at the following location: [IRS Operations During COVID-19: Mission-critical functions continue](#), under Paper Tax Returns.

---

## **MSRB Provides Temporary Fee Waivers for Transactions with the Federal Reserve's Municipal Liquidity Facility.**

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today filed a proposed rule change with the Securities and Exchange Commission (SEC) to temporarily waive market activity fees for municipal market transactions related to the Federal Reserve’s Municipal Liquidity Facility (MLF).

“The MSRB remains committed to supporting the industry during the COVID-19 crisis,” said MSRB Interim CEO Nanette Lawson. “Waiving fees for MLF transactions is a meaningful way to be helpful at a time of unprecedented financial strain around the country. Meanwhile, we continue to provide timely data, market expertise and responsive regulation to help states, communities and all municipal market participants.”

The MSRB recently [loaned the expertise](#) of Chief Market Structure Officer John Bagley to the Federal Reserve Bank of New York to help operationalize the MLF. The MLF was established to purchase certain short-term municipal securities of states, cities and counties and other governmental entities to help provide them with the funding needed to deliver essential public services as they grapple with the effects of the COVID-19 pandemic.

The MSRB is providing a temporary waiver of underwriting, transaction and technology assessments under its Rule A-13 for brokers, dealers and municipal securities dealers facilitating MLF transactions. The waiver is temporary and only applicable during the duration of time the MLF is purchasing municipal securities, which is currently scheduled to cease on December 31, 2020.



- [Read the notice.](#)
- [Access additional information on the MSRB's COVID-19 response, including data and regulatory relief efforts, on its dedicated information page.](#)

Date: May 28, 2020

Contact: Leah Szarek, Director of Communications  
202-838-1500  
lszarek@msrb.org

---

## **[Opportunity Zone Fundraising Trends, with Nick Parrish.](#)**

What Opportunity Zone fundraising trends can be gleaned after raising \$465 million? And what's next for Opportunity Zones in the midst of the coronavirus pandemic? Nick Parrish is managing director and head of business development at Cresset Partners, a multifamily office that specializes in alternative investments in real estate, private capital, and Opportunity Zones. Their first QOZ fund closed earlier this year after raising \$465

[Read More »](#)

### **Opportunity Db**

May 27, 2020

---

## **[HUD Releases Toolkit to Guide Local Leaders in Developing Strategic Plans for Opportunity Zones.](#)**

The U.S. Department of Housing and Urban Development (HUD) published a toolkit guide Thursday to provide local leaders with strategies for promoting economic development in federal opportunity zones (OZs). "[Opportunity Zones Toolkit Volume 2: A Guide to Local Best Practices and Case Studies](#)," includes background on the incentive, strategies and case studies of successful examples.

### **Novogradac**

Friday, May 29, 2020

---

## **[IRS Notice Extends Continuity Safe Harbor to Five Years for PTC, ITC Properties Affected by COVID-19-Related Delays.](#)**

The Internal Revenue Service today issued a notice to extend the continuity safe harbor for renewable energy production tax credit (PTC) and investment tax credit (ITC) properties that began construction in 2016 or 2017. [Notice 2020-41](#) adds an extra year to the four-year continuity safe harbor in existing guidance, stating that those projects placed in service within five years will be deemed continuous. The extension is due to industry-wide delays in the supply chain caused by the COVID-19 pandemic. The notice also extends the 3½-month continuity safe harbor for taxpayers to

satisfy the beginning-of-construction requirements to include any services or property received by Oct. 15, 2020. The notice will be discussed **June 25** in an [upcoming Novogradac webinar](#). Stay tuned for details.

For community development, affordable housing and renewable energy updates related to COVID-19, see Novogradac's [dedicated page](#).

## **Novogradac**

May 27, 2020

---

### **Fitch Ratings Updates Criteria for US HFAs: Mortgage Insurance or Guarantee Fund Programs.**

Link to Fitch Ratings' Report(s): [U.S. Housing Finance Agencies: Mortgage Insurance or Guarantee Fund Program Rating Criteria](#)

Fitch Ratings-New York-27 May 2020: Fitch Ratings has published an updated criteria report titled 'U.S. Housing Finance Agencies: Mortgage Insurance or Guarantee Fund Program Rating Criteria.' The report replaces the existing criteria dated July 2, 2019.

The scope of the report has been updated to include local housing finance agencies (HFAs) that are similar to state HFAs in terms of portfolio size, debt outstanding and management oversight. No changes to the ratings of existing transactions are anticipated as a result of the application of the updated rating criteria.

The full report is available at [www.fitchratings.com](http://www.fitchratings.com).

Contact  
Mikiyon Alexander  
Director  
+1-646-582-4796  
Fitch Ratings, Inc.  
33 Whitehall Street  
New York, NY 10004

Kasia Reed  
Analytical Consultant  
+1-646-582-4864

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

Additional information is available on [www.fitchratings.com](http://www.fitchratings.com)

---

### **Fitch Ratings Updates Thermal Power Project Rating Criteria.**

Link to Fitch Ratings' Report(s): [Thermal Power Project Rating Criteria](#)

Fitch Ratings-London-27 May 2020: Fitch Ratings has published an update of its “Thermal Power Project Rating Criteria”.

The update includes removing material that is covered separately in the related “Infrastructure and Project Finance Rating Criteria” report, such as details in relation to debt structure, and the completion risk key rating driver assessments covered in the “Completion Risk Rating Criteria” report. The update further harmonises relevant sections with the “Renewable Project Rating Criteria” report. Overall, the intention is to reduce repetition and description of fundamentals that are not directly unique to this sector rating methodology.

Fitch does not expect any rating changes as a result of the updated criteria. The report replaces the version dated 24 March 2020 and is available at [www.fitchratings.com](http://www.fitchratings.com) or by clicking on the link above.

Contact:

Kim Locherer  
Director  
+44 203 530 1918  
Fitch Ratings Limited  
30 North Colonnade  
London E14 5GN

Andrew Joynt  
Senior Director  
+1 212 908 0594

Sajal Kishore  
Senior Director  
+65 6796 7095

Alex Nouvakhov  
Director  
+1 646 582 4876

Greg Remec  
Senior Director  
+1 312 606 2339

Alvaro Utrera  
Director  
+34 91 076 1981

Media Relations: Athos Larkou, London, Tel: +44 20 3530 1549, Email: [athos.larkou@thefitchgroup.com](mailto:athos.larkou@thefitchgroup.com)

Additional information is available on [www.fitchratings.com](http://www.fitchratings.com)

---

**[S&P: A Bumpy Recovery Is Ahead For Hospitals And Other Health Providers](#)**

## [As Non-Emergent Procedures Restart](#)

### **Table of Contents**

- Government Funding Is Providing Significant Dollars To Help Liquidity
- Acute-Care Providers Begin To Shift Focus To Reactivation And A New Normal
- Most For-Profit Health Provider Subsectors Feel The Pain

### **Key Takeaways**

- Credit analysis will distinguish near-term business disruption from the long-term credit story.
- The credit impact for health care services is neutral or negative.
- Many health service providers are receiving significant operating support and liquidity assistance, but not enough to overcome the extent of near-term cash flow and liquidity decline.
- Elective procedures are beginning to ramp up slowly, although geographically unevenly.

[Continue reading.](#)

---

## [S&P: Hospitality Sector Rating Outlook Revised To Negative Amid COVID-19 Impact.](#)

**(Editor's Note:** In the original report published April 3, 2020, bond ratings on Dickinson, Glendale, Hillsborough County, and Orlando were misstated in the table as a result of an administrative error. A corrected version follows.)

FARMERS BRANCH (S&P Global Ratings) April 3, 2020-S&P Global Ratings revised the outlook to negative from stable and affirmed numerous long-term ratings and underlying ratings on bonds secured by priority-lien tax revenue pledges. The outlook revision and rating action are taken on bonds secured by hospitality taxes (including hotel occupancy taxes and sales taxes on prepared food and beverage sales). The negative outlook reflects our view that the affected credits face at least a one-in-three likelihood of a negative rating action over the intermediate term (generally up to two years).

As the COVID-19 pandemic persists and the social risk from the spread of the virus grows, the implications on the leisure and hospitality sector have been acute and dramatic. Restrictions on travel and consumer activity-driven by social distancing and stay-at-home orders intended to flatten the curve and slow the viral infection rate-have led to hotel booking cancellations and deferrals, convention and conference cancellations, and the widespread closure of bars and restaurants. Although the closure decisions are prudent, in our opinion, the health and safety aspect of this action in the near term will materially affect coverage, financial results, and liquidity, which we believe might deteriorate further as a result of the onset of a global recession, and is reflective of our analysis of environmental, social, and governance risks. While the precise impact on bonds secured by hotel occupancy taxes and by sales taxes on prepared food and beverages is unknown, we believe that the decline in pledged revenue will be precipitous and likely last well into the second quarter.

With almost 200 million Americans either under shelter-in-place orders or being urged to stay at home in a concerted effort to contain the spread of COVID-19, we believe that the longest economic expansion in U.S. history has come to an abrupt end. (See "It's Game Over For The Record U.S. Run;

The Timing Of A Restart Remains Uncertain,” published March 27, 2020 on RatingsDirect.) S&P Global Economics now forecasts a global slowdown in GDP growth, with a base case assumption of a 1.3% decline in U.S. GDP in 2020 and annualized declines of 2.1% in the first quarter and 12.7% in the second quarter. We also believe that there is a high risk to credit if the coronavirus outbreak widens substantially in the U.S., with the impact being a protracted and more prolonged period of coronavirus-containment measures that further amplify the current U.S. economic recession.

[Continue reading.](#)

---

## **FAF Issues 2019 Annual Report, “Standards that Work for Everyone”**

**Norwalk, CT—May 26, 2020** — The Financial Accounting Foundation (FAF) today released its online 2019 Annual Report. The report is available in a downloadable PDF and a website friendly version. Both versions of the annual report are available at [www.accountingfoundation.org/everyone](http://www.accountingfoundation.org/everyone).

The annual report theme is “Standards That Work for Everyone.” It provides an outline of how the Financial Accounting Standards Boards (FASB) and the Governmental Accounting Standards Board (GASB) work together to obtain fresh perspectives on effective approaches to standard-setting—and how the FAF supports that process. For the FASB and the GASB, the report includes leveraging expertise and resources, sharing research, and collaborating to educate stakeholders with joint webinars and CPE programs. For the FAF, the report includes providing the standard-setting Boards with the tools and support they need to serve our stakeholders.

The 2019 Annual Report includes:

- Letters from FASB, GASB, and FAF leaders
- Snapshots of 2019 outreach and other activities that contribute to making standards that work for everyone, and
- Complete 2019 management’s discussion and analysis and audited financial statements (previously posted to the FAF website).

The online version of the report also includes complete lists of all FASB and GASB advisory group members, including the Emerging Issues Task Force and the Private Company Council.

---

## **GASB Outlook E-Newsletter - Spring 2020**

[View the GASB Newsletter.](#)

[05/26/20]

---

## **The State Pension Crisis Goes Beyond the Big Blue States.**

**Politicians and fund administrators everywhere wasted the reform potential of an 11-year bull market.**

Legislators from Illinois and New Jersey provoked an outcry in April when they asked Washington to bail out their failing pension systems. Senate Majority Leader Mitch McConnell offered instead to let states file for bankruptcy. His message: Don't expect aid for problems that have little to do with fighting the novel coronavirus and the economic slowdown accompanying it.

The crisis in state pension systems is a result of decades of fiscal mismanagement. The problem, however, goes well beyond deeply indebted Illinois and New Jersey. Many state and municipal retirement funds have been on an unrelenting downward trajectory for 20 years, failing to gain ground even during the 11-year bull market that followed the 2007-09 recession. Now, with the economy in tatters because of the coronavirus, more government pension systems are close to a crisis, and taxpayers are running out of time to demand a solution.

The figures are startling. At the end of the 1990s, most pension systems were fully funded, with no debt. But the steep market declines of 2000 and 2001 drove funding levels down to 89% by 2003, and debt soared to \$233 billion, according to Pew Research. Though pension administrators assured taxpayers the funds would rebound, the plunge in financial markets in 2008 sent systems reeling again. By 2010 state funds were on average only 75% funded, and unfunded liabilities had tripled to \$750 billion. Years of subsequent market gains haven't reversed the trend. By 2018 state pension debt had reached \$1.2 trillion, and the latest market downturn has almost certainly sent it soaring again.

This fiscal nightmare stems in part from politicians' habit of increasing employee benefits while markets are booming, thereby squandering fund surpluses. California's Legislature gave workers rich new benefits in 2000, allowing some 200,000 employees to retire with full pensions at 55 and granting Highway Patrol officers pensions equal to 90% of their final salaries. Although executives of the California Public Employees' Retirement System, which was 120% funded at the time, assured legislators they could pay those benefits without additional contributions from governments, subsequent market downturns have forced the state and local governments to increase their annual contributions to \$15 billion last year, up from \$362 million in 2000. Calpers' funding level, meanwhile, shrank to 70% last year—and is even lower now.

Politicians have consistently neglected to contribute to these systems even during good budgetary times, preferring to fund more popular programs. While the economy was expanding from 2015-17, 27 states failed to put enough money into pensions systems to reduce their debt, according to a Pew survey.

Meanwhile, elected officials and pension administrators have endorsed overly optimistic economic assumptions that made their systems look affordable. In 2007, for instance, most state funds projected an annual return of 8% or more on their investments. Under intense criticism, many have now pared down projected returns to 7.25%, but doing so has added billions of dollars of debt. Here's a reality check: Over the past decade, state pension systems averaged only 6.8% actual returns, according to Wilshire.

Even before the most recent market drop, a striking number of funds were already at or dangerously close to crisis levels. A 2019 study by Milliman identified a dozen state and big municipal plans with less than half the funding needed to fulfill their obligations, and another 14 with funding below 60%. That included the Pennsylvania school retirement system (54%), South Carolina's retirement system (54.1%), the Massachusetts teachers' system (54.8%), and the state plans in Colorado (58.8%) and Missouri (59%).

This is worrisome because, as Calpers officials admitted after a 2015 review of their operations, once a pension system slips below half-funded, it may be impossible to save it no matter how much

taxpayers contribute. The money that should be earning market returns simply isn't there. That's why it's urgent for taxpayers to demand reforms now.

One alternative, proposed in 2015 by a bipartisan New Jersey study commission, would close the state's deeply indebted defined-contribution plan and migrate workers into a cash-balance program that provides a modest annuity roughly equivalent to Social Security, supplemented by a 401(k)-style savings plan. The Garden State's powerful unions blocked that plan, but other states might consider adopting it.

Another option, enacted by Utah, allows workers to join their defined-benefit plan only if they agree to pay any extraordinary costs incurred from market downturns. Otherwise, workers enroll in a 401(k)-style contribution plan that limits taxpayer liability.

For some pension funds, stronger medicine is necessary. The New Jersey teachers' retirement plan is 26.5% funded, according to Milliman, and pays nearly \$1.7 billion more in pensions every year than it receives in contributions. Although Mr. McConnell backed off his state-bankruptcy plan, in 2016 the Manhattan Institute proposed model legislation that would allow states to place their pension systems alone in bankruptcy to reorganize.

There are other options for reform, too. But they all require something that's been missing: political will. Something else that's needed, time, is running out.

## **Wall Street Journal Opinion**

By Steven Malanga

May 29, 2020 6:34 pm ET

*Mr. Malanga is a senior fellow at the Manhattan Institute and senior editor of City Journal.*

---

## **[How State Bond Banks Could Supercharge Fiscal Federalism.](#)**

**With an expanded role, they could serve as an efficient conduit between local governments of all sizes and federal financial resources for revenue shortfalls and infrastructure.**

The COVID-19 pandemic has hit states, counties, cities, school districts and other jurisdictions and public agencies like a financial tidal wave. In March, the municipal bond market became fiscal flotsam. Fortunately, the Federal Reserve System and Congress acted more swiftly and decisively than ever before and built a makeshift breakwater.

Most Governing readers are well aware of the multi-trillion-dollar federal bailouts of large and small companies, which were funded by Congress and implemented through the Treasury Department and the Federal Reserve. But some may not know that the Fed also surgically injected unprecedented liquidity into the municipal bond market. Public officials at the state and local level need to learn how this works and what it portends for a more resilient future in muni finance. Then the opportunity to fully leverage fiscal federalism becomes more obvious.

[State bond banks](#), which consolidate local bond issues to garner better interest rates and lower issuance costs, could supercharge the Fed's municipal-market operations and kickstart local infrastructure projects whenever Congress opens its construction checkbook. But to function as

hubs in the intergovernmental finance network, the bond banks would need to expand their charters.

[Continue reading.](#)

GOVERNING.COM

GIRARD MILLER, FINANCE COLUMNIST | MAY 26, 2020 | OPINION

---

## **S&P: Sunshine State's Tourism Slump Clouds Budget Outlook**

With Florida's (AAA/Stable) general revenues declining nearly 28% for the month of April relative to estimates, the state's positive momentum for much of last year has all but stalled as recessionary headwinds intensify. Additionally, as the unwelcome hurricane season approaches, the state's phased efforts to safely re-open its economy could be further challenged by a natural disaster. While the short-term economic outlook remains murky, S&P Global Ratings believes the state is well positioned to address the mounting challenges over the near term supported by its strong structural budgetary management and reserves.

Coinciding with the beginning of spring break, the final quarter of the fiscal year is typically when general revenues peak. With the onset of the COVID-19 pandemic in early-to-mid March, however, the state's economic activity largely began to idle, reflecting a considerable slide in its sales tax collections. With two months left in collections, the state's general revenues would have to increase at least 11% more than initially estimated to make up the difference. Additionally, while its total net collections for the fiscal year are down 2.6% relative to forecast, April collections largely reflect economic activities that occurred in March just as economic activities were slowing. The Office of Economic and Demographic Research noted, however, that certain declines, including corporate income taxes, highway safety fees, and corporate filing fees, reflect deferments in payment now due in June and beyond. Collectively, these revenue sources represented 35% of the total revenue collection decline for the month. Given our baseline assumption that U.S. economic activities will not meaningfully rebound until later in the third and fourth quarters of the year, we do not anticipate the state's collections quickly returning to near-estimated levels, but rather gradually growing as economic activity improves. (For additional information, please see "An Already Historic U.S. Downturn Now Looks Even Worse," published April 16, 2020, on RatingsDirect.)

[Continue reading.](#)

---

## **COVID-19: Voluntary COVID-19 Disclosures -- Time to Share Your Approach With the Marketplace?**

On May 5, 2020, the Municipal Securities Rulemaking Board found that continuing disclosure references to the coronavirus pandemic ("COVID-19") had jumped 25 percent in the course of a single week. After a statement by the Securities and Exchange Commission ("SEC") encouraging issuers to make voluntary COVID-19 disclosures, one week later the number of disclosure references had jumped another 30 percent. Of 50,000 municipal issuers, currently approximately 5,000 have made voluntary COVID-19 disclosures.



The news cycle is dominated by events that are being interpreted through the lens of the pandemic, and municipalities are challenged to provide updates to the marketplace as to the impact of COVID-19 on governmental revenues, operations, and forecasts. Whether crafting your pandemic disclosure for an offering document, or evaluating what, if anything, to voluntarily disclose via EMMA, members of K&L Gates public finance team analyze in this alert the current guidance from the SEC and our thoughts on how to proceed with your pandemic disclosures.

### **The SEC Encourages Voluntary Supplemental COVID-19 Disclosure**

On May 4, 2020, the SEC issued a statement encouraging municipal issuers to make voluntary disclosures describing their approach to the COVID-19 pandemic. The SEC noted that the vast majority of municipal securities are held by retail investors who benefit from the tax-exempt status and therefore may need additional information, as opposed to corporate securities more often held by large pension funds or retirement accounts.

The SEC's statement acknowledged the challenges of providing disclosure as the pandemic unfolds—the difficulty of describing current financial status and operating conditions in the midst of circumstances that may be changing on a daily and weekly basis; the lack of audited review; and the uncertainty of providing projections based on future circumstances based on changing estimates and assumptions. Nevertheless, the SEC recommended that issuers provide current issuer- and security-specific information for the benefit of investors and the marketplace.

With regard to projections, the SEC encourages issuers to disclose projections regarding the potential future impact of COVID-19 on their financial and operating conditions, despite uncertainty around future operating conditions, resource needs, and evolving strategies to respond to the pandemic that will be subject to change.

From the SEC's perspective, concerns about the liability from the voluntary disclosures were minimized when compared to the value of the information to the marketplace, by (1) the ability to wrap the disclosure in disclaimers and cautionary language, (2) the need to keep consistent with other required issuer disclosure, and (3) the SEC's expectation that it would not penalize issuers for good faith disclosure efforts.

Nonetheless, the SEC acknowledges that each issuer will need to make its own determination, and will need to evaluate its concerns about liability in consultation with its counsel.

### **Suggested Content for Voluntary COVID-19 Disclosure**

The SEC statement suggested that issuers consider disclosure covering:

(a) **Operations and Financial Condition.** Along with every sector of the economy, it is expected that COVID-19 is also materially adversely impacting municipal finances, operational availability, and ability to provide services at typical levels, and impacts to costs that municipalities must bear. Issuer disclosure could include information regarding: (1) current operational and financial status, including decreases in revenues and delays in collection of revenues; (2) impacts to operational and financial condition, including unbudgeted costs; and (3) how operational and financial condition may change the pandemic response evolves. The SEC notes that historic comparisons are unlikely to be informative in the context of the pandemic.

(b) **Sources of Liquidity.** The SEC suggests municipalities disclose cash on hand, reserves or other funds or liquidity facilities the municipality has access to, what

liquidity limitations may exist, and whether current liquidity is expected to be adequate to fund essential services and make timely debt service payments.

(c) **Federal, State, and Local Aid.** What aid sources the issuer has or is looking into and when such aid may be available, and what material terms or conditions are attached to the aid that may affect the finances or operations of the municipality.

(d) **Reports Prepared for Other Governmental Purposes.** Where existing reports are being created with material information on municipal finances and operations, they should be leveraged for disclosure, and/or made available to investors through EMMA rather than only being available on an entity's website.

## **Liability Concerns in Sourcing Information for Voluntary Disclosure**

Given the SEC's recent history in carefully examining municipal disclosures, issuers may have liability concerns in making a voluntary disclosure where not required by existing continuing disclosure undertakings. We believe there are several options for creating meaningful disclosures to the marketplace without generating material additional risk of liability.

Choosing to create a voluntary disclosure is easier where it can be based on existing public records you have generated in response to the pandemic as it has evolved. Your entity may have already prepared and publicly discussed with your governing body items such as (a) interim budget updates, (b) updated revenue forecasts, (c) revised service or utilization expectations, (d) COVID-19 response plans for operations and staffing, or (e) communications to the public describing your situation. Historically, the SEC has deemed such public records as communications to the marketplace, and thus there may be little additional risk in sharing such data on EMMA, with appropriate disclaimers and cautions.

Your municipality may also consider providing general guidance that is descriptive of the COVID-19 impact without sharing specific figures and forecasts, in an effort to provide a more "evergreen" update that would not need to be updated with every new development related to the pandemic and in your, state, or federal responses. You may wish to discuss (a) general economic impacts to revenues and timing of receipts, as experienced to date and what is reasonably expected in the coming months; (b) changes undertaken, and that you reasonably expect to undertake, to respond to COVID-19 in your operations, staffing, safety measures, service levels, or availability; and (c) anticipated changes to budgets and your costs given both the demands and the limitations placed on your entity by COVID-19.

Where existing public records or general guidance is not available, we recommend consulting with your counsel and bond counsel to evaluate your situation and arrive at a tailored determination as to whether or not to create a disclosure.

## **K&L Gates**

by Scott A. McJannet & Cynthia M. Weed

May 28, 2020

Copyright 2020 K & L Gates

---

## **LIBOR Transition - Issue 5: Greenberg Traurig**

Welcome to Greenberg Traurig's LIBOR Transition Newsletter, where we provide updates, analysis, and occasional commentary on the latest developments relating to the highly anticipated phasing-out of LIBOR at the end of 2021 – just 19 months from now.

### **Corporate Trust and Structured Finance**

LIBOR is the reference rate found in many corporate trust transactions, and nearly all structured finance transactions. Floating rate notes (and swaps) in corporate and municipal bond issuances are tied to LIBOR, as are the certificates (and swaps) in residential mortgage backed securities (RMBS) and other asset-backed securitizations. What does the LIBOR transition mean for trustees and others who administer these transactions under the governing agreements for the benefit of investors?

Legacy trust agreements may pose the greatest challenge. The maturity of corporate and municipal bonds typically measures in decades. The same is true of the mortgages and other debt instruments that underlie asset-backed securitizations. Trustees are still administering deals dating back to the 2000s, or earlier, when no one contemplated the end of LIBOR. A typical trust agreement (e.g., pooling and service agreement, indenture, trust agreement) from the early-to-mid 2000s often requires the trustee to designate a new rate if LIBOR is temporarily unavailable. For example, the trustee (or securities administrator or paying agent) “shall designate an alternative index that has performed, or that the Trustee expects to perform, in a manner substantially similar to [LIBOR].” In the absence of manifest error, the trustee’s designation and ensuing interest calculation “shall be final and binding.”

However, making such a unilateral designation may bring litigation risk. A consensus is developing among the Alternative Reference Rates Committee (ARRC) that banks use the new Secured Overnight Financing Rate (SOFR) as an alternative to LIBOR. Investors may argue that SOFR – as a “risk free,” overnight rate secured by U.S. Treasuries and calculated based on actual market transactions – inherently cannot be “substantially similar” or “comparable” to LIBOR, as may be contractually required. Even if the methodology for spread adjustments to make SOFR more comparable to LIBOR were agreed upon by all market participants, documentation signed many years ago never contemplated for the adjustment of the applicable margin. In practice, SOFR, even with a spread adjustment, may reduce interest payments to investors, to their detriment and the issuer’s benefit. Litigation risk may also increase if the new reference rate would result in some classes of investors receiving comparably less under the cash flow waterfall, while others would receive more. With the agreement silent, a trustee may be put in the awkward position of exercising discretion regarding the “fairness” of applying a recommended spread adjustment methodology. Beyond that, any unilateral selection also may expose the trustee to charges of conflict of interest – for example, if the new reference rate would somehow increase the bank’s compensation, or if a party questioned why the trustee in its banking capacity used one reference rate for its own deals and chose another for the trust or securitization.

For these reasons, and absent a provision delegating any such decision to an independent third party, a trustee may seek to further mitigate potential liability by putting it to the investors, or even a court, to approve or select a new reference rate. In charging the trustee with the choice of selecting a replacement rate, the legacy trust agreements may have envisioned a short-term disruption of LIBOR, like a technology failure, but not LIBOR’s permanent cessation. As a result, a trustee may need to consider other methods, potentially in combination, to administer the transition away from LIBOR. Considerations include the following:

1. **Investor consent.** Legacy trust agreements in the United States typically do not expressly provide for investor consent as a means to insulate the trustee from liability in exercising its authority. Still, if all investors agreed to the new reference rate beforehand, the trustee may be well-positioned to avoid liability. But, obtaining unanimous investor consent presents significant challenges. First, the potential disparate impact of a new rate on different classes of investors may preclude unanimity. Second, a consent solicitation is an up-or-down vote, often without a forum for dialogue among competing interests. Third, the logistics may prove difficult: affirmative unanimous consent may require an actual response from every investor, numbering in the hundreds or thousands. If the governing trust agreement contained a negative consent provision, the trustee might be able to use an alternative reference rate if the requisite percentage of investors did not object within an established timeframe. Without this express provision, however, a negative consent solicitation may not be enough to shield the trustee from liability, since a later-dissenting investor may allege inadequate notice or another misstep that supposedly prevented its voice from being heard. Moreover, given the competing interests among different classes of investors, there may be dissent. Finally, amendments that alter the interest rate on a note or a bond typically require affirmative consent of every affected investor.
2. **Investor direction.** By contract, a trustee typically is not be liable for any action taken by it in good faith in accordance with the direction of a specified threshold of investors. For example, a fairly typical provision in a legacy trust agreement provides: “The Trustee shall not be personally liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Certificate-holders of any Class holding Certificates which evidence, as to such Class, Percentage Interests aggregating not less than 25% as to the time, method and place of . . . exercising any trust or power conferred upon the Trustee under this Agreement.” Investor direction addresses most, but not all, of the issues with a consent solicitation. It is a contractual mechanism to shield the trustee from liability, and it does not require investor unanimity, or an affirmative response from all investors. Again, however, the potentially disparate impact of a new reference rate among different classes of notes, bonds or residual interests may prevent the trustee from reaching the threshold for direction across all classes. And, like a consent solicitation, a request for direction is an up-or-down vote that may not provide a forum to resolve differences.
3. **Trust instruction proceeding.** A trust instruction proceeding (TIP) may insulate a trustee from liability in selecting or designating a new reference rate. In a TIP, the trustee asks the court to resolve a question of trust administration, but only after all interested parties receive notice and have an opportunity to be heard. The court’s final order is binding on all investors. Significantly, a TIP provides that the trustee has satisfied its duties to investors and is not subject to liability if it acts in accordance with the order. The final order also may provide for payment of the trustee’s related fees and expenses. Statutory provisions governing TIPs are a key part of the Uniform Trust Code, which has been enacted in 34 states as of Jan. 1, 2020. New York has not adopted the code, but it provides for a similar “special proceeding” to resolve issues of trust administration. N.Y.C.P.L.R. 7701.

A trustee may commence a TIP to, among other things, (1) confirm or ratify its conduct, (2) resolve an ambiguity in the trust documents, or (3) resolve disagreements with, or between, investors. Designating a new reference rate to replace LIBOR implicates these concerns. A consent solicitation or request for direction may be a prelude to a TIP, as each helps frame the issue and flesh out the competing positions. The trustee prepares a petition seeking judicial instruction or direction, and provides widespread notice to all beneficiaries and other interested persons. Any interested person who objects to the relief or wishes to be heard may appear in the TIP. If the petition is contested, the TIP proceeds as a traditional lawsuit, although ideally on a faster track, culminating in an

evidentiary hearing and then a judicial decision that binds all parties and protects the trustee from liability.

Accordingly, a trustee may prefer the option of a TIP in which the court approves or otherwise designates the LIBOR replacement rate. But a TIP is not without its decision points and potential pitfalls, which a trustee should consider beforehand. For example:

- **Trustee's position.** Trustees may decide whether to take a position on the new reference rate, or simply ask that the court resolve a dispute among investors. If a trustee has a preference – for instance, a new reference rate that would best fit its own systems and operations in administering the trust for the benefit of investors – there may be little reason to remain neutral. Mechanical issues may arise when switching from a term-rate (like LIBOR), where the parties know the payment amount in advance of the interest period, to an average in-arrears rate as term SOFR may become, where the parties do not know the amount until the end of the interest period. Furthermore, the spread adjustment methodology may also lead to issues as to its sufficiency and as to its fairness in compensating for the lower SOFR rate. These types of changes may affect waterfalls and reporting obligations.
- **Consistency.** Trustees, securities administrators, and paying agents typically administer thousands of transactions. Their primary interest may be in a replacement rate that is consistent across transactions, no matter which reference rate ultimately is designated. A trustee may wish to explore structuring the TIP process across trusts to help achieve consistency and to reduce the legal fees borne by any single transaction.
- **Timing.** With LIBOR currently anticipated to end at the close of 2021, trustees may wish to move quickly. TIPs may be expedited, but recent TIPs to approve the settlements of RMBS loan repurchase actions have taken a year or more to resolve. The sheer volume of TIPs on the LIBOR transition may compound the time crunch.
- **Disclosure.** Throughout this process, a trustee should consider the disclosures it makes to investors about the process for selecting a new reference rate and transitioning from LIBOR, including anticipated steps and timing.

## Recent Developments.

- **ISDA publishes report summarizing the final responses to its consultation on the implementation of pre-cessation fallbacks for derivatives referencing LIBOR.** On May 14, 2020, the International Swaps and Derivatives Association (ISDA) released a report about findings of its [consultation](#) launched on Feb. 25, 2020, which indicated that the majority of respondents supported including pre-cessation triggers in the amended 2006 ISDA Definitions for LIBOR for new derivative trades and including pre-cessation triggers for existing derivative trades in an ISDA Protocol to which market participants could adhere to amend their trades. The sole pre-cessation trigger would be the unrepresentativeness of LIBOR. This issue relates to the “zombie LIBOR” issue where LIBOR ceases to be representative of the London interbank offered rate because of a lack of quotations from banks, even though LIBOR is still being published. ISDA expects to publish amendments to the 2006 ISDA Definitions to incorporate the fallbacks for new trades in July 2020, which would align the derivatives market with pre-cessation triggers that had previously been proposed by the Alternatives Reference Rates Committee (ARRC). [View the ISDA report here.](#)
- **ARRC Announces Recommendation of a Spread Adjustment Methodology for Cash Products.** On April 8, 2020, the ARRC announced that it is recommending a spread adjustment methodology for USD LIBOR-indexed products to SOFR based on “a historical median over a five-year lookback period.” This methodology is consistent with the methodology expected to be applied for derivatives products, and in theory will prevent any discrepancies between the cash and the derivatives markets. Any discrepancy between the cash and derivatives market may lead to

hedging issues for borrowers under loan facilities. In addition, for consumer products, the ARRC is recommending a one-year transition period to this five-year median spread adjustment methodology. View the ARRC press release [here](#).

## **Parting Shot**

### ***LIBOR transition within the context of COVID-19***

Amid the Coronavirus Disease 2019 (COVID-19) pandemic, “steady as she goes” seems the current position of the different regulators in charge of coordinating an orderly transition from LIBOR to alternative reference rates, in particular, after the UK’s Financial Conduct Authority (FCA) [confirmed](#) on April 29, 2020, that “firms cannot rely on LIBOR being published after the end of 2021”.

Notwithstanding that the FCA has [extended the deadline](#) for ending the use of the LIBOR interest rate benchmark in new loans until the end of March 2021 (from September 2020), giving more time to banks already dealing with COVID-19-related issues, the FCA has stayed course and not extended the use of LIBOR past the original deadline of end of 2021.

Meanwhile, authorities around the world are preparing for the discontinuation of LIBOR as originally announced. For example, regulators in [Australia](#) and [South Korea](#) have encouraged market participants to assess their exposure to LIBOR and begin their transition to alternative rates. In the United States, the ARRC continues to chart the course by providing its own list of [objectives for 2020](#) and a [list with recommended best practices for the cessation of U.S. dollar LIBOR](#), “doubling down” on its early decision to use SOFR as the alternative rate for the U.S. market after LIBOR is no longer quoted. In addition, questions persist in the United States about the viability of SOFR given recent volatility and the lack of a forward-looking term SOFR rate.

It is possible that the FCA will not further extend the use of LIBOR, and that the ARRC will not select a different rate as the recommended alternative reference rate. However, the FCA and/or ARRC may change their minds. For example, if SOFR spreads widen considerably from LIBOR during this economic crisis, as they did in a backtrack calculation during the 2008 Financial Crisis, pressure may grow from market participants to find an alternative rate. Further, some of the COVID-19 stimulus loan programs in the United States, intended to provide relief and liquidity during the crisis, are currently indexed in LIBOR (and not SOFR), because “quickly implementing new systems to issue loans based on SOFR would require diverting resources from challenges related to the pandemic.” ([see question G.3 in the Federal Reserve’s FAQs in connection with The Main Street Lending Program](#)).

The crisis created by COVID-19 has made market participants change priorities to address more urgent matters, and has placed transition efforts on the back-burner. As such, banks and other market participants may not be working to determine their exposure to existing contracts referencing LIBOR, outlining plans of action, changing internal models, modifying their operational systems, and further, engaging counterparties in renegotiating – when necessary – documentation that may not properly provide for a useful alternative reference rate.

COVID-19 disrupted the world as we know it. With economies around the world having to adapt to a new reality, financial institutions may wish to prioritize plans related to an orderly transition to alternative reference rates. Indeed, pre-cessation triggers may hit before 2021 if LIBOR becomes unrepresentative of London interbank offered rates. In such a case, the LIBOR disruption may occur well before it was planned by any market participant.

Friday, May 29, 2020

©2020 Greenberg Traurig, LLP. All rights reserved.

---

## **Checklist - Disclosures for Health Care Providers With Outstanding Tax-Exempt Bonds.**

If your organization is a hospital, nursing home, life plan community, ambulatory surgery facility, or behavioral health provider with publicly held tax-exempt bonds outstanding, it is essential that you consider enhancing public disclosures of your organization arising from the COVID-19 pandemic. Although most municipal bond issuers are obligated to make periodic public disclosures as negotiated at the time of the bond issuance, the Securities and Exchange Commission (SEC) is urging conduit issuers, which commonly issue bonds through state and local public bond authorities, to enhance those disclosures by making more frequent voluntary disclosures regarding the impact of COVID-19 on the issuing organization. These disclosures should, at a minimum, include information relating to the impact of COVID-19 on the facility's employees, patients, the community at large, and perhaps on operations and revenue.

The [SEC's statement on May 4, 2020](#) follows [formal guidance](#) released by the SEC for public issuers of securities. As the SEC does not have formal jurisdiction over municipal bond issuers, the statement was directed to underwriters, investors and market participants over which the SEC does maintain some oversight. Health care providers, a large subset of issuers in the municipal bond market, often utilize conduit authorities for the facilitation of tax-exempt debt, which is the major preferred source of capital for nonprofit providers of all types. As a result of the COVID-19 pandemic, health care providers that have issued tax-exempt bonds are facing many issues, such as care for vulnerable patients and protecting the community and employees from the further spread of COVID-19.

The SEC's advisory recognizes that there is much unknown about the impact of COVID-19, and stresses the importance of municipal bond issuers making at least minimum disclosures about its impact.

We have developed a checklist of disclosures below, which is specifically tailored for health care providers, to assist with preparing disclosures discussing the impact of COVID-19. You can utilize this checklist to make certain you have considered many of the ramifications you are facing as a result of COVID-19.

### **Disclosure Checklist**

**Describe the impact of COVID-19 on patients and staff in your organization. You should consider the following disclosures:**

- The number of patients who have been infected with COVID-19, and any deaths of patients resulting from COVID-19
- The number of staff who have been infected with COVID-19, and any deaths of staff resulting from COVID-19
- Any measures taken by your organization to protect staff and patients from further infection, such

- as screening, isolation
- areas, testing, meal delivery and limitations on communal activities and outside visitors
- Communications by your organization with patients, families and the community

**Describe the impact of COVID-19 on the procedural and financial operations of your organization. You should consider the following disclosures:**

- Any operational interruption or loss of operational opportunities, for example reduced hours or services
- Any orders to halt normal and elective procedures or treatments
- Any increased expenses for additional personnel, increased housekeeping, payment of hazard pay or overtime, and cost of supplies, such as personal protective equipment (PPE)
- The impact of telehealth or other virtual services, such as virtual tours
- Any lost revenue, for example resulting from reduced capacity or services
- Any savings, for example resulting from reduced personnel or reduced lab costs
- Any state or local shutdown orders
- The impact on investment performance resulting from negative financial market performance

**Describe any funding received from federal or state programs as a result of the impact from COVID-19. You should consider the following disclosures:**

- The receipt of funds in connection with the CARES ACT and the Paycheck Protection Program
- The receipt of any provider relief funds, both targeted and general
- The ability to attest to federal government-required terms and conditions, such as:
  - Limitations on abortions
  - Caps on executive salaries
  - Elimination of balance billing for presumptive or actual COVID-19 patients
  - Whether calculations of amounts funded were accurate
  - Whether the provider rejected the federal relief funds for health care providers
- The receipt of Medicaid or Medicare funding under programs designed to assist paying for COVID-19 expenses

**Describe any donations received or partnerships formed as a result of the impact from COVID-19. You should consider the following disclosures:**

- Donations of PPE supplies
- Purchase of needed equipment, such as ventilators
- Leasing of space for offsite facilities, such as testing areas in parking lots and use of ambulatory surgery centers for isolation or quarantine
- Contracting for needed personnel, such as infectious disease specialists, additional morgue space or refrigeration and nursing and ancillary personnel or temporary workers from partnering institutions
- Any coordination with local, state and federal health authorities

**Some general cautions are in order relating to the disclosure of information about the impact of COVID-19.**



- You should not rush to provide forecasted data on the future operations of your organization. “Safe harbors” for forward-looking statements that are provided to registered corporate issuers are not provided to municipal issuers. Municipal issuers have no obligation to forecast results.
- You should be absolutely certain that any public disclosure that is made is consistent with other certifications and filing requirements of federal programs, cost reports and financial reporting in audited statements.
- Please consult your legal and accounting advisers before filing disclosures.
- Consider making your disclosures on EMMA, even if you issue press releases or hold investor calls, since doing so will retain the information for historical purposes in one easily identifiable site.

## Conclusion

While the SEC is attempting to enhance disclosures in the public tax-exempt bond market, many market participants, especially issuing authorities and underwriters that participated in the issuance of health care provider bonds, are clearly recommending that COVID-19 disclosures be made to demonstrate that these institutions are coping with the pandemic. We hope our checklist will assist health care providers in formulating relevant disclosures for their bondholders.

by Henry Fader and Ashleigh Reibach

May 28, 2020

**Pepper Hamilton LLP**

---

## **[Supreme Court Upholds Federal Response to Puerto Rico Debt.](#)**

**The case concerned the constitutionality of appointments to a government board charged with restructuring billions of dollars of debt.**

The Supreme Court on Monday [unanimously upheld](#) a key aspect of the federal response to the worst debt crisis in Puerto Rican history, one that threatened basic services like schools and hospitals, some \$50 billion in public pension obligations and more than \$70 billion in debts to bondholders. The crisis worsened after Hurricane Maria destroyed much of the island’s infrastructure in 2017, with the commonwealth estimating that recovery costs would exceed \$139 billion.

The court ruled that members of a government board created by Congress in 2016 to clean up the financial mess had been properly appointed. Had the court come to the opposite conclusion, its ruling could have undone years of work on restructuring the commonwealth’s debts.

The 2016 law at issue in the case — the Puerto Rico Oversight, Management and Economic Stability Act, or PROMESA — created an independent entity to restructure the commonwealth’s debt, the Financial Oversight and Management Board. Since then, the board has tried to resolve about 165,000 claims from creditors, not always to their satisfaction.

[Continue reading.](#)

**The New York Times**

By Adam Liptak

June 1, 2020

---

## **[BLX/Orrick 8th Annual Post-Issuance Compliance Workshop.](#)**

### **A Comprehensive Overview of Post-Issuance Tax Law and SEC Secondary Market Disclosure for 501(c)(3) Organizations and State and Local Government Issuers Who Utilize Tax-Exempt Financing**

The BLX/Orrick Post-Issuance Compliance Workshop is returning to Las Vegas! Reserve your place today at this 8th annual educational event.

**Vdara Hotel & Spa, Las Vegas, NV  
October 1-2, 2020**

[Click to REGISTER](#)

#### **PROGRAM DESCRIPTION**

The BLX/Orrick Workshop offers timely discussions of topics related to post-issuance compliance and tax law for the public finance and 501(c)(3) communities who borrow on a tax-exempt basis. With open forums allowing for attendee participation, BLX and Orrick professionals will lead the program and assist participants with understanding the IRS and SEC regulations and requirements relating to tax-exempt debt. The sessions encourage audience participation and address questions from participants relating to real life situations. The BLX and Orrick team strives to make the discussion of tedious tax laws understandable and relatable.

#### **AGENDA - Coming Soon**

#### **BLX SENIOR REPRESENTATIVES & ORRICK TAX PARTNERS TO PRESENT AT THE WORKSHOP**

All Workshop participants will have the opportunity to interact directly with BLX Representatives and Orrick Partners throughout the Workshop.

[CLICK HERE](#) for more information on Orrick.

#### **CPE and MCLE Credits offered**

#### **HOTEL INFORMATION**

BLX has secured a limited number of rooms at a special discounted rate of \$135\* (plus applicable fees) at the Vdara. The last day to book a room is September 9, 2020. To reserve your room, click [here](#).

#### **WORKSHOP PRICING**

Issuers and non-profit organizations: \$695 | \$745 after May 31

Other professionals\*\*: \$1095 | \$1145 after May 31

**An invoice with payment instructions will be sent once registration is received.**

## **\*\* Who May Attend**

In general, this educational workshop is for representatives from nonprofit organizations and state and local governments. In addition, the Workshop will be open for certain Industry Professionals. For information on Industry Professional attendance, please contact Cynthia Quezada Sixtos at [csixtos@blxgroup.com](mailto:csixtos@blxgroup.com).

## **Refunds, Cancellation and Concerns**

Requests to refund registration fees must be received in writing by September 4 and will be subject to a \$100 cancellation fee. No refunds will be granted after September 4. Refunds or cancellations of hotel bookings need to be requested from the Vdara and are subject to their policies.

For additional information or any questions on the Workshop and/or invoicing, please contact:

Cynthia Sixtos  
[csixtos@blxgroup.com](mailto:csixtos@blxgroup.com)  
or call 213-612-2207

---

## **[Puerto Rico Board Backtracks on Planned Bondholder Payments.](#)**

### **The board overseeing Puerto Rico's finances concludes it doesn't have the money to cover bondholder payments under a \$35 billion restructuring plan**

Puerto Rico's financial oversight officials are backing away from commitments made to bondholders as the economic damage from the coronavirus becomes clearer, according to people familiar with the matter.

The board overseeing Puerto Rico's finances has concluded it won't have a sufficient surplus to cover bondholders' settlement payments under its current debt-adjustment proposal, these people said.

The proposed restructuring, which writes down \$35 billion in government bonds by 70%, laid out a path to end the U.S. territory's court-supervised bankruptcy with the backing of major creditors. But the business and travel restrictions put in place to combat the spread of Covid-19 cut into the revenue needed to settle the government's debts to bondholders and pensioners.

The board, which sets Puerto Rico's repayment terms, is considering trying to renegotiate the proposed settlement and avoid sparking litigation with creditors, people familiar with the matter said.

A spokesman for the board said it would meet Wednesday to approve a new fiscal framework that would lay out how much bondholders could be repaid over the coming years.

Elected leaders in Puerto Rico have said the proposed terms are no longer workable, reflecting anxiety about the pandemic's economic impact, which the island's fiscal agency has estimated could reach \$5.7 billion through the 2022 fiscal year.

The fallout from stay-at-home mandates and social-distancing guidelines also has darkened the outlook for many U.S. states, though none are under as much fiscal strain as Puerto Rico. As a

territory, Puerto Rico can't borrow from the Federal Reserve's municipal lending facility, which has authority to purchase up to \$500 billion in short-term debt from states and large cities.

Before the pandemic, bondholders had been more optimistic about a possible end to the bankruptcy, which began in 2017, as support coalesced around settlement terms. The board secured backing from a committee of public retirees and from competing hedge funds including GoldenTree Asset Management LP and Autonomy Capital.

If the board tries to secure additional concessions from creditors, the negotiating process could lengthen the bankruptcy process past the November gubernatorial election and well into 2021.

## **The Wall Street Journal**

By Andrew Scurria

Updated May 26, 2020 2:14 pm ET

---

### **Biggest Muni Rally in Decade Drives Yields to Cusp of Zero.**

- **One-year tax-exempt debt is yielding 0.05% in test of new lows**
- **Rally may test negative rates that Wall Street's ruled out**

Interest rates have fallen so quickly and so steeply in the \$3.9 trillion municipal-bond market that states and cities can borrow virtually for free.

Even with the economic fallout of the coronavirus pandemic driving local governments toward what may be their biggest fiscal crisis in decades, a rally in the bond market is leaving yields flirting with zero.

That marks a dramatic shift from two months ago, when yields were surging as waves of panicked selling raced through Wall Street. Municipal securities are now headed toward their biggest monthly gain since 2009, driving yields on top-rated bonds due in 2021 to just 0.05%, down from as much as 2.8% in late March.

The massive move in part tracks the Treasury market, where yields had already been hovering near zero, said Jason Diefenthaler, director of tax-exempt portfolio management at Wasmer Schroeder. Short-term securities have also benefited from two Federal Reserve programs aimed at municipal debt, including one that could lend as much as \$500 billion to governments facing budget shortfalls.

"It was just a matter of time," he said.

The drop marks a test of how low short-term rates can go — and whether they could flip negative. Firms including Bank of America Corp., the biggest underwriter, have dismissed the likelihood of that, since that would erase the tax advantages that are a principal reason for buying municipal debt instead of other securities like Treasuries.

Moreover, the individuals who are the primary investors wouldn't have much incentive to buy debt that doesn't yield anything, Diefenthaler said. He said that dynamic could prevent short-term yields from dropping much more.

Still, he added: "Anything's possible."

## **Bloomberg Markets**

By Amanda Albright

May 27, 2020, 10:30 AM PDT Updated on May 27, 2020, 12:10 PM PDT

---

### **In Boom-and-Bust San Francisco, Pandemic Brings Grim New Reality.**

- **Rise of remote work, layoffs threaten tech-fueled economy**
- **Budget gap may reach \$3.6 billion over next four years**

Uber, Lyft and Airbnb have slashed thousands of jobs. Salesforce and Visa are letting employees work remotely for months; Twitter and Square are allowing them to do so for good.

For the companies' hometown of San Francisco, the moves are early signs of a dire blow.

In a city with a long history of booms, busts and natural calamities, the coronavirus pandemic has suddenly upended nearly a decade of prosperity. While municipalities across the U.S. are grappling with economic fallout from the virus, San Francisco stands to take a deeper hit given its high concentration of office jobs that make remote working easier, a tech industry battered by layoffs and a pricey real estate market that has already driven out some residents.

[Continue reading.](#)

## **Bloomberg Markets**

By Romy Varghese

May 29, 2020, 4:00 AM PDT

---