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## **Cybersecurity - Two-Part Webinar Series for NFMA Members**

### **Municipal Cybersecurity Risks**

NFMA and MAGNY jointly announce a two-part series of webinars on Municipal Cybersecurity Risks and the unique challenges presented by current circumstances. The first panel hosted by NFMA on April 23 at 12:00 PM EDT, will consist of public finance professionals focusing on and identifying the credit factors and disclosure issues as they relate to cybersecurity risks. On May 6 at 12:00 PM EDT, MAGNY will conduct a follow-up panel from the inside perspectives of cyber security professionals in the field who have worked in or consulted with governments. They will provide a first-hand view of cyber security threats and mitigation and what questions analysts should be asking.

Both webinars are offered to all members of the NFMA as a benefit of membership.

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### **April 23 - 12:00 PM EDT - NFMA on GoToMeetings**

#### **Cybersecurity: An Emerging Risk That Has Arrived**

Even in this time of social distancing and COVID-19, cybersecurity remains a credit risk. And, now that many of us in the NFMA are working from home, new risks have arisen - Zoom-bombing, anyone? In 2019, the number, types and cost of attacks have risen greatly. Throughout the municipal sector, bond issuers have experienced, ransomware, distributed denial of service attacks, business email compromise (BEC) and even deep fake scams. One mayor under attack offered \$400,000 as the 'going rate' for ransomware. In a coordinated attack, 23 Texas municipalities were simultaneously shut down. And BEC attacks in late 2019 were getting \$2 million an attack from a number of institutions. The rating agencies have begun to change ratings citing cyber breeches as a contributing cause. Please join these panelists in a lively discussion on the evolving sophistication of cybercriminals; the regulatory and market needs for disclosure; lessons learned from attack experiences; the municipal advisors take on preparation and notification; and what the rating agencies are asking in management meetings.

**Moderator:** Geoffrey Buswick, Managing Director, S&P Global Ratings

**Panelists:** Gil Southwell, Vice President, Wells Capital Management; Marti Shew, Director, Hilltop Securities; Lindsay Nickle, Partner, Lewis Brisbois

**Register for Cybersecurity: An Emerging Risk That Has Arrived** on Apr 23, 2020 12:00 PM EDT [here](#).

After registering, you will receive a confirmation email containing information about joining the webinar.

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**May 6 - 12:00 PM EDT - MAGNY on Zoom**

### **Cybersecurity Professionals on Municipal Cybersecurity Risks**

Hear the inside perspectives of cybersecurity professionals in the field who have worked in or consulted with governments. They will provide a first-hand view of municipal cybersecurity threats and mitigation efforts. They will identify and discuss the major threats and issues, including the unique security challenges presented by the COVID-19 disruptions, what type of entities are most vulnerable, and what questions to ask to ascertain if a borrower has the capabilities, resources and processes in place to protect itself from cyber-attacks or recover from one, if compromised.

**Moderator:** Tiffany Tribbett, Director, S&P Global Ratings

**Panelists:** David Weinstein, Former CTO, CISO and Cybersecurity Advisor, State of New Jersey; Vikas Bansai, Cyber Security Principal, Deloitte Advisory with municipal and higher education client base; Leroy Terrelonge, Assistant Vice President and Cyber Risk Analyst, Moody's, Former Director of Intelligence and Operations at Flashpoint (cybersecurity firm) and Analyst at the National Security Agency.

Register for the Cyber Security Professionals on Municipal Cybersecurity Risks on May 6, 2020 12:00 PM EDT [here](#).

After registering, you will receive a confirmation email containing information about joining the webinar.

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- [Disclosing COVID-19 Risks and Impacts in Connection with Municipal Securities.](#)
  - [MSRB Publishes Summary of State and Local Disclosures to Its EMMA System about Impact of COVID-19.](#)
  - [MSRB Provides Temporary Regulatory Relief to Market Participants Affected by COVID-19.](#)
  - [NABL Sends Suggestions for COVID-19 Relief to Congress & Treasury.](#)
  - [GFOA Fiscal First Aid Resource Center.](#)
  - [When Can Bond Investors Lie to Banks?](#)
  - [Municipal Bond Defaults Will Be A Wake-Up Call For Bond Insurers.](#)
  - [Community QE – An April Game Plan for States and Cities.](#)
  - [Federal Tax Law Considerations for Financings COVID-19 Costs on a Tax-Exempt Basis: What Issuers Need to Know – Orrick](#)
  - [Preston Hollow Capital, LLC v. Bouldin](#) – In Preston Hollow's suit against bond guarantor, District Court holds that Preston Hollow must disclose the citizenship of each individual comprising Preston Hollow's 66 members – including partnerships, LLCs, trusts, pension benefit plans, and retirement plans – in order to establish diversity jurisdiction.
  - And finally, I'll Give You Some Longevity To Infer is brought to us this week by [Cochegrus v. Herriman City, Rosecrest Village Homeowners Association, Inc.](#), in which the Supreme Court of Utah stated, "We conclude that under the circumstances here, the durable, nontransitory nature of the unsafe condition itself is evidence from which a factfinder could infer longevity." Is it possible

for a sentence to wear a little monocle and waistcoat while speaking in a haughty British accent? I think we can safely infer that it is.

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## **PUBLIC UTILITIES - MINNESOTA**

### **[LSP Transmission Holdings, LLC v. Sieben](#)**

**United States Court of Appeals, Eighth Circuit - March 25, 2020 - F.3d - 2020 WL 1443533**

After proposed 345-kilovolt intrastate electric transmission line was approved and two incumbent electric utilities gave formal notice of their intent to construct line, out-of-state transmission developer brought action against the Commissioners of the Minnesota Public Utilities Commission (PUC) and the Minnesota Department of Commerce, alleging Minnesota statute granting incumbent electric utilities a right of first refusal to build and own electric transmission lines that connected to their existing facilities violated the dormant Commerce Clause.

Incumbent utilities intervened as defendants. The United States District Court granted defendants' motions to dismiss for failure to state a claim. Developer appealed.

The Court of Appeals held that:

- Statute did not facially discriminate against out-of-state entities;
- Statute did not have purpose of discriminating against out-of-state entities;
- Statute did not have effect of discriminating against out-of-state entities; and
- Statute did not violate dormant Commerce Clause under *Pike* balancing test, 90 S.Ct. 844.

Minnesota statute granting incumbent electric utilities a right of first refusal to build and own electric transmission lines that connected to their existing facilities did not facially discriminate against out-of-state entities, as would have violated dormant Commerce Clause; Minnesota's preference was for electric transmission owners who had existing facilities, regardless of whether they were Minnesota-based entities or based out-of-state, and incumbent utilities in Minnesota included entities headquartered in Minnesota and four other states.

Minnesota statute granting incumbent electric utilities a right of first refusal to build and own electric transmission lines that connected to their existing facilities did not have purpose of discriminating against out-of-state entities, as would have violated dormant Commerce Clause; statute was not primarily aimed at protecting in-state interests but at maintaining a regulatory system that had worked and provided adequate and reliable services at reasonable rates to Minnesota residents, state regulation inherently involved siting, permitting, and constructing transmission lines, and Federal Energy Regulatory Commission (FERC) left such control to state authority and had not deemed that state right of first refusal laws used highly ineffective means to accomplish state interests.

Minnesota statute granting incumbent electric utilities right of first refusal to build and own electric transmission lines that connected to their existing facilities did not have effect of discriminating against out-of-state entities, as would have violated dormant Commerce Clause; although many incumbent utilities that possessed right of first refusal under statute were headquartered in Minnesota and controlled most of state's transmission lines, Minnesota allowed entities other than utilities, such as independent transmission companies, to qualify as incumbents, and if entity did not already own existing transmission facility in Minnesota, then entity, whether from Minnesota or out of state, faced incidental hurdle of seeking approval and gaining transmission facilities in Minnesota.

Burden imposed by Minnesota statute granting incumbent electric utilities right of first refusal to build and own electric transmission lines that connected to their existing facilities was not clearly excessive in relation to Minnesota's legitimate interests in regulating its electric industry and maintaining its historically-proven status quo for constructing and maintaining electric transmission lines, and thus statute did not violate dormant Commerce Clause under *Pike* balancing test, 90 S.Ct. 844; the states had authority over location and construction of electrical transmission lines, incumbents were not obligated to exercise right of first refusal, and there was no evidence cumulative effect of state right of first refusal laws would eliminate competition in the market completely

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## **PUBLIC RECORDS - NEVADA**

### **[Las Vegas Metropolitan Police Department v. Center for Investigative Reporting, Inc.](#)**

**Supreme Court of Nevada - April 2, 2020 - P.3d - 2020 WL 1650320 - 136 Nev. Adv. Op. 15**

Requester filed petition for writ of mandamus, seeking to inspect or obtain copies of all records related to rapper's murder within city police department's custody and control.

Before the scheduled hearing, police department and requester reached agreement, whereby police department would produce portions of its records, along with index identifying and describing any redacted or withheld records.

The District Court dismissed petition as moot, based on parties' agreement, concluded that requester had prevailed, for purposes of attorney fee award under Nevada Public Records Act (NPRA), and awarded requester attorney fees. Police department appealed.

The Supreme Court held that:

- Appellate court would apply catalyst theory to determine whether requesting party prevailed, for purposes of award of attorney fees and costs under NPRA, when parties reached agreement that afforded requesting party access to requested records before court entered judgment on merits, and
- As matter of first impression, requester was "prevailing party" and, thus, was entitled to reasonable attorney fees and costs under NPRA, when parties reached agreement that afforded requester access to requested records before court entered judgment on merits.

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## **ANNEXATION - NORTH CAROLINA**

### **[Town of Pinebluff v. Moore County](#)**

**Supreme Court of North Carolina - April 3, 2020 - S.E.2d - 2020 WL 1652564**

Town brought action against county, seeking a writ of mandamus directing county board of commissioners to adopt a resolution authorizing town's extraterritorial jurisdiction expansion.

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

The Supreme Court held that no irreconcilable conflict existed between amended subsection of extraterritorial jurisdiction statute, allowing town to extend its extraterritorial jurisdiction two miles

beyond an annexed area, and previously-enacted subsection of statute, which stated that, absent certain exceptions, a city could not extend its extraterritorial jurisdiction into an area in which county was exercising each of its powers enumerated by subsection, and therefore amendment did not repeal by implication the previously-enacted subsection; interpreted together, statute stated that town could extend its extraterritorial jurisdiction beyond annexed area only if the extension also complied with the provisions of previously-enacted subsection.

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## **JURISDICTION - TEXAS**

### **Preston Hollow Capital, LLC v. Bouldin**

**United States District Court, S.D. Texas, Galveston Division - January 30, 2020 - Slip Copy - 2020 WL 486783**

Preston Hollow, an independent municipal finance company, filed this case back in June 2019, seeking to recover millions of dollars from Mark Bouldin (“Bouldin”) under a guaranty agreement.

Bouldin, a Florida resident, is the President of Senior Care Ownership one of the entities with an ownership interest in Senior Care. The lawsuit alleges that Senior Care borrowed roughly \$44 million raised through the sale of tax-exempt bonds to construct senior living facilities. Preston Hollow invested more than \$21 million in the financing. Bouldin guaranteed the bond and loan obligations of Senior Care.

Branch Banking and Trust Company (“BB&T”) was the original indenture trustee with respect to the bonds and the loans relating to the financing. Because BB&T was formed under North Carolina law and has its principal place of business in North Carolina, BB&T is a citizen of North Carolina for purposes of the diversity jurisdiction analysis.

In August 2019, Preston Hollow added Senior Care as a defendant, suing Senior Care for the unpaid loan Bouldin had guaranteed.

On January 8, 2020, the judge entered an order requiring Preston Hollow, as the plaintiff in this action, “to file a letter explaining the citizenship of all parties within seven days.” Preston Hollow submitted a letter on January 15, 2020. In that letter, Preston Hollow informed me that it believes that Defendant Senior Care Living VI, LLC (“Senior Care”) has three members: Senior Care Ownership, Inc. (“Senior Care Ownership 3”), which is a corporation organized under the laws of Florida with its principal place of business in Florida; and two limited liability companies. Preston Hollow represented to that it is unable to determine the membership of those two limited liability companies. In its January 15, 2020 letter, Preston Hollow also indicated that it has 66 members, seven of whom are individuals, 28 are partnerships or limited partnerships, 16 are limited liability companies, nine are trusts, three are employee retirement or pension benefit plans, and three are other business organizations. Preston Hollow said that its members prefer not to disclose details of their involvement in Preston Hollow.

Importantly, Preston Hollow argued that the citizenship status of its members is not relevant because Preston Hollow is not a real party in interest in this case. Instead, Preston Hollow asserted that it is suing exclusively as an agent of BB&T, the real party in interest.

The judge rejected Preston Hollow’s claim that it is merely bringing this lawsuit in a representative capacity on behalf of BB&T. “Tellingly, Preston Hollow is unable to point to any document that gives it the authority to bring a claim on behalf of BB&T, the trustee. Instead, Section 7.20 of the MTI

expressly provides that Preston Hollow has the right to bring a claim “in lieu of” the trustee.” “It is clear that Preston Hollow has the right to bring an affirmative claim for relief *instead* of the trustee, not *on behalf of* the trustee. This is a significant distinction, which ultimately means that Preston Hollow is acting as a representative of the bondholders, not as an agent for the trustee.

The judge noted that, far from acting solely in a representative capacity, Preston Hollow has a pecuniary interest in this litigation and fully expects to receive a significant portion of any damage award obtained in this case. “In conclusion, I find that Preston Hollow is a real and substantial party to the controversy pending before me. Preston Hollow is not only a representative of all the bondholders, it is also a real party in interest with its own stake in the litigation.”

“Preston Hollow has indicated that its 66 members prefer not to disclose details of their involvement in Preston Hollow. While I appreciate this, I believe such information is essential for me to determine whether diversity jurisdiction exists. To this end, I (again) order Preston Hollow to file a letter explaining the citizenship of Preston Hollow’s members. Such letter should also be filed by Friday, January 31, 2020.”

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## **LIABILITY - UTAH**

### **[Cochegrus v. Herriman City, Rosecrest Village Homeowners Association, Inc.](#)**

**Supreme Court of Utah - March 26, 2020 - P.3d - 2020 WL 1482588 - 2020 UT 14**

Pedestrian brought negligence action against city, homeowners’ association that was abutting property owner, and association’s management company arising from her trip and fall on metal rod protruding out of hole in city’s grassy park strip between sidewalk and street.

The Third District Court granted summary judgment for defendants. Pedestrian appealed.

The Supreme Court held that:

- Genuine issues of material fact existed as to whether defendants had constructive knowledge of rod, and
- Genuine issues of material fact existed as to whether association and company had a duty to pedestrian.

Genuine issues of material fact existed as to whether city, homeowners’ association that was abutting property owner, and association’s management company had constructive knowledge of metal rod protruding out of hole in city’s grassy park strip between sidewalk and street, precluding summary judgment in pedestrian’s negligence action arising from her trip and fall.

Genuine issues of material fact existed as to whether homeowners’ association, which was abutting property owner, and its management company had a duty to pedestrian, precluding summary judgment in pedestrian’s negligence action arising from her trip and fall on metal rod protruding out of hole in city’s grassy park strip between sidewalk and street.

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## **IMMUNITY - WASHINGTON**

### **Ehrhart v. King County**

**Supreme Court of Washington. April 2, 2020--- P.3d ----2020 WL 1649891**

Patient's wife brought action against county public health department, alleging negligence after patient died after contracting hantavirus.

The Superior Court granted conditional partial summary judgment to wife. County appealed.

After grant of direct discretionary review, the Supreme Court of Washington held that:

- County was not responsible for enforcing state regulation setting out duties of local health officer or the local health department, and thus any failure by county to enforce regulation could not support application of failure-to-enforce exception to public duty doctrine to allow instant action;
- Such regulation required county only to make a determination about how to respond to report of hantavirus case, not to make a particular determination; and
- Regulation was intended to protect public as a whole, and thus failure-to-enforce exception to public duty doctrine did not apply.

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## **FRANCHISE FEES - CALIFORNIA**

### **Zolly v. City of Oakland**

**Court of Appeal, First District, Division 1, California - March 30, 2020 - Cal.Rptr.3d - 2020 WL 1498339 - 20 Cal. Daily Op. Serv. 2827**

Solid waste disposal customers brought action to challenge constitutionality of franchise fees which city charged waste management entities, a portion of which was redesignated as a solid waste management fee.

The Superior Court sustained city's demurrer, and taxpayers appealed.

The Court of Appeal held that:

- Complaint sufficiently stated claim that franchise fee which city charged waste haulers was not reasonably related to the value received and thus was a tax requiring voter approval;
- Challenge that city's future redesignated franchise fee increases for solid waste haulers was an unconstitutional tax did not present an actual controversy proper for adjudication and thus was not ripe; and
- Customers' payment of solid waste disposal fee did not cause customers to incur hardship, as required for claim to be ripe.

Complaint sufficiently stated claim that franchise fee which city charged waste haulers was not reasonably related to the value received and thus was a tax requiring voter approval; complaint noted that contracts required initial franchise fees, asserted that the contracts were not the product of bona fide negotiations and that various financial analyses were not performed, and that grand jury found the franchise fees were disproportionately higher than fees in surrounding area and that city's procurement process was mishandled and subject to political considerations, and complaint noted that waste hauling rate increases for customers ranged from 79.76 percent to 155.37 percent.

Challenge that portion of city's future franchise fee increases for solid waste haulers, which had



been redesignated as solid waste disposal fees, was an unconstitutional tax did not present an actual controversy proper for adjudication and thus was not ripe; while the ordinance imposing the redesignated fee provided for fee increases, it was uncertain whether or when those will occur, as increases were not implemented if hauler's gross receipts for the prior calendar year were less than the calendar year before that, actual amount of any such increase also was uncertain, and court could not assess whether those future unknown increases exceeded the city's future costs.

Customers' payment of solid waste disposal fee, which consisted of part of redesignated franchise fee for waste hauling contracts, did not cause customers to incur hardship, as required for customers' declaratory judgment action claiming fee was an unconstitutional tax to be ripe; challenge to the current redesignated fee was time-barred such that any harm currently incurred was based on their own failure to timely challenge the fee, any harm they might incur from future fee increases was uncertain, and customers did not show they would be unable to pursue appropriate legal remedies should the anticipated harm ever materialize.

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## **Tax-Exempt Debt Payment Deferrals For Municipal Securities: Dinsmore**

The COVID-19 pandemic has delayed and lowered revenues, creating an unprecedented period of fiscal uncertainty for borrowers of tax-exempt debt. Borrowers forced to navigate these conditions may request lenders defer scheduled debt payments to help weather the storm.

Borrowers and lenders of tax-exempt debt must be mindful that a deferral of scheduled payments may endanger the debt's tax-exempt status. A deferral could be considered a modification causing the debt's "reissuance," which is treated as a new issuance for tax purposes and a refinancing of the original bond issue. When a reissuance occurs, the debt will lose its tax-exempt status unless appropriate legal steps are taken.

Not all deferred payments will adversely impact the tax exemption. First, a failure of a borrower to pay is not a modification, because there is no alteration of the rights or obligations of the lender or borrower. Furthermore, a forbearance by the lender will not be treated as a modification until the forbearance remains in effect for more than two years following the borrower's initial nonpayment, plus any additional period during which the parties conduct good-faith negotiations (or during which the borrower is in bankruptcy proceedings or a similar case, e.g., receivership, foreclosure).

A modification altering an instrument's payment schedule will be deemed significant if it materially defers payment. Whether a deferral is material depends on the facts and circumstances of each case. There is a safe harbor allowing a payment to be deferred up to five years (or 50 percent of the original term of the instrument, if shorter) but only from the original due date of the first scheduled payment that is deferred. Yet a finding that a deferred payment satisfies the safe harbor is not the end of the analysis, because a deferral resulting in a change of yield in excess of the greater of 0.25 percent or five percent of the pre-modification yield would still result in a significant modification under the regulations, which would trigger a reissuance of the bonds.

Deferrals of scheduled payments may be undertaken under the right circumstances. Borrowers and lenders of tax-exempt debt who are considering such a delay must be mindful of the reissuance rules to avoid adverse tax consequences.

Tuesday, April 7, 2020



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## **BDA Submits Municipal Note Guarantee Recommendation to Fed.**

Today, the BDA submitted a one-pager to the Fed in response to the recent announcement of the Municipal Liquidity Facility stemming from passage of the CARES Act. In the one-pager the BDA calls on the Fed to create a Note Guarantee Program for State and Local Governments.

**The Municipal Guarantee recommendation can be viewed [here](#).**

### **Municipal Note Guarantee Recommendation**

The recommendation is a response to initial outline of the Municipal Liquidity Facility announced yesterday. In the one-pager the BDA calls on the Fed to create a Note Guarantee Program for State and Local Governments.

The BDA calls on the Fed to develop a program that will:

- Provide credit guarantees to issuers who sell TANs and RANs with maturities up to 12 months during the duration of the program;
- Provide a credit backstop similar to a bank Letter of Credit to any investment-grade issuer who met reasonable requirements; and
- If the issuer failed to retire TANs or RANs covered by the facility on time, the Fed would advance the par amount to investors and would become the creditor to the state or local government.

### **Bond Dealers of America**

April 10, 2020

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## **GFOA Fiscal First Aid Resource Center.**

A financial crisis can take many forms:

- A major local employer lays off much of its workforce.
- Property values plummet due to a shrinking population in the area.
- A natural disaster inflicts significant infrastructure damage.
- A mass-quarantine halts economic activity.
- A cyberattack shuts down online commerce.

Any of these events would likely cause significant financial distress for even the best-prepared local governments. Whether they lead to increased expenditures, decreased revenue, or a combination of both, the effect is the same: the local government finds itself without enough money to do everything that people expect it to get done. GFOA has put together this set of resources to help local government finance officers facing these types of situations. The centerpiece is a 12-step process we call **Fiscal First Aid: Recovering from Financial Distress**. Use the following diagram to navigate through the different steps of the financial recovery process.

### **12-Step Fiscal First Aid Recovery Process**

[Step 1: Recognition](#)

[Step 2: Mobilize](#)

[Step 3: Generic Treatments](#)

[Step 4: Initial Diagnosis](#)  
[Step 5: Fiscal First Aid](#)  
[Step 6: Detailed Diagnosis](#)  
[Step 7: Recovery Plan](#)  
[Step 8: Long-Term Treatments](#)  
[Step 9: Long-Term Financial Planning](#)  
[Step 10: Recovery Leadership](#)  
[Step 11: Manage the Recovery Process](#)  
[Step 12: The Outcome of Recovery](#)

### **New GFOA Research**

[Working Remotely: A Guide for the Public Sector](#)  
[Cash is King: Short-Term Strategies to Slow the Flow of Money Out the Door and Keep the Budget Balanced](#)

### **Upcoming Training**

[April 13: Procurements Under FEMA Awards During Periods of Emergency or Exigency](#)  
[April 15: Assessing Risks Related to Cyber Crime](#)

### **Past Training**

Click on each webinar to access a recording of the webinar, the PowerPoint presentation, and other supporting materials.

[March 27, 2020. Financial Decision Making Under Uncertainty](#)  
[April 1, 2020. Budgeting During a Recession: Principles, Practices, Processes, and Politics](#)  
[April 8, 2020. Financial Scenario Planning: Visualizing and Strategizing for Uncertain Times](#)  
[April 9, 2020. Take the 2020 Financial Policy Challenge](#)

### **Free Limited-Time Offers from Third-Party Firms**

In order to get as many good Fiscal First Aid resources to GFOA members as quickly as possible, [GFOA is working with private sector firms that have graciously agreed to provide their expertise free of charge](#). Please be aware that there is no financial relationship between these firms and GFOA. Also, GFOA does not endorse any products or services.

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## **[Risk Assessments for Municipal GO and Revenue Debt Investors During Economic Downturn.](#)**

**In the midst of COVID-19, the domestic and global financial market outlooks are grim and the collective blow to the markets highlight the convoluted nature of their dependency and interconnectedness.**

This notion applies to all financial markets, both domestic and globally: municipal debt markets, corporate debt, equities, commodities, etc. Furthermore, the notion that fixed-income markets often see a surge in capital influx during market downturns and recessions – because fixed income is generally considered a safer option than other instruments – may not be entirely true, given that investors are skeptical of the overall performance of both private and public sectors. This is also because both debt and equity markets are heavily reliant on consumer spending, which has come to

a considerable halt.

In this article, we'll take a closer look at whether the economic downturn will impact GO and revenue-backed municipal debt in a similar way, and we will also highlight key signs for investors to look out for within their municipal debt holdings in order to assess risk exposure.

[Continue reading.](#)

**municipalbonds.com**

by Jayden Sangha

Apr 08, 2020

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## **When Can Bond Investors Lie to Banks?**

### **The thing which is not**

The usual way that municipal bonds get issued is that a city or state or agency or university or whatever calls up its investment bankers, and the investment bankers call up a bunch of muni investors and get them to put in orders to buy some of a new bond. Buying newly issued bonds is generally a good way to make a little extra money—muni bonds, like corporate bonds and stocks and most other things, tend to “pop” when they first start trading—so it is good for the investors to get these calls. On the other hand sometimes a new muni deal will struggle to find buyers, so it is good for the investment banks (and the municipalities) if the investors take these calls. It is a business of relationships: The banks like being able to call investors to place deals; the investors like getting the calls to buy lucrative new issues; everyone is better off if they stay friends and work well together.

Another, less usual way that municipal bonds sometimes get issued is that one investor calls up a city or state or agency or university or whatever, or its investment banker, and says “hey if you want to issue a new muni bond just sell all of it to us.” For the issuer this approach—called a “100% placement”—might be faster or more certain or more convenient than the usual approach of having banks market the deal to a lot of potential buyers, but it might also be more expensive: If you're only selling the bonds to one buyer, you're not getting a market check on the interest rate. For the investor buying all of the bonds, there are obvious advantages: You're buying a lot of bonds from an issuer that you've checked out and like, for one thing, plus you are hopefully getting a bit of a higher interest rate than you'd get in a regular marketed transaction. For the investors not buying all the bonds, there is something obviously annoying about the existence of 100% placement deals. A lot of your advantage, as a big muni bond investor, is getting calls from banks when a new deal is launched. If you don't get those calls because deals are 100% placed with one investor, you lose out.

Nuveen LLC is a big municipal bond investor, a mutual fund manager with, by its own account, “the largest high-yield [municipal] fund in the world,” running about \$150 billion of muni assets. Preston Hollow Capital LLC is a newer, smaller municipal bond investor, running about \$2.1 billion of assets using permanent capital. Nuveen invests in municipal deals in the regular way, though it does some 100% placements. Preston Hollow is a 100%-placement specialist; it “styles itself as a ‘bespoke solution provider’ that custom-designs its deal structures to lend flexibility and security to issuers through 100% placements.”

This made Nuveen mad. If a municipality sells a 100% placement to Preston Hollow, that is bad for

Nuveen. Nuveen can get mad at the issuer, but there are lots of issuers and they mostly don't issue that frequently and it's hard to communicate with them in a coordinated way. It can get mad at Preston Hollow, but Preston Hollow doesn't care about Nuveen's feelings; Preston Hollow wants to disrupt and annoy big incumbents like Nuveen. But if it gets mad at the investment banks—a small group of repeat players who do a lot of deals with Nuveen and care about its business—then it might get somewhere.

So Nuveen focused on the investment banks:

In evaluating broker-dealers for partnering, Nuveen consistently rates “seeing deals” as the most important factor in the relationship. .... When Preston Hollow conducts 100% placements, it funds the entire issuance, and consequently Nuveen does not “see” these deals before the bonds reach the wider market. This lessens Nuveen's ability to meet market demand because it diminishes the array of purchase options available to it. ...

In an internal chat, Nuveen's Chief Investing Officer John Miller described broker-dealers working with Preston Hollow as “stab[bing] us in the back” and suggested his stance to broker-dealers would be that “if you want to build your business around Preston [Hollow], go ahead, but don't think you can ever call us again.”

So Nuveen called up some brokers and basically said that. Preston Hollow sued, arguing that Nuveen is not allowed to do that. Last Thursday a Delaware Chancery Court judge, Sam Glasscock, decided the case. Here is his [opinion](#) (from which I have been quoting). Basically Preston Hollow won: Vice Chancellor Glasscock ruled that (1) Nuveen was doing that and (2) it's not allowed to do that. On the other hand he didn't award any damages to Preston Hollow, because Preston Hollow didn't ask for any, and he declined to order Nuveen to stop doing this, since it had apparently already stopped. So it's a weird win, though a win nonetheless. “In light of this decision, it would be exceedingly unwise for Nuveen to mount a similar campaign of malicious behavior,” he wrote, which is almost as good as ordering Nuveen not to.

It is a little unclear to me, reading the opinion, whether it would in fact be illegal for Nuveen just to call up investment banks and say “if you do deals with Preston Hollow, you can't do any deals with us.” The rules for “tortious interference with business relations”—the bad thing that Nuveen did—are strange; you are obviously allowed to interfere with your competitors' business by *competing with them*, and you're even allowed to interfere by expressing the opinion that their business is bad. In fact, “as long as a party avoids an illegal restraint on trade, ‘he may refuse to deal with the third persons in the business in which he competes with the competitor if they deal with the competitor,’” which is the gist of what Nuveen was accused of. You can “exert limited economic pressure” but not “improper economic pressure,” which is a little vague.

But Vice Chancellor Glasscock effectively resolved the issue by finding that Nuveen didn't just call up investment banks and say “if you do deals with Preston Hollow, you can't do any deals with us”; it also called up the investment banks and *lied about Preston Hollow*, which probably tips the whole thing into impropriety. Here is his memorable summary of the situation:

In *Gulliver's Travels*, Swift puts Gulliver in contact with the Houyhnhnms, beings so moral and rational that they cannot comprehend the art of lying. They do not even have a word for the concept, and are forced to describe a lie as “the thing which is not.” After hearing the testimony of some of Nuveen's witnesses, one might think they were such

beings. Their circumlocutions for falsehoods—"hedge," "bluff," "exaggeration," "role-play," "scenario," "overstatement," "blustering," "short-cutting," "puff," "shorthand," "overblowing"—in situations where more quotidian creatures would simply say "lie," might make one doubt that the latter word is in their vocabulary. Their testimony was generally that institutional investors and their bankers speak in an argot of forceful misstatements that all parties involved know is posturing, so that no real untruth is conveyed. Perhaps. Far more likely is that institutional investors, like the rest of us Yahoos, make statements of fact, true or false, with the intent to be believed. In this post-trial Memorandum Opinion, I find that Nuveen used threats and lies in a successful attempt to damage the Plaintiff in its business relationships. Accordingly, Nuveen is responsible for the tort of intentional interference with business relations.

He is not kidding. Here is how Nuveen's John Miller and Steve Hlavin put it to Deutsche Bank AG (emphasis added):

Hlavin called Deutsche and stated that Nuveen "will not be conducting high-yield business with anyone who is involved in these types of transactions [i.e. 100% placements] with Preston Hollow." Hlavin represented on this phone call that Nuveen was "going to every single bank and broker-dealer" that day, and that "the policy going forward is that if you are doing - if you are actively doing business with [Preston Hollow], Nuveen will not be doing business with you." **At trial, Hlavin testified that he did not intend his words to be taken seriously, but that he needed to "make exaggerated statements" to "strengthen [his] position."** Hlavin testified that when he referenced Preston Hollow, he was "shorthanding" for 100% placement transactions.

In addition to this "devastating" ultimatum, Hlavin represented to Deutsche on this call that Preston Hollow lied to issuers by misrepresenting things about Nuveen. Hlavin said Preston Hollow was "demonstrating predatory lending practices" toward borrowers and would "take [the borrowers] into bankruptcy." In a second call with Deutsche later that day, Hlavin claimed he possessed "direct evidence" of Preston Hollow's lies, though it is apparent from his testimony that he based this statement on what he overheard at Nuveen's trading desk. **At trial, Hlavin testified that he did not need to verify his allegations because he was "role playing" to "build a position" and "challenge someone in debate."**

On December 21, 2018, Miller also called Deutsche. In that call, Miller stated that he had a "firm commitment" from Wells Fargo, BAML, Goldman, and JPMorgan to "never do business with Preston Hollow again." **At trial, Miller testified that he exaggerated these statements; by "firm commitment," he meant the broker-dealers "were going to look into their private versus public practices." He testified he "was overstating, shortcutting, and blustering a little bit to try and get their attention." Miller did not consider these statements to be problematic, as he testified that in the high-yield municipal bond market, other parties "[are] blustering and exaggerating to me. And I'm blustering and exaggerating back to them. And we kind of know what's going on."**

Here's what they told Goldman Sachs Group Inc. (emphasis added):

On December 21, Miller called his contact at Goldman. After discussing Preston Hollow's growth as a company, Miller said that "to be a partner with Nuveen . . . you can't do any of this private ... business with Preston Hollow." He also stated that Goldman would "have to choose who [it does] business with. Because I don't want to do business with those firms that do business with Preston Hollow." At trial, Miller testified this was "a very blustery introduction . . . to get his attention." He also testified that referencing Preston Hollow was only "a shortcut" to discuss 100% placements. Miller represented to Goldman that he had "five dealers so far" in agreement not to do business with Preston Hollow, and that he would be attempting to get more. **Again, at trial, Miller testified regarding this purported agreement that he was "exaggerating a little . . . to get a reaction."**

In addition, Miller told Goldman that Preston Hollow lied to issuers. He told Goldman that issuers fell for Preston Hollow's "predatory practices" after hearing its "predatory sales pitch." He also stated that "issuers are being told things that are not true," and that Preston Hollow would "rush the issuer into" unfair or suspect transactions. He proffered that he had "a lot of evidence" to support the allegations. Attempting to put some of this evidence forward, Miller told Goldman that multiple states' attorneys general had contacted Preston Hollow over "unethical practices," sent it "nastygrams," and told it, "[d]on't come into my town again." Miller based this allegation on a letter from a single city attorney that suggested one of Preston Hollow's transactions might not meet state attorney general requirements with regard to a bond issue. **Miller testified the dissonance presented by his allegation and his evidence was "a little bit of a shortcut."**

Ah. I actually find Nuveen's view a *bit* more plausible than the Vice Chancellor does. Like, when Nuveen called up investment banks and said (1) "if you do deals with Preston Hollow we will never do deals with you again" and (2) "every other investment bank has made a firm commitment not to do deals with Preston Hollow," the banks had to know Nuveen was, you know, bluffing or blustering or exaggerating or whatever you want to call it. (Deutsche Bank, which got the worst of Nuveen's bluster, seems to have ignored it and kept dealing with Preston Hollow, though Nuveen did actually reduce its business with Deutsche Bank.) Investors *love* to bluster about stuff they dislike and swear that they'll never do business with you again, but what else are they going to do? If you bring them good bond deals, they're gonna pick up the phone. And if they tell you that all of your competitors have agreed to give up a profitable business, great, more for you.

Or here is Vice Chancellor Glasscock's fun summary of "the box," an important bond-trader threat:

One tool municipal bond traders use to leverage desired actions is to express displeasure by putting another party or entity "in the box." This bond-trader colloquialism is well-known in the industry, and both Nuveen and Preston Hollow use it regularly. A broker-dealer can also put a trader or other counterparty in the box. At its most basic, it is simply a way for a party to leverage action. Being "in the box" has no official repercussions and so can be used somewhat casually. At the same time, being "in the box" can lead to more serious consequences, such as a temporary cessation of business between parties.

Being in the box—it's a hockey metaphor, the penalty box—sort of notionally means that the party who put you in the box is not going to trade with you for a while, but as the Vice Chancellor says it



doesn't necessarily mean that. It could just mean that they're mad at you and want to express that they would *like* to stop trading with you for a while, but the world is what it is and if you've got a trade for them they're gonna take it. "Well, you're in the box, but you are a tick tighter than anyone else so I guess we'll trade with you," that sort of thing.

We have [talked](#) a lot over the [years](#) about bond traders at investment banks who have gotten in trouble for lying to their customers. Their awkward defense is always of the form: Look, I am a *bond trader*, my whole business is lying to my customers, it is what they expect, since they spend all day lying to me too. Judges are always a bit horrified, but not always unpersuaded, by this argument. It's got some truth to it! Here one of those customers, Nuveen, launched a pretty broad program of lying to its bond dealers, and didn't even think that was a bit unusual. They were "role playing" to "build a position" and "challenge someone in debate"; it is just what one does.

## **Bloomberg Opinion**

By Matt Levine

April 13, 2020, 9:28 AM PDT

*Matt Levine is a Bloomberg Opinion columnist covering finance. He was an editor of Dealbreaker, an investment banker at Goldman Sachs, a mergers and acquisitions lawyer at Wachtell, Lipton, Rosen & Katz, and a clerk for the U.S. Court of Appeals for the 3rd Circuit.*

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### **[Nuveen Improperly Tried to Destroy Rival, Judge Concludes.](#)**

**The Chicago-based bond market powerhouse "was not simply attempting to achieve a competitive edge. . . .It meant to use the leverage resulting from its size in the market to destroy Preston Hollow."**

(Bloomberg) — U.S. bond-market powerhouse Nuveen LLC wrongfully interfered with the business of Preston Hollow Capital LLC by organizing an intimidation campaign to coerce broker-dealers from doing business with its smaller rival, a judge ruled.

Delaware Chancery Court Judge Sam Glasscock III found that Chicago-based Nuveen misused its market power as one of the biggest buyers of state and local government bonds to freeze out the smaller firm from doing business with Wall Street banks and brokers.

"Nuveen was not simply attempting to achieve a competitive edge," Glasscock said Thursday in a 59-page ruling. "It meant to use the leverage resulting from its size in the market to destroy Preston Hollow."

Still, Glasscock declined to issue an injunction barring Nuveen from further wrongdoing because the company has agreed to stop the boycott and not disparage its rival.

Preston Hollow sued separately for damages in Delaware Superior Court. That suit is still pending.

"We respectfully disagree with the court's finding that Nuveen tortiously interfered with Preston Hollow's business," Jessica Greaney, a Nuveen spokeswoman, said in a statement.

The judge's ruling is the latest twist in a high-profile fight in the normally staid bond market. Preston

Hollow sued last year, complaining Nuveen used its “unfettered power” to strong-arm banks into blackballing it.

Jim Thompson, Preston Hollow’s chairman and chief executive officer, said the firm wasn’t concerned with Glasscock’s refusal to issue an injunction to prevent Nuveen from starting another disinformation campaign.

“The court’s stern language will serve as the injunction we sought, as we are confident Nuveen will follow the court’s admonition that it would be “exceedingly unwise for Nuveen to mount a similar campaign of malicious behavior,” Thompson said in an emailed statement.

The judge heard testimony at a trial last year that Nuveen executives, including muni-bond titan John Miller, threatened to pull tens of millions of dollars in business from banks that underwrote offerings with Preston Hollow and financed its loans. Miller is co-head of Nuveen’s fixed-income unit and oversees more than \$160 billion in municipal bond assets.

Preston Hollow is best-known for making \$2 billion in loans to finance hospitals, real estate developments and student housing. Nuveen, which had almost \$1 trillion in assets under management as of March 31, is the investment manager of TIAA, best known for offering financial products to teachers.

At trial, Preston Hollow’s lawyers played tapes of calls Miller made to bond traders at Goldman Sachs & Co. and Deutsche Bank AG in which he threatened them with loss of Nuveen’s business if they continued to do deals with Preston Hollow.

Testimony in the case showed Miller and other company officials disparaged Preston Hollow, including claims that the company’s “unethical practices” caught the attention of states attorneys general. Glasscock said that amounted to a single letter from one city attorney.

“Miller’s testimony that this lie was ‘a little bit of a shortcut,’ does not keep it from constituting a knowing misrepresentation intended to interfere with Preston Hollow’s business.”

Miller still has the company’s support, Greaney said.

“John and his team remain motivated by a desire to protect client investments while also supporting a fully transparent municipal-bond market for all participants,” she said.

## **Crain’s Chicago Business**

April 09, 2020

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### **[Preston Hollow Capital Gratified by Delaware Chancery Court’s Finding That Nuveen Used ‘Threats and Lies’ to Stifle Competition in Municipal Bond Market.](#)**

#### **- Ruling Affirms that Nuveen Undertook a Systematic, Destructive Campaign Against Smaller Rival, Preston Hollow Capital -**

Preston Hollow Capital (“PHC”), an independent specialty municipal finance company based in Dallas, today outlined its response to the recent ruling by the Delaware Chancery Court, which

found Nuveen guilty of using “threats and lies in a successful attempt to damage [PHC] in its business relationships.” The ruling was delivered on Thursday, April 9, 2020 in a [60-page Memorandum Opinion](#) from Vice Chancellor Sam Glasscock III. Vice Chancellor Glasscock found Nuveen liable for the anti-competitive and injurious actions of its team led by Nuveen Head of Municipals, John Miller, in intentionally and illegally interfering with PHC’s business relations with its primary lender and six major Wall Street investment banks.

Jim Thompson, Chairman and Chief Executive Officer of Preston Hollow Capital, stated, “Municipal borrowers deserve a truly competitive marketplace where they are able to select the capital provider that meets *their* needs in funding their vital projects, not the needs of a large money manager like Nuveen. This is, in essence, the very injustice that the Vice Chancellor exposed. His ruling meticulously details Nuveen’s campaign of anti-competitive, untruthful, unfair and destructive conduct carried out by Miller and his team against Preston Hollow in our marketplace. It’s important to remember that the real ‘winners’ are municipal borrowers across the country, as we expect Nuveen to heed the Court’s stern admonition that it would be ‘exceedingly unwise for Nuveen to mount a similar campaign of malicious behavior’ against Preston Hollow going forward.”

### **Nuveen’s Anti-Competitive Conduct**

The Court’s ruling painstakingly reveals Nuveen’s organized, methodical attack against its smaller rival, which Miller had come to view as a competitive threat. In the words of the Court:

The facts revealed in litigation ... show that as Preston Hollow was becoming a contender in the high-yield municipal bond market, Nuveen, the self-styled “largest high-yield [municipal] fund in the world,” sought an industry-wide agreement not to conduct business with Preston Hollow. Although part of Nuveen’s motive was its interest in ‘seeing all the deals,’ its behavior shows that its object was also an attack directed at Preston Hollow’s ability to operate. The evidence demonstrated an aggressive and widely dispersed campaign to use almost any pressure necessary to cut off a competitor from its chief source of business as well as its financing. I find that Nuveen was not simply attempting to achieve a competitive edge; it meant to use the leverage resulting from its size in the market to destroy Preston Hollow. [Memorandum Opinion, p. 51]

These and related findings made by the Court reflect intentional anticompetitive conduct of the kind often punished by regulators charged with supervision of financial markets.

### **Nuveen’s Pattern of Deceit Concerning Preston Hollow Capital**

The Memorandum Opinion also catalogues the array of falsehoods about Preston Hollow that Miller and his team spread throughout the municipal marketplace:

[The Nuveen witnesses’] circumlocutions for falsehoods—“hedge,” “bluff,” “exaggeration,” “role-play,” “scenario,” “overstatement,” “blustering,” “short-cutting,” “puff,” “shorthand,” “overblowing”—in situations where more quotidian creatures would simply say “lie,” might make one doubt that the latter word is in their vocabulary. Their testimony was generally that institutional investors and their bankers speak in an argot of forceful misstatements that all parties involved know is posturing, so that no real untruth is conveyed. Perhaps. Far more likely is that institutional investors, like the rest of us Yahoos, make statements of fact, true or false, with the intent to be believed. In this post-trial Memorandum Opinion, I find that Nuveen used threats and lies in a successful attempt to damage the Plaintiff in its business relationships. [Memorandum Opinion, pp. 1-2]

The Vice Chancellor lays down withering criticism of Nuveen’s trial witnesses’ credibility,

characterizing their explanations as “both self-serving and disingenuous.” [Memorandum Opinion, p. 39]:

## **Business Wire**

April 13, 2020

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### **Municipal Bond Defaults Will Be A Wake-Up Call For Bond Insurers.**

The coronavirus has had a devastating effect on the short-term finances of every state and municipal entity dependent on sales and payroll taxes for the revenues. The short-term effect, however, may well have very long-term implications for the finances of these entities. In turn, insurers of the bonds—those that guarantee interest and principle against default—are going to be asked to share the pain.

The 2008 Financial Crisis had a devastating effect on the monoline bond insurance industry, which used to be dominated by names like Ambac Financial, MBIA MBI and FGIC. Only one insurer, Assured Guaranty, came through the crisis relatively unscathed and rose to become the industry leader from a previous third or fourth place. Its success, however, was unrelated to its municipal bond underwriting. Rather, it was due to its prudence in not plunging into the insuring of corporate and structured mortgage backed securities.

It was this segment of the business that brought down all the industry leaders. The actual business of insuring municipal bonds came through the crisis without immediate losses, so Assured Guaranty gained market share and prospered. But the industry shrunk dramatically and the seeds for future troubles soon became clear.

Two major changes came out of the financial crisis that threatens the health of this important industry. The first was that interest rates declined to where the insurance fees dropped as much as 80 percent. This is because bond insurance had traditionally been structured to be of no cost to the issuer, i.e. the fees were based of the savings in interest expense due to the bonds being rated AAA versus the issuers rating which were usually A- or BBB.

In theory, this ignoring of traditional underwriting principles was justified on the assumption that the insurer was writing coverage to a zero losses standard. This was, of course, a stretch in logic but was supported by Moody's and Standard & Poor's so long as they could get a piece of the fees on each deal for rendering their AAA imprimatur. The insurance fee structure was furthermore negatively impacted when S&P, and eventually the other rating agencies, downgraded the United States from AAA to AA+. This led to then downgrading the monoline bond insurers as well as the credit enhancement they actually could render. Along with the decline in interest rates, this proved to be a massive hit to the industry's fee structure. Still, they forged on, but failed to convince bond buyers that their insurance was worth more than the credit enhancement differential which had become miniscule. This of course was reflected in minuscule yield differentials.

A second negative event for bond insurers since 2008 has been a redefining of just who is being insured. The financial problems of states and municipalities have been growing for decades as unfunded obligations for pensions and health care have ballooned in anticipation of a crisis sometime in the future. In my view, the pandemic has accelerated that crisis point.

I have been reporting on municipal bond defaults for more than thirty years through the

Forbes/Lehmann Distressed Municipal Debt Report. We are seeing numerous municipalities assuming that, since they paid for the bond insurance, they are entitled to its benefits. Hence, there are an increasing number of instances of municipalities refusing to make their contractual debt service payments thereby requiring the bond insurers to step up and pay. Puerto Rico has gone so far on its insured issues that it now collects the interest payments as they come due from the insurer, and keeping the money rather than pay out interest to bondholders! The presumption in such actions by the municipal bond issuer is ludicrous, but defensible with taxpayers. Bondholders have yet to be heard from.

This pandemic provides an opportunity for distressed bond issuers to come together, declare a financial emergency and essentially renege on future interest and principal payments. And why not, they may even decide to renege on their uninsured debt as well. We see the extraordinary actions taken so far at the federal level by both the Federal Reserve Bank and the Federal Government. Some of these municipalities only have enough cash to either pay employees or to make interest payments. Their choice is obvious. Will the Fed or Washington intercede, probably, but this is far from certain.

For monoline bond insurers the future choices are clearer. For too long, bond insurance has been treated as a credit enhancement tool. It has become a true insurance product. It's time to treat it and price it as such or face possible ruin. One solution is to focus on selling insurance to the bondholders rather than the issuers. This concept has been tried in the past with very limited success since it could not compete with the low fees and higher costs from the credit enhancement approach. Now is the time for change.

## **Forbes**

by Richard Lehmann

Apr 13, 2020

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### **[Community QE - An April Game Plan for States and Cities.](#)**

Late last week, just before the holiday weekend, the Fed [announced](#) that it would be opening a new financing facility for hard-pressed States and Cities dealing with our COVID-19 pandemic – a facility fully deserving of the name '[Community QE](#).' This is a truly 'game changing' development that is just as critical for States and Cities as it will be *unfamiliar* to them for a while. Both for that reason, and because it will be crucial for our States and Cities to start using the new Facility *immediately*, this Column will provide a bit of background and then recommend a 'Game Plan' for the coming week for hard-pressed States and Cities.

#### **Background**

On April 9, the Board of Governors of the Federal Reserve System ('Fed') [announced plans](#) to open a new Municipal Liquidity Facility ('MLF,' 'Facility') to assist U.S. States and Localities suffering acute liquidity shortages while working to address the current COVID-19 pandemic.[1] A number of compelling considerations have prompted the move.

Prominent among the mentioned considerations are three mutually reinforcing developments that have intensified in recent weeks. *First*, States and Cities are facing spikes in [required expenditure](#) as they take on the role of front-line responders to the pandemic and its consequences. *Second* and

simultaneously, States' and Cities' principal sources of revenue – in particular, sales taxes, income taxes, and property taxes – have [dramatically contracted](#) as businesses suspend operations and taxpayers 'shelter in place.' Finally *third*, the \$4 trillion municipal bond market, the health of which is critical not only for States and their Subdivisions, but also for other securities markets, has experienced [unprecedented volatility](#) since February.

Against the backdrop of these developments, public health officials, State and Local officials, and bond market professionals [have called](#) since March for Fed intervention in the markets for State and Municipal securities ('munis') to stabilize prices, restore confidence to muni-investors, and ease the liquidity strains already hampering State and City pandemic response efforts. With passage of the Coronavirus Aid, Relief, and Economic Security ('[CARES](#)') Act by Congress last month, it became clear that both our federal legislature and our Fed and Treasury would be [heeding](#) these calls.

What remained unclear till the 9th of this month was what precise form the relief to States and their Subdivisions would take. That *remains* at least *somewhat* unclear, inasmuch as (a) U.S. Governors this morning requested that Congress appropriate more funding for States, and (b) the new Fed Facility has only just been announced and is accordingly only beginning its existence even as a 'work in progress.' But we know much more now than we did before the 9th, and it is all very good news for everyone concerned about the three developments enumerated above.

I'll accordingly first lay out what new details we now have, then offer informed predictions as to what more is likely to come, and then lay out the aforementioned Game Plan for States and Cities to follow in making optimal – and *immediate* – use of the new Fed Facility as it currently stands. In effect, as I [noted](#) the morning of the Fed's announcement last week, we have entered a world of [Community QE](#), which it is critical for States and Cities to master and put to use quickly.

## **The Municipal Liquidity Facility**

The new [Municipal Liquidity Facility](#) will operate under the auspices of [Section 13\(3\)](#) of the Federal Reserve Act ('FRA'), which grants the Federal Reserve emergency lending authority in exigent circumstances. The Fed typically exercises this authority through purchase and hence 'monetization' of short-term debt instruments – a practice known in finance parlance as 'discounting.'

In effect, the Fed temporarily swaps its own dollar liabilities, which are legal tender, for liabilities of its counterparties, which are not legal tender. The counterparty is thereby rendered 'liquid' – possessed of sufficient cash to spend on what ever it must spend to work past whatever difficulties it might be facing – until its debt instruments reach maturity. At that point the instruments are either redeemed in full or 'rolled-over' (when such option is available).

Perhaps needless to say, the Fed made abundant use of the Section 13(3) authority to afford liquidity assistance to many institutions and markets during the financial troubles of 2008-14, and thus has considerable experience with this funding mechanism. It is thus not the use of 13(3) that will be new now, but the use of the facility to aid States and their political Subdivisions in particular. That is unprecedented, and its significance is accordingly apt to be under-appreciated at first.

The new Municipal Liquidity Facility (again, MLF) that the Fed will now open under Section 13(3) will, like its predecessor facilities during the last financial crisis, operate through a newly formed special purpose vehicle (SPV) – in essence, a legal trust able to purchase, hold, and sell financial assets. In this case the assets in question will be State and Municipal paper, presently called 'Eligible Notes' in the MLF Term Sheet, whose salient characteristics I will lay out in a moment.[2]

The MLF SPV will be [initially capitalized](#) with \$35 billion from the U.S. Treasury, Congressionally



appropriated for the purpose by the aforementioned CARES Act. On this basis, [the Fed will itself lend \\$500 billion](#), rendering Treasury the equity investor and hence first risk-bearer in the SPV while the Fed serves as leverage-provider.

While the structure just described has, as noted before, been a familiar one since the last financial crisis, the 'substance' of its particular operations is new and noteworthy – indeed unprecedented and 'game-changing' – in ways that are critically important for States and their Subdivisions now faced with pandemic-caused hardship. At least three features bear special mention in this connection.

[First](#), the MLF SPV will purchase securities *directly* from States or their Subdivisions – they will not have to be sold first on the 'open market' to private sector financial institutions as is the case with Fed purchases under the FRA's [Section 14](#) authority.

[Second](#), the months-to-maturity on the paper in question will, for now at least, be 24 rather than 12 months as originally anticipated.

And [third](#), most importantly of all, the Fed will retain discretion (a) to *extend* the mentioned months-to-maturity requirement, (b) to extend the *timeframe* within which it is willing to buy – currently set to expire September 30th – and (c) to *loosen* the qualitative *criteria* that Eligible Notes must meet.

In addition to these three most salient features, several others are also worth bearing in mind at least as background conditions, even though they are subject to change – and, in this observer's view, in some cases *likely* to change – going forward ...

*First*, where *apportionment* of funds is concerned, the Fed appears to intend, at least for the time being, to calculate on a per capita basis. States or Cities with large populations would in that sense be eligible for more funding than States or Cities with smaller populations – but only in proportion to those populations themselves. This means that in effect every citizen and legal resident of the U.S. will be eligible for the same benefit as everyone else. Whether departures from *pro rata* distribution of this kind might be forthcoming if some States or Cities recover quickly from the pandemic while others recover more slowly remains to be determined.

*Second*, at present Eligible Notes are required, not only to mature within 24 months of issuance, but also, per the [Term Sheet](#), to be 'tax anticipation notes (TANs), tax and revenue anticipation notes (TRANs), bond anticipation notes (BANs), [or] other similar short-term notes issued by Eligible Issuers,' and can only secure lending up to 20% of each relevant issuer's 'general revenue from own sources and utility revenue' for the fiscal year 2017. Crucially, however, 'States may request that the SPV purchase Eligible Notes *in excess* of the applicable limit in order to assist political subdivisions and instrumentalities that are not eligible for the Facility' (emphasis added).

*Third*, proceeds of Note sales to the MLF SPV are to be used, again per the Term Sheet, 'to help manage the cash flow impact of income tax deferrals resulting from an extension of an income tax filing deadline; potential reductions of tax and other revenues or increases in expenses related to or resulting from the COVID-19 pandemic; and requirements for the payment of principal and interest on obligations of the relevant State, City, or County.' The Fed is in these words encouraging public perception of the MLF as a tide-over liquidity facility meant to assist counterparties in, as the Term Sheet puts it, 'managing [their] cash flows' – even as other sections of the Term Sheet leave open the prospect of longer-term 'rollover' of Note debt should the present pandemic and its sequelae continue to pinch.

Finally *fourth*, Eligible Issuers will be all U.S. States and the District of Columbia, U.S. Counties with populations exceeding two million, and U.S. Cities with populations exceeding one million. The Term

Sheet also stipulates in this connection that only one issuer per State, County, or City is eligible. While this requirement might be read to mean that for each State, only it itself or one of its Subdivisions may access the MLF, the fact that the Term Sheet also permits 'States [to] request that the SPV purchase Eligible Notes in excess of the applicable limit in order to assist political subdivisions and instrumentalities that are not eligible for the Facility' suggests that this restricted reading would not be correct. It suggests that instead as many eligible Counties and Cities as there are in a State may access the MLF in *addition* to, and hence in *parallel* with, the State itself.[3]

Two further, what I'll call 'interpretive' points bear noting before we summarize the upshot of the foregoing.

*First*, Chairman Powell and the Fed Board of Governors have effectively encouraged, in their [public pronouncements](#) of the [past several weeks](#) generally and the [last several days](#) particularly, a 'flexible' interpretation of all restrictive language found in the MLF's Term Sheet. The Chairman and the Board have also stated that they will continue to monitor the secondary muni markets for signs of resumed volatility, with an eye to possibly intervening further to stabilize them. Combined with the many openings for extension and exception specified in that Sheet itself as described above, these amount to assurances that the MLF is not only a 'work in progress,' as noted above, but also a work whose scope will *expand* should the *need* for it expand. We are, in other words, very much in '[whatever it takes](#)' territory right now, and the Fed is prepared to improvise further as necessary.[4]

*Second*, bond market and public finance experts in recent weeks have been [calling upon the Fed](#) to purchase State and Municipal debt with maturities not only in excess of traditional 6-month and 12-month durations, but also in excess of the new 24-month duration. The Fed for its part has said nothing to discourage such calls. Most commentators, not to mention '[smart money](#)' on the markets, seem now to anticipate upwards of three- to five-year State and Municipal debt to find its way onto the MLF balance sheet. While this cannot be predicted with certainty, of course, States and Cities faced with serious crises will do well to judge maturity lengthening on the part of MLF-eligible paper more likely than not - or perhaps better put, to be no less likely than any eventual need to issue it.

The Fed is, in short, keen not to repeat the [mistakes of the 1930s](#), but instead to repeat the successes of 2008-14. That is to say it will err, if it errs, not on the side of caution but on the side of its opposite - [bold, decisive, and crisis-ending action](#).

Putting all of the above together, reading it against the backdrop of the aforementioned 'whatever it takes'-style public comments made this week by Fed Chairman Powell, and synthesizing it all into a one-paragraph description of the new MLF, it appears then that we have the following:

*The Fed will immediately begin directly monetizing 2-year State and Municipal debt, in order to ensure that all States and their Subdivisions are sufficiently financed to continue their current roles as front-line responders to the nation's ongoing COVID-19 pandemic. While in the immediate term it will supply funding up to 20% of what States and their Subdivisions normally take in through traditional revenue sources, it stands ready to lever-up that amount, as well as to lengthen the maturities of eligible paper, should the pandemic and its collateral damage continue to work hardship for longer than now is anticipated. It also stands ready to 'roll over' even 2-year State and Municipal debt, once it has purchased it, should crisis conditions continue past present expectations.*

This is effectively *Quantitative Easing for Communities*, or *Community QE*. Our States and their Subdivisions will do well to begin using it at once.

## **An April 'Game Plan' for States & Their Subdivisions**

In light of the above, it seems to this observer that States and their Subdivisions should begin making use of the new MLF immediately. Because those federal instrumentalities that would normally have taken the lead role in addressing the Coronavirus pandemic have not done so, it has devolved upon our States and Cities to play the role of these federal agencies. What the Fed has effectively just announced is that these *de facto* new federal *instrumentalities* will now receive *de jure* federal financing. *Acting* as federal entities, they will now also be *funded* much like federal entities.

There is not a moment to lose in accessing and using these funds. For one thing, every lost day amounts to hundreds or thousands of lost lives. For another thing, harm to State and Local economies is much easier to do than to undo. Best then to employ all means of 'damage control' now, at the earliest possible opportunity, rather than later - when thousands more will have died and much more productive capacity will have been lost.

It should also be noted that, in addition to all of the reasons elaborated above, there is *another* reason to treat the new MLF as affording us much that is needed right now to address and reverse our pandemic: that is the very fact that the MLF is, as emphasized twice now already, a '*work in progress*' ...

The Fed is *improvising* right now. That means that what *we* do in response to the improvisation will be very important in determining the shape it assumes as it unfolds. We - the States and the Cities - are in other words *co-authors* of this new authority. It will ultimately be partly *what we make of it*. That is precisely why this observer is writing this Memorandum.

What, then, to 'make' of the MLF? This author believes all State Governors and Legislatures should be called into emergency session at once, 'virtually' if need be, to begin serious deliberation over how to begin using the MLF immediately. These sessions should also be attended by representatives of the States' largest Counties and Cities, as well as by appropriate personnel from all relevant State and Municipal Public Finance Departments.

Counties and Cities should hold counterpart Mayoral and Council meetings as quickly as possible too. For smaller ones, this will be to determine what aid to seek from their States as the latter tap into the new MLF. For the larger ones, it will be both for that reason and in order to determine what to seek *directly* from the Fed through the MLF.

All States and Cities that go into session as just described should also engage representatives of all [regional Federal Reserve Banks](#) in whose operational jurisdictions they are located as quickly as possible - ideally requesting their attendance at the sessions themselves. This will be important because the regional Federal Reserve Banks are the primary 'interface' between our federated Federal Reserve System and the nation's various State, Local, and Regional economies.[5] In virtue of that role it will be easiest for the Federal Reserve System both to learn as quickly as possible what State and Local MLF needs are going to be, and to set into motion all procedures that will be necessary for States and Cities to *access* the Facility, if these regional Fed officials are involved in deliberations - even if only as observers - from the very beginning.

Because the need of funds generally is likely to be recognized and agreed upon even more quickly than the full panoply of specific *uses* of funds, it will probably also be best for State and City officials to 'segment' the deliberations that they commence in the emergency sessions that I am recommending here. First can come deliberation and decision over how much funding to seek and whom to authorize to begin preparations for the new issuances that the States and Cities will sell to the MLF SPV. That will of course involve *preliminary* vetting of specific needs and ongoing crises, if only to ensure everyone is clear on the urgency of the funding need itself. But more detailed

decisions as to specific intra-State and intra-City *allocation* of funds then can be deferred to a second deliberative phase commencing immediately after decisions about what funding to seek have been made.

Call the first, *quantitatively* oriented discussion of funding needs and issuance authorization, then, 'Phase One.' And call the second, more *allocatively* oriented deliberation and decision-making 'Phase Two.'

If at all possible, this author believes States and Cities should begin holding their *Phase One* sessions immediately following the Easter weekend – that is to say, the week of April 12th – or as soon thereafter as possible. This is, again, both because the public health and economic devastation being wrought by the pandemic is happening quickly, and because the sooner that States and Cities begin weighing-in on how the MLF is implemented, the more influence they will have on its ultimate contours and characteristics. Once these Phase One decisions have been reached and the appropriate State and Local personnel have been assigned their issuing and Fed-liaising tasks, States and Cities can proceed directly to Phase Two preparations – that is, to gathering information, testimony, advice and all other deliberative 'inputs' necessary to make sensible allocation decisions in respect of the new funding that will be coming from the MLF.

Once Phase Two deliberations end in allocation decisions, States and their Subdivisions might next consider what I'll call '*Phase Three*' deliberations over whether to press the Fed for further liberalization of the terms of the MLF Term Sheet. It might be decided, for example, that authorization to purchase State and Municipal paper of longer maturity than 24 months should be sought, or that a rollover option should be made more explicit. These questions can presumably wait, however, until current uncertainties 'on the ground' are resolved. With any luck, for example, the pandemic might be contained before summer ends. Or the States' Governors might succeed in their current effort to secure more direct funding from Congress.

However that may be, what matters now is that Phase One commence, and that it commence 'with all deliberate speed.' This observer will continue to watch events unfold, and will follow-up with further reporting and recommendations on an 'as [seems to be] needed' basis.

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[1] See Board of Governors of the Federal Reserve System, *Press Release: Federal Reserve Takes Additional Actions to Provide Up to \$2.3 Trillion in Loans to Support the Economy*, April 9, 2020, available at. In what follows the terms 'City,' 'Locality,' and 'Municipality' are used more or less interchangeably to refer to what the law labels 'municipal corporations.' The terms 'Subdivision' and 'Political Subdivision' are in turn used to embrace both entities of that first type and Counties, which the new Facility described in this Memorandum distinguishes and treats differently from Cities.

[2] Board of Governors of the Federal Reserve System, Term Sheet: Municipal Liquidity Facility, April 9, 2020, available at.

[3] Hence, for example, in California both the State and the City of Los Angeles would be immediately eligible to borrow under the Facility, while the State would be eligible to petition for additional borrowing on behalf of other cities such as San Diego or San Francisco. New York State and New York City will be similarly enabled. The story will be similar for Texas, save in its case two cities – Dallas and Houston – rather than one will be eligible alongside the State to borrow immediately. The author is currently seeking confirmation of this reading.

[4] 'Whatever it takes' has become a catchphrase in central banking parlance since European

Central Bank ('ECB') President Mario Draghi's assurance in 2012 that the ECB would do what ever is necessary to stabilize the Eurozone. Use of the phrase in the present context signals a readiness on the part of a monetary authority to interpret terms flexibly or even to rewrite them should the alternative be market collapse.

[5] To recur to the examples mentioned in footnote 3, for instance, officials of the Federal Reserve Bank of New York would be in attendance at State sessions in Albany and City sessions in lower Manhattan. Officials of the Federal Reserve Bank of Dallas would be in attendance at Texas sessions in Austin and Municipal sessions in Dallas and Houston. And so on.

## **Forbes**

by Robert Hockett

Apr 12, 2020

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### **Far Worse to Come: COVID-19 Collapse of State and Local Governments**

Another sudden and unexpected factor will transform this year's elections. Many states, cities and counties are about to, suddenly, run out of money. Wages won't be paid. Services won't be delivered. Institutions will shut down abruptly. Many state colleges may fold. And yet most state and local political and administrative leaders just sit and watch. Voters will not be pleased.

Millions of American workers filed for unemployment insurance during the past two weeks. That is a record and represents a collapse of our local economies. Across the country, in every state, county and city, businesses have been shut down, and many will not return after the coronavirus crisis is over. Tens of millions have lost jobs, homes, savings and retirement incomes that will never return. Owners of rental property will go under when their loan payments come due and renters can't pay. Across the country, state and local economies are being badly damaged — many of them permanently.

The result is that state and local tax revenues will plummet. States and localities will burn through any reserves they've maintained like wildfire. Since most of our politicians and government managers have been raised during a decade of expanding economies, their first instinct will be to wait and then panic and then raise taxes to cover shortfalls — perhaps a special "coronavirus surtax." Taxpayers across the country have tolerated various forms of high state and local taxes; the politicians would naturally ask, "Why should now be any different?"

But it is different. The resulting increased tax burden would be a disaster. Businesses that were barely hanging on would go under. Workers and homeowners who were barely surviving would go under. State and local tax bases would collapse even faster. There would be social unrest, possibly requiring martial law. People would migrate from high-tax states toward new jobs, accelerating a downward spiral. These large migrations would make the 2020 census results nonsense.

The only answer for the states, counties and cities that want to survive is to slash budgets now — probably 30 to 50 percent — eliminate all nonessential spending and reduce taxes today. Business leaders know that, in these types of situations, the only way to save a company is to cut costs immediately. There is no other answer, and those who act first and most aggressively are the most successful in saving the company and the greatest number of its employees. In short, "fiscal distancing" — that is, separating politicians from taxpayers' money by cutting budgets and taxes

now — is literally the only useful thing that state and local governments can do to prevent further economic and social catastrophe.

There is actually no other significant role that states and local governments can play in saving their economies, tax bases and quality of life. Only the federal government can provide truly useful, significant financial help to businesses and individuals during this historic disaster because only the federal government can print money in a crisis. Cutting taxes is the only state and local option to help their economies. Spending extra money now is throwing rocks into their own lifeboats.

I've talked to and written to many state and local officials over the past couple of weeks. Their recorded messages say they are all "working nonstop on coronavirus task forces." Not to be rude, but most of that is a complete waste of time and public resources. With few exceptions, little or nothing useful will come of that. Only private businesses, individuals and the federal government are able to address this problem. For the most part, state and local governments will be in the way, except for critical, essential services such as police forces, fire departments and health care. Nearly everything else must go, now.

Of course, I'm not optimistic that many officials or politicians at the state or local levels will take massive budget cuts or slashing taxes seriously — yet. They were raised in a different world of explosive economic growth. Most would prefer to promote vanity and virtue-signaling projects from their towering sandcastles they've built with taxpayer money over the past couple of decades, even as their castles crumble around them. They could never grasp that cutting taxes is the only tool they have to preserve their states, counties and cities. The concept is far beyond their political vocabulary — none of them could grasp the public finance, let alone the Darwinian game theory, aspects of the enormous challenge in front of them.

States are now furiously competing for ventilators. Tomorrow they will be fighting for taxpayers. Their primary (only) goal today should be to support and save their local economies — businesses, homeowners and other taxpayers — so that they have a foundation left on which to build later. If they kill off their tax base or drive businesses and taxpayers out of their states or localities, they will have poured salt on their fields and they will starve in the future. Their political careers will be over.

And so, as the coronavirus preys on the weakest human bodies, it also preys on the weakest state and local politicians. We can only hope that the fiscal mortality rate among those will be lower than the models suggest. In the end, though, the ruthless force of American politics probably will claim a new crop of unexpected victims.

THE HILL

BY GRADY MEANS, OPINION CONTRIBUTOR — 04/12/20 09:00 AM EDT

*Grady Means is a writer (GradyMeans.com) and former corporate strategy consultant. He served in the White House as a policy assistant to Vice President Nelson Rockefeller. Follow him on Twitter @gradymeans1.*

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## **[Can The Fed Save The Municipal Bond Market?](#)**

The rapidly-deepening economic crisis keeps threatening financial markets, including the \$3.9 trillion municipal bond market. The ongoing economic collapse means state and local economies are plummeting, dragging their government finances with it. Today, the Fed [announced a multibillion](#)



[intervention](#) to stabilize the muni market. But can the Fed save the market?

The Fed has resisted this unprecedented step. But the pandemic-related bad economic news keeps piling up, with today's announcement of six million new unemployment insurance claims (for a three-week total over 16 million, around ten percent of the labor force). And there's no break in sight. The St. Louis Federal Reserve now predicts a loss of 47 million jobs with an unemployment rate rising to 32.1 %, over 7 % above the highest level ever recorded in the Great Depression.

State and local governments are staggering under the spending burdens from health care and other public services imposed by the pandemic. But they also are seeing all tax and revenue sources—sales, income, property, and excise taxes—fall, with sharply negative forecasts for the future at a time when many states ordinarily would be passing a new fiscal year budget. California, Colorado, Alaska, New York, Florida—no state or city is immune.

[Continue reading.](#)

## **Forbes**

by Richard McGahey

Apr 9, 2020

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### **[States, Cities Set for Deficit-Borrowing Spree After Big Tax Hit.](#)**

(Bloomberg) — America's state and cities will likely need to sell billions of dollars of short-term debt to keep running as the fallout from the coronavirus deals a massive hit to tax collections.

With local economies grinding to a virtual halt and tax-filing deadlines pushed back until July, governments across the country are likely to face severe financial strains during a time of the year when they're usually flush with cash.

In New York, where the pandemic is projected to add as much as \$7 billion to the budget deficit in the current fiscal year, Budget Director Robert Mujica said on April 1 that the state has "no choice but to issue short term borrowing to bridge the gap" for the three months until annual income-tax payments are due. Rhode Island is weighing whether to borrow \$300 million. The New York State Thruway Authority may borrow as much \$350 million as toll revenue from drivers plummets.

"It's very likely to see an uptick in the short-term note borrowing as these issuers await their revenue to come through," said Erin Ortiz, a managing director at Janney Montgomery Scott in Philadelphia. "Local governments have a much smaller revenue base and tend to operate with lower fund balances and available cash."

Such short-term borrowing climbed to a record \$67 billion in the aftermath of the last recession, when the contraction rippled through tax collections long after it began. The unprecedented speed and scale of the pandemic-induced slowdown is delivering a more immediate financial hit, with the widespread closure of businesses decimating sales-tax revenue and throwing millions of Americans out of work since last month.

The ability of states and cities to borrow on a massive scale this time has been complicated by unusual volatility in the \$3.9 trillion municipal-bond market after investors pulled out record sums of

cash amid concern that the crisis will create financial distress for hospitals, convention centers and others that have issued debt.

That retreat has caused the pace of debt sales to tumble as the biggest deals are put on hold. Since March 16, only about \$6 billion of new state and local government bonds have been issued, a drop of 70% from the same period a year ago, according to data compiled by Bloomberg.

Richard Li, the public debt specialist for Milwaukee, Wisconsin, on April 2 tried unsuccessfully to auction \$120 million of nine-month notes to cover the temporary cash shortfalls it was anticipating before the virus struck. His office received just two bids, both from separate arms of JPMorgan Chase & Co., and rejected them both because the cost was higher than expected. The city opted for a loan with U.S. Bank at an offer closer to the market rate, Li said.

“The market is so locked up and it just can’t figure itself out,” Li said.

That’s left state and local government officials looking for the Federal Reserve to utilize the power to buy municipal debt that it was given under the \$2 trillion economic stimulus program. The Government Finance Officers Association, a lobbying group for municipalities, last week urged the central bank to create a low interest-rate loan program for governments facing cash crunches from the virus, saying a flood of short-term borrowing could destabilize the public market.

The Fed has already extended some aid by allowing short-term debt to be pledged as collateral under its money-market fund lending program, a step that helped arrest a steep jump in interest rates last month. But it has yet to spell out how — and whether — it will use the powers extended under the stimulus law.

Morgan Stanley municipal strategist Michael Zegas said the central bank could purchase short-term notes directly or buy securities on the secondary market.

“That’s the type of activity that could help the market heal faster than it would on its own,” he said.

## **Bloomberg**

by Danielle Moran

Bloomberg April 8, 2020

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### **[Fed Expands Corporate-Debt Backstops, Unveils New Programs to Aid States, Cities and Small Businesses.](#)**

#### **Latest round of emergency measures expands central bank’s footprint into credit markets it has previously avoided**

The Federal Reserve is going farther than ever to shore up the U.S. economy, unveiling programs to lend directly to states, cities and midsize businesses that have seen revenues evaporate amid efforts to combat the novel coronavirus.

The central bank also said Thursday it would expand previously announced plans to backstop lending to large companies by supporting riskier bonds issued by corporations that had recently lost their investment-grade status.

Altogether, the Fed said nine lending programs it is creating or expanding would provide up to \$2.3 trillion in loans, and officials signaled they were prepared to expand those programs as needed to stem long-lasting damage to the U.S. economy.

"It's really an awesome display of creativity and decisiveness—the breadth and diversity of programs," said Antonio Weiss, a Treasury official in the Obama administration who is now a senior fellow at Harvard University's John F. Kennedy School of Government. "They are taking a role well beyond any the Fed has played in its modern history, and the economy needs it."

In leading the Fed beyond past efforts to support lending during the Great Depression or after the 2008 financial crisis, Chairman Jerome Powell is pushing deeper into areas of credit and fiscal policy that the central bank has traditionally deferred to elected officials.

During and after the financial crisis, the Fed left it to the White House and Congress to provide financial assistance to failing auto makers and local governments facing declining revenues and rising expenses, viewing such decisions as essentially political.

Now, with a far broader swath of the economy shut down to prevent the spread of infection, companies and local governments of all sizes are struggling to make payroll, pay bills and service their debts.

The Fed last month cut its benchmark rate to near zero at two unscheduled meetings and has ramped up purchases of Treasury and mortgage-backed securities at an unprecedented scale. Its asset portfolio has quickly ballooned to more than \$6 trillion from \$4.2 trillion in February, and it is on pace to more than double by midyear from its prior high of \$4.5 trillion.

"The Fed is at war against the virus, and this is a wartime degree of commitment to credit policy," said Krishna Guha, vice chairman of Evercore ISI.

The superlatives the Fed is setting with the scale of its response have been matched by the speed with which unemployment is rising. An all-time high 7.5 million Americans were receiving unemployment benefits at the end of March, the Labor Department reported Thursday. Another 6.6 million had submitted claims during the week ended April 4.

The severe scale of damage has prompted the Fed to signal its willingness to buy assets or make loans in any market it thinks will be necessary to stave off further job losses and business failures.

The Fed has tried to identify "the priority areas where we thought help was needed," Mr. Powell said during an online forum Thursday. "As we identify other areas, we won't hesitate to move."

Mr. Powell also said it would be important to defer to health authorities in determining how to reopen the economy. "We need to have a plan nationally," he said. "We all want it to happen as quickly as possible. We all want to avoid a false start."

The Fed first moved in funding markets last month to prevent a public-health crisis from morphing into a financial crisis, and later said it would assist credit markets that have broken down.

The Fed's initial response borrowed heavily from the programs developed by former Chairman Ben Bernanke, who during the 2008 financial crisis used lending authorities the Fed hadn't employed since the Great Depression.

Having exhausted those off-the-shelf tools, the Fed is now devising new ones, relying on the advice of British journalist Walter Bagehot, author of an 1873 book that central bankers still use as a guide

for crisis management.

"The holders of the cash reserve must be ready not only to keep it for their own liabilities, but to advance it most freely for the liabilities of others," Bagehot wrote. "They must lend to merchants, to minor bankers, to 'this man and that man,' whenever the security is good."

Congress and the Treasury have made possible a new generation of loan programs by extending nearly \$450 billion to cover losses the Fed might sustain in its lending programs. The Fed relied on \$185 billion in additional support from the Treasury in launching the programs announced Thursday.

That leaves the Fed with a significant amount of resources available still to expand these programs or introduce new ones should they be needed. Mr. Powell signaled the central bank was in no hurry to withdraw its crisis support and deflected worries that the expansion of credit by the Fed would lead to inflation.

"I worry that in hindsight, you will see that we could have done things differently. But one thing I don't worry about is inflation right now," he said.

The steps unveiled Thursday will finance loans that banks make through the government's emergency small-business lending program and allow banks to exclude those loans from required capital ratios, freeing them up to make more of those loans, which are separately guaranteed by the Small Business Administration.

The Fed will create two other facilities to encourage banks to lend to midsize businesses, which it defined as those with fewer than 10,000 employees or less than \$2.5 billion in revenues last year.

This Main Street Lending Program will enable up to \$600 billion in lending to firms that are too large to qualify for the small-business loans but too small to access corporate debt markets. Firms can apply for those loans on top of the forgivable payroll loans from the SBA, and banks will be able to sell 95% of the debt to the Fed.

Due to restrictions placed by Congress, the Fed said loans under the Main Street program would be subject to rules on payments to shareholders and executive compensation.

The Fed earlier announced plans to backstop funding markets for large companies and said Thursday it would expand those programs to accept some riskier classes of corporate debt beyond investment grade.

One corporate credit backstop to support new debt issuance of highly rated firms will now include so-called fallen angels that were investment-grade in mid-March but have subsequently been downgraded. A second corporate credit backstop will similarly allow a limited amount of purchases of non-investment-grade debt in exchange-traded funds.

By dipping a toe into the junk-bond market, the Fed is trying to create space for inevitable downgrades for firms in its lending facilities, reducing the "cliff effect" that companies face when they move from the lower rungs of investment grade to noninvestment grade.

Prices for debt from companies, including Ford Motor Co., registered especially large gains after the Fed's announcement. Ford's 7.45% bonds due in 2031 traded as high as 89.5 cents on the dollar after the Fed's announcement, according to MarketAxess, compared with 71 cents Wednesday. The auto maker has more than \$36 billion in bonds outstanding, making it the single largest issuer of below-investment-grade debt.

Other potential beneficiaries include Continental Resources Inc. and Western Midstream Operating LP, which lost their investment-grade status after March 22, the Fed's cutoff date for formerly investment-grade firms. Continental Resources' 4.9% bonds due in 2044 climbed to 73.375 cents from 61 cents.

Another program will accept new classes of debt in the previously announced Term Asset-Backed Securities Loan Facility, or TALF, that were initially excluded from that facility when it was used after the 2008 financial crisis to support consumer and business credit markets. The program will become open to the highest-rated tranches of existing commercial mortgage-backed securities and newly issued collateralized loan obligations.

Under TALF, the Fed lends money to investors to buy securities backed by credit-card loans and other consumer debt. The Fed has made \$100 billion available for that program and didn't increase the amount Thursday.

To ease funding strains for cities and states experiencing large revenue drops and rising expenses from simultaneous economic and health crises, the Fed said it would purchase up to \$500 billion in short-term debt directly from U.S. states, the District of Columbia, counties with at least two million residents, and cities with at least one million residents.

The facility is designed to provide financing of up to two years to state and local governments dealing with increased demand for services at a time when revenues are plunging. The Fed program aims to restore more buying and selling in a market that seized up in mid-March, causing cities and states around the country to cancel borrowing deals for core infrastructure needs.

Muni-bond prices tanked amid frenzied selling last month. Investors yanked \$32.8 billion from municipal-bond mutual and exchange-traded funds, the largest monthly outflows since data collection began in 1992, according to Refinitiv.

By limiting the facility to one issuer for each state, city or county, the Fed is likely to avoid propping up some of the most risky municipal borrowing.

Roughly 10% of muni bonds outstanding are junk-rated or unrated debt, much of it issued with state, city or county permission by a range of private entities including nursing homes and charter schools. Those bonds, many of which are held by high-yield mutual funds or other institutional investors, make up one of the most troubled sections of the market.

Analysts said the Fed's help, while valuable, wouldn't replace the need for more aid from the federal government, which provided around \$200 billion to states and cities in last month's stimulus bill.

Unlike the federal government, most states operate with balanced-budget requirements that don't allow them to run deficits. "No amount of borrowing can substitute for actual funding to states that will face really impossible decisions around the provision of essential services, unless Congress alleviates the pressure on state budgets," said Mr. Weiss of the Kennedy School.

During his two years as Fed chairman, Mr. Powell has delicately resisted providing pointed advice about tax and spending decisions outside the central bank's traditional purview of regulating banks and setting short-term interest rates.

While he said the Fed would continue to use its powers "forcefully, proactive and aggressively," he issued a more assertive call Thursday for additional spending from Congress and the White House.

Many borrowers will benefit from the Fed's emergency loans, Mr. Powell said, but "there will also be

entities of various kinds that need direct fiscal support rather than a loan they would struggle to repay.”

Mr. Powell punctuated his call for additional fiscal support by highlighting how severe economic burdens are falling on low-income workers and other vulnerable segments of society.

The task of delivering financial support “directly to those most affected falls to elected officials, who use their powers of taxation and spending to make decisions about where we, as a society, should direct our collective resources,” Mr. Powell said.

## **The Wall Street Journal**

By Nick Timiraos

Updated April 9, 2020 5:15 pm ET

—Heather Gillers and Sam Goldfarb contributed to this article.

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### **[Smaller Cities Cry Foul on Coronavirus Aid.](#)**

#### **Mayors protesting exclusion get sympathetic ear from some lawmakers for next round of stimulus**

Mayors of small cities facing big budget shortfalls say they were unfairly cut out of the \$2.2 trillion stimulus law, and they are drawing support in Congress to make them eligible for direct aid in future rounds of coronavirus legislation.

Localities are seeing increased strain on first responders and police departments, in addition to bearing the cost of purchasing personal protective equipment. Meanwhile, revenue streams from sales taxes and income taxes have slowed and unemployment claims are surging. But the rescue law stipulates that only counties and cities with populations over 500,000 residents can apply directly for the \$150 billion in emergency funding for state, local and tribal governments.

“It’s a terrible slap in the face to most cities around the country,” Shane Bemis, the mayor of Gresham, Ore., said of the population restriction.

The Republican mayor said he may have to look at cuts to the police force and fire department or add a levy to property taxes to continue the services, should the shutdown continue. His city, a suburb of Portland, has about 110,000 residents.

In an interview with WSJ’s Gerald F. Seib, New Jersey Governor Phil Murphy said there is room to be optimistic after his state saw a drop in the rate of new Covid-19 cases, but warned that more federal support is needed to continue the fight against the novel coronavirus. Photo: Associated Press

Lawmakers are sympathetic but are balancing many urgent priorities in future stimulus bills. Some cities may get funds through grants and aid to hospitals as well.

“This is not a question of picking A over B, it’s saying both A and B need sufficient resources,” said House Majority Leader Steny Hoyer (D., Md.) in an interview. In the next large bill that Congress considers, he wants to get additional assistance to small communities and “get them directly to the



locality, as opposed to going through the states.”

House Speaker Nancy Pelosi (D., Calif.) and Senate Minority Leader Chuck Schumer (D., N.Y.) on Wednesday requested an additional \$150 billion for states and local governments. They didn’t say if they backed keeping the population requirement for direct aid to cities. An aide to Majority Leader Mitch McConnell (R., Ky.) couldn’t say if the Senate leader would support changing the requirements in future legislation.

Rep. Joe Neguse, a Colorado Democrat, on Tuesday introduced legislation that would allocate \$250 billion for local communities, cities and towns that are facing challenges due to the pandemic. The legislation was introduced with 75 sponsors, but it’s not known if that will be incorporated as part of a future economic stimulus package.

Meanwhile, Sens. Michael Bennet (D., Colo.) and Cory Gardner (R., Colo.) wrote to Treasury Secretary Steven Mnuchin this week, asking him to take a broad definition of what he sees as coronavirus-related needs and ensure small and rural communities receive a share of the funds approved by Congress last month.

“I don’t think there should be population limits one way or another,” Mr. Gardner said.

A spokesperson for the Treasury Department didn’t return a request for comment.

Separately, Mr. Mnuchin said that the federal government would soon announce plans to establish a facility to purchase municipal securities, responding to a Democratic effort to get the U.S. to provide a backstop for struggling cities and localities.

Lawmakers are looking at other approaches as well. Rep. Rashida Tlaib (D., Mich.) is working on part of the package of issues that House Financial Services Committee Chairman Maxine Waters (D., Calif.) will submit for consideration in future legislation. She said the goal would be to push the Federal Reserve to buy up municipal debt, providing money to help localities weather the crisis. The stimulus package gives the Federal Reserve the option to buy such debt.

Congressional aides said the 500,000 population stipulation was in the most recent bill as it was being quickly negotiated to move it through Congress faster. States that receive their share of the \$150 billion can then send some to local governments, though mayors see a need for money urgently now.

“We could be off by several million dollars in our existing budget, so that’s a problem,” said Andy Schor, the mayor of Lansing, Mich., which has about 120,000 residents.

In addition to losses in tax revenue, the local minor-league baseball team, the Lansing Lugnuts, told the city it wouldn’t pay rent this month on the stadium, and the convention space the city helps subsidize lost \$1.5 million in business in two days when the pandemic hit. Mr. Schor told his residents this week to stop putting their yard waste on the curb, as one of his first decisions in the pandemic was to not hire the seasonal help that picks it up.

The law also means cities with big metro areas but relatively small populations were left out.

Miami Mayor Francis X. Suarez, who was the second confirmed case of Covid-19 in his area and has since donated blood plasma to help, doesn’t expect to directly receive funding and is frustrated by the lack of information on how the money appropriated by Congress will be allocated. Miami, with just under 500,000 residents, has spent millions of dollars on personal protective equipment and coronavirus testing and has the most cases in Florida.

"We have reserves, but they are not limitless," he said in an interview. "Right now we're estimating a hit of \$20 million a month in terms of lost revenue."

## **The Wall Street Journal**

By Natalie Andrews

April 9, 2020 9:19 am ET

—Siobhan Hughes contributed to this article.

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### **State Funding Woes Are Dragging the Fed Into Muni-Market Reboot.**

#### **The central bank has been aggressive in supporting the economy, but financing by local governments poses unique challenges**

Reviving the market for bonds sold by state and local governments is shaping up as one of the stiffest tests in the Federal Reserve's campaign to restore financial normalcy.

The Fed has committed trillions of dollars to keep money flowing through markets vital to economic growth, including huge purchases of government and mortgage securities and new programs to backstop money-market funds and corporate-debt markets.

Those efforts have helped to fuel the markets' partial recovery, say investors and portfolio managers, with the Dow Jones Industrial Average up 26% from its March 23 low.

But the central bank is limited in its efforts to revive the \$4 trillion market for municipal securities, which back everything from school facilities to stadiums and highways. The Fed has so far intervened in only a few corners of the market, which is fraught with idiosyncrasies that make it difficult to categorize debt as investment-grade or risky, the line in the sand drawn by the Fed to ascertain what it backstops during a crisis.

The constraints stem in part from the coronavirus's decimation of state and local finances, which could make the risks even harder to judge, and the Fed's traditional deference to Congress in handling local government financing decisions.

"The Fed doesn't want to be in a position to say you have to raise taxes or cut pay to policemen or firemen" to secure or repay a loan from the central bank, said Scott Alvarez, who was the Fed's general counsel from 2004 to 2017.

Treasury Secretary Steven Mnuchin told Democratic lawmakers Wednesday that Fed and Treasury officials would soon unveil a program to backstop financing for states. The devil will be in the details, and those designs—along with other announced plans for lending to small and midsize businesses—could be unveiled as soon as Thursday, according to people familiar with the matter.

While the Fed has the authority to purchase municipal debt with maturities of six months or less, it hasn't exercised that authority. A more likely route would be to establish an emergency lending program to backstop longer-dated muni debt.

The \$2 trillion rescue package that Washington approved last month includes \$454 billion that the Treasury can use to absorb losses on any Fed lending facilities. That bill provided \$200 billion in

direct funding for states and cities, but they are likely to need another \$300 billion to \$600 billion, said Tom Kozlik, head of municipal credit at Hilltop Securities.

The aid to cities and states in the recent rescue package “will not be enough to offset the cost many states and municipalities are encountering,” said Boston Fed President Eric Rosengren. The Fed can help with financial markets, but those efforts will be less effective without more direct aid, he said.

Officials are trying to avoid a rerun of state and local government layoffs after the 2007-09 recession, which contributed to an underwhelming economic recovery despite unprecedented Fed stimulus.

The Fed typically seeks to steer clear of concerns about the potential loss of taxpayer funds by focusing on purchases of assets such as highly rated bonds whose default is widely judged to be minimal. Such judgments are harder to come by in the market for municipal bonds, where even the strongest borrowers have been hammered by the challenges arising from an unprecedented shutdown of business and commerce around the country.

States face not just the burden of boosting spending on public-health responses, but also a drop in revenue from sharp declines in sales-tax collections.

“In almost every way, states are at the front lines of fighting this,” said Joe Torsella, Pennsylvania’s state treasurer.

Fears that state and local finances will be permanently damaged are evident in the investor flight from this market, which until recently has ranked among the most resilient.

In March, investors pulled \$32.8 billion from municipal-bond mutual and exchange-traded funds, according to Refinitiv, the largest monthly outflows since data collection began in 1992. State and local governments canceled billions of dollars of planned borrowing. The S&P Municipal Bond Index gave up more than a year’s worth of gains.

The Fed has long resisted lending to states and companies, having spurned requests from lawmakers in 2008 to aid ailing U.S. auto makers and ruled out a muni-debt backstop.

The central bank has already broken some taboos during the current crisis. It is in the process of unveiling lending facilities for large and midsize companies, and it has dipped a toe into muni-debt markets by expanding a money-market lending backstop to include certain types of municipal debt—and by purchasing some highly rated municipal debt in a facility backing the market for very-short-term commercial debt.

Analysts and state officials said the Fed could provide support by buying a broad-based muni index, avoiding the prospect of picking winners and losers outright.

Among the issues the Fed must weigh is who ultimately benefits. The yields on bonds issued by Montgomery County, Md., an affluent suburb of Washington, D.C., and Cook County, Ill., home to Chicago and where more than 700,000 people live in poverty, both jumped more than 2 percentage points over a week in March, indicating lower prices.

Yields on the Montgomery County bonds have since declined more than those on the Cook County bonds—indicating that while the market views the Montgomery County bonds as a better risk, the Cook County securities are potentially the ones more in need of support. Those sorts of regional and distributional issues carry significant risk for the Fed, investors said.

“It would be very problematic for the institution and its credibility to decide between New York and Montana,” said Mark Spindel, a Washington-based investment manager who co-wrote a history of the Fed.

The prospect of increased lending to businesses and local governments, often in consultation with the Treasury Department, could reshape the Fed’s longstanding autonomy from the executive branch.

During and after World War II, the central bank pegged Treasury yields to finance war spending and the recovery. A bruising fight with the Truman administration, which resulted in the resignation of the Fed chairman, ultimately led to a formal agreement in 1951 to end the Fed’s policy of fixing Treasury yields.

“I think it is possible that we will have a central bank when this is all over that has sacrificed a piece of its independence,” said Jeremy Stein, a former Fed governor who now teaches at Harvard.

Fears about the loss of central-bank independence are overstated given the gravity of the current crisis, said Mr. Torsella.

While political and constitutional tensions loom, “smart, well-intentioned people can figure out how to do this in a way” that “simply restores functioning of this market,” said Mr. Torsella. “I want to make sure we have a fighting chance of getting back to those more normal times.”

## **The Wall Street Journal**

By Julia-Ambra Verlaine and Nick Timiraos

Updated April 8, 2020 5:56 pm ET

—Siobhan Hughes and Kate Davidson contributed to this article.

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## **[Fed Announces Municipal Liquidity Facility.](#)**

### **Announcement Follows BDA Letter / Recommendations to the Fed**

The Federal Reserve today [announced the guidelines](#) of the Municipal Liquidity Facility, authority that was provided by the recent passage of the CARES Act.

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

Last week, the BDA urged to the Fed and Treasury to take action in the primary market by through direct purchases. The Fed also left the door open to further actions, including limited secondary market activity in which the BDA wrote in favor of.

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

### **Facility Facts**

The Municipal Liquidity Facility will support lending to states, cities with a population exceeding one million residents, and counties with a population exceeding two million residents.

Under the Facility, a Federal Reserve Bank will commit to lend to a special purpose vehicle on a recourse basis. The SPV will purchase Eligible Notes directly from Eligible Issuers at the time of issuance.

The Reserve Bank will be secured by all the assets of the SPV. Treasury will make an initial equity investment of \$35 billion steaming from the \$454 billion allotted in Sec. 4003 of the CARES Act, in the SPV in connection with the Facility.

The SPV will have the ability to purchase up to \$500 billion of Eligible Notes.

**Eligible Notes:**

- TANS,
- TRANS
- BANS, and
- Other similar short-term notes issued by Eligible Issuers, provided that such notes mature no later than 24 months from the date of issuance

**Termination Date**

The SPV will cease purchasing Eligible Notes on September 30, 2020, unless the Board and the Treasury Department extend the Facility. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

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

**Bond Dealers of America**

April 9, 2020

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**[Press Release: BDA Statement on the Federal Reserve Municipal Liquidity Facility](#)**

*We welcome the Fed's support for the market and we are hopeful this facility will provide needed help to municipal issuers. We are looking particularly at how smaller issuers will access the facility. We look forward to working with the Fed and others to ensure that any extraordinary help for the market is applied as effectively as possible. We also urge the Fed to use its CARES Act authority to provide support as needed for the secondary market for municipal bonds – providing much needed liquidity, benefiting the overall market.*

The Bond Dealers of America is the only Washington, DC based trade association that represents securities dealers and banks whose focus is the U.S. bond markets. We work passionately to promote public policies and market practices that improve the market environment while also providing a forum for its members to learn, collaborate, debate and discuss issues of common interest.

The BDA acts as a clearinghouse for industry information and issues and provides educational opportunities for industry professionals through conferences, seminars and roundtables. By supporting the interests and prosperity of our members, we help to strengthen the companies, municipalities and investors who depend on them for both access to market liquidity and to raise the capital they need to grow and prosper.

April 9, 2020

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### **Fed Treads Cautiously Into Muni Market With Loan Lifeline.**

- **Central bank isn't making open-market buying, as some sought**
- **Fed leaves the door open to more steps if they are needed**

The Federal Reserve is treading carefully into the \$3.9 trillion municipal-bond market.

The central bank announced on Thursday that it would lend as much as \$500 billion to states and the biggest local governments to cover massive tax shortfalls brought on by the swift slowdown in the economy, preventing a wave of short-term debt sales from hitting the public markets. But it stopped short of swooping in to buy long-term debt to head off another sell-off like the one that erupted last month, as it is doing with corporate bonds, collateralized loans and commercial mortgage-backed securities.

"The Fed is throwing a lifeline to municipal governments," said Gary Pollack, head of fixed income at DWS Investment Management. "This will provide them time to get through this difficult period."

The step will ensure that states and the most-populous cities can raise money to keep operating as tax collections dry up while their economies grind to a virtual halt and annual filing deadlines are pushed back. Wall Street analysts had predicted that such sales would jump in the coming months, which could have put pressure on a segment of the market where interest rates surged sharply last month when money managers dumped the shortest-dated securities to raise cash.

The lending program is somewhat limited in scope, however, since it is open to states and the 10 cities and 16 counties that are big enough to meet the minimum population requirements, according to Census figures. While states would be allowed to borrow money for smaller governments that don't qualify on their own, it's not clear how willing they would be to do so on behalf of financially struggling municipalities.

"While today's action helps the largest cities, it completely misses the mark for those cities, towns, and counties across our country that fall under the population minimums," Chris Iacovella, the chief executive officer of the American Securities Association, a lobbying group for regional firms. "These areas represent the heartbeat of America and for some reason the Fed and Treasury have chosen to exclude them while backstopping the largest cities, which doesn't make any sense."

The Fed's move comes after the municipal-bond market went through an unprecedented sell-off in March as investors pulled record amounts out of mutual funds and governments began to forecast huge deficits from the virus-related shutdowns in activity. That rout stopped after Congress reached agreement on the \$2.2 trillion economic stimulus measure, which gave the central bank the power to lend to states and cities and fostered speculation that it would start buying already-issued bonds in order to backstop the market.

"I am a bit disappointed in that the Fed will not be buying muni bonds in the secondary market, something they are doing for investment-grade corporate bonds," RJ Gallo, senior portfolio manager at Federated Hermes. "Perhaps that may evolve in the future if this program fails to provide sufficient capital and liquidity support."



Bond prices gained after the Fed's announcement Thursday, driving the yield on 10-year top-rated securities down 10 basis points to 1.24%, less than half what it hit in March. Even risky securities that fell steeply during last month's sell-off joined in the gains, with Ohio tobacco-settlement bonds due in 2055 climbing to as much as 97.5 cents on the dollar from about 91 cents Wednesday.

The Fed's special purpose vehicle will purchase so-called tax, revenue and bond anticipation notes, which governments sell when they're facing temporary shortfalls in revenues or waiting to sell long-term debt. The notes that the entity purchases must mature in 24 months or less.

That will prevent a massive amount of short-term securities from being issued at a time when the municipal-debt market is only slowly reviving from last month's turmoil, which has starkly reduced the pace of new bond sales as many large deals are put on hold.

John Mousseau, the chief executive officer of Cumberland Advisors, said the Fed's direct lending will help guarantee that the "market will not seize up," which could in turn take pressure off of longer-dated securities as well.

The Fed said in a statement Thursday that it would continue to watch conditions in the municipal market to see if further action is needed. That fits with the central bank's typical approach to wading into new asset classes, said Sean Simko, head of global fixed-income management at SEI.

"What we've noticed from the Fed is that they do like moving in steps — they're taking it in a measured pace," Simko said. "It wouldn't surprise me if they would come into the market with a step two or step three if needed."

## **Bloomberg Markets**

By Amanda Albright, Fola Akininbi, and Danielle Moran

April 9, 2020, 8:35 AM PDT Updated on April 9, 2020, 11:20 AM PDT

— *With assistance by Alexandre Tanzi*

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## **'Where No Fed Has Gone': Wall Street Reacts to Muni-Debt Program**

The Federal Reserve on Thursday said it will lend as much as \$500 billion to states and the biggest counties and cities, making its first direct move ever into the \$3.9 trillion municipal-debt market to help limit the financial fallout of the coronavirus pandemic.

The step will help governments cover the shortfalls they are facing because of the vast shutdowns sweeping over much of the country and prevent waves of short-term borrowing by localities sold to plug budget holes from potentially destabilizing the public markets.

The move was broadly welcomed by Wall Street analysts, municipal bond investors, underwriters and lobbying groups, even though it fell short of buying already-issued debt as some had sought. Moreover, it's only open to cities with a population above 1 million and counties with 2 million or more, limiting its direct effect on local governments to the 26 that are big enough to qualify, based on Census figures.

## **Bank Analysts' Views**

- Municipal strategists at Barclays Plc said that the program is a “positive development” because it will relieve pressure on the new-issue market, though it “probably falls well short of investor expectations.” The group led by Mikhail Foux, predicts eligible governments will tap the program “aggressively,” with the tax revenue of states and local municipalities expected to drop by \$350 billion or more.
- Bank of America analysts Yingchen Li and Ian Rogow said the move is “broadly positive for muni market” since it should lower interest rates and improve investors’ confidence, likely resulting in lower risk premiums. The group estimates the Fed could purchase as much as \$268.2 billion of notes directly from the 50 states and Washington D.C., based on the limits included in the program.
- Jeffrey Lipton, head of municipal research at Oppenheimer & Co., said “the Fed is going where no Fed has gone before” and he expects that it will be followed by other operations directed at the municipal-securities market. Lipton said further thought has to be given to the efficacy of what he called a “short-term fix” and is skeptical of the long-term impact on credit.
- Eric Kazatsky, municipal strategist for Bloomberg Intelligence, said the Fed’s entry on the short end of the market could cloud the pricing of risk for borrowers like Illinois, which is on the cusp of junk. “While the Fed’s deeper involvement is welcome news to those in municipal finance, potential for disruption in credit spreads in the front end of the curve is a real possibility.”

## **Buyers Weigh In**

- The Fed’s decision is positive and will provide state and local government with liquidity to get through what is a very difficult time, said Matthew Norton, co-head of municipal portfolio management at AllianceBernstein. “I think the Fed will do whatever it takes,” he said. If the market needs more liquidity they certainly would step up and do so as they have in other asset classes.”
- Jim Evans, the chief investment officer for fixed-income at Parametric Portfolio Associates, said that the Fed is looking for states to make decisions for smaller entities in order to fully vet their needs. That vetting “encourages issuers that can access markets to do that in the normal market channels and not use this facility,” he said.
- Still, some investors said that more action may be needed. RJ Gallo, senior portfolio manager at Federated Hermes, said he was disappointed that the Fed wouldn’t buy municipals in the secondary market like it’s doing with corporate bonds. “Perhaps that may evolve in the future if this program fails to provide sufficient capital and liquidity support,” he said.
- Thomas Graff, a portfolio manager at Brown Advisory, said the lending program won’t help cash-strapped not-for-profit hospitals and nursing homes that are reeling from the impact of the virus. He said a more broad purchasing program could help those credits. “Ultimately that would help a wider range of issuers, including non-profit hospitals and nursing homes.”

## **Lobbyists Want More**

- Lobbying groups for state and local governments had pressed the Fed to wade into the market in light of the sell-off last month. Mike Nicholas, CEO of the Bond Dealers of America, said the group representing banks and dealers welcomed the new program but wants the Fed to provide support as needed to the secondary market. “We are looking particularly at how smaller issuers will access the facility,” Nicholas said in a statement.
- The American Securities Association, a lobbying group that represents regional financial services firms, said the program “misses the mark” for smaller local governments. “These areas represent the heartbeat of America and for some reason the Fed and Treasury have chosen to exclude them while backstopping the largest cities, which doesn’t make any sense,” CEO Chris Iacovella said in a statement.

## Bloomberg

By Danielle Moran and Amanda Albright

April 9, 2020, 12:25 PM PDT

— *With assistance by Fola Akinnibi*

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### **Soaring Bond Yields Drive States, Cities to Buy Back Own Debt.**

- **Ohio, Pennsylvania buy hospital debt after market selloff**
- **Yields on variable-rate munis have fallen but still above norm**

Investors' swift retreat from a key corner of the municipal-bond market is causing state and local governments to take matters into their own hands.

Governments are wading into the variable-rate market to drive down borrowing costs on the bonds with interest rates that reset daily or weekly. The municipal-bond market's steep sell-off last month led yields on the debt to surge as money managers dumped them to raise cash, costing municipalities as they were facing higher expenses from battling the spread of the coronavirus.

The steps by officials to buy back some of their localities' own debt signal some concern about the health of the state and local bond market even after the Federal Reserve last month included purchases of variable-rate debt as collateral as part of its lending program for money market funds. Yields on an index of the securities fell 2.9 percentage points on Wednesday to 1.83%, still higher than the 0.92% that the index has averaged over the last five years.

[Continue reading.](#)

## Bloomberg Markets

By Amanda Albright and Romy Varghese

April 7, 2020, 6:18 AM PDT

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### **Small, Mid-Sized Cities Currently Cut Out of Direct Coronavirus Funding.**

**With tax revenues down sharply, all local governments are hurting. But leaders of small and mid-sized jurisdictions in particular are arguing that they need more support.**

The massive coronavirus relief package President Trump signed into law at the end of last month includes a \$139 billion pot of money meant to help states and local governments in dealing with the disease outbreak.

But smaller- and mid-sized cities and counties won't get direct access to those funds.

While these smaller governments could get some money from other parts of the package or from "pass-throughs" from states or bigger counties, local officials say the federal government is going to

need to provide far more financial support to help them weather the public health crisis.

A group of Democratic lawmakers in the U.S. House on Tuesday put forward a bill that would move in this direction by allotting \$250 billion in local government aid for smaller jurisdictions.

And on Wednesday, House Speaker Nancy Pelosi and Senate Minority Leader Chuck Schumer issued a statement outlining Democratic priorities for an “interim” coronavirus package. As part of it, they are calling for an additional \$150 billion that could be used to help state and local governments “mitigate lost revenue” from the crisis.

“We need relief,” said Vince Williams, the mayor of Union City, Georgia, which is located southwest of Atlanta and has about 22,000 residents. “This is something that’s going to cripple a lot of municipalities.”

“Especially smaller cities, we’re going to have issues when people can’t pay their property taxes,” Williams added. “They won’t be able to pay their liquor license fees, business licenses. Everything is going to hit us all at once, once all of this passes.”

In general, advocates for state and local governments and some public finance experts echo Williams’ point. They say that federal help for the states and localities is so far woefully insufficient to cover the escalating costs associated with the public health crisis and the expected tax revenue declines from the economic downturn the outbreak has caused.

The law that Trump signed last month was the third legislative package lawmakers have passed to address the pandemic. A section of it creates a \$150 billion Coronavirus Relief Fund to provide payments to local governments with populations over 500,000 and to states.

Each state is guaranteed a payment of at least \$1.25 billion from the fund, with money provided to local governments within their borders subtracted from the total that is allocated to them. The amount made available to each state will vary based on their populations. While the fund is \$150 billion in total, \$8 billion is set aside for tribal governments and \$3 billion for territories.

The law specifies that this money has to be spent on “necessary expenditures” due to the public health emergency, incurred between March 1 and Dec. 30, 2020. Eligible costs are also supposed to be previously unbudgeted or unplanned.

Nan Whaley, the mayor of Dayton, Ohio, called it “incredibly concerning” that her city of 140,000 residents, along with other mid-sized municipalities in Ohio like Toledo, Akron and Youngstown, are boxed out of direct payments from the relief fund.

A Congressional Research Service report published last week estimates that Ohio will receive \$4.5 billion from the relief fund and that five counties there are eligible for about \$775 million.

Whaley said Dayton would fight for some of the state’s cut, but doubts the city will see any of it. “If you give the state money, they’re going to take care of themselves first. And there’s probably not going to be any money left for the cities,” she said. “These pass-throughs don’t work.”

Montgomery County, which surrounds Dayton, appears to meet the 500,000-person population threshold requirement, but Whaley is also skeptical that those dollars will flow to her city.

She and others are now looking towards the possibility of a fourth federal relief package and say that it should include a program that provides federal aid payments directly to small- and mid-sized cities and other local governments.

Michael Gleeson, the National League of Cities' legislative manager for finance, administration and intergovernmental relations, said the population cutoff for jurisdictions to qualify for the relief fund was among the big issues for the group currently on Capitol Hill. "There are a lot of smaller cities, towns and villages that could be shut out from direct access to federal aid," he said.

NLC has said that 36 cities meet the population threshold, and together may be eligible for up to an estimated \$8.2 billion of direct funding, ranging from about \$90 million for Fresno, California to \$1.5 billion for New York City.

Hadi Sedigh, chief innovation officer for the National Association of Counties, said the hope is that some of the relief fund dollars would flow down from states to smaller counties.

"Based on our understanding of the intent of Congress, this state stabilization fund was generally intended to provide fiscal support for the recovery of state and local governments of all sizes," he said. "It has some specific, direct paths for counties of 500,000 or more residents."

"The calling out of that path doesn't necessarily need to make a statement about how much of the money should go to those smaller counties," Sedigh added.

Sedigh noted that NACo represents 3,000 counties of all different sizes and that roughly 130 of them appear to meet the population threshold to qualify for direct funding.

It's possible but uncertain, he said, that Treasury Department guidelines could establish some standards for how states distribute the money they get from the relief fund to local governments. Treasury did not respond on Tuesday to emailed questions about guidance for the fund.

There's clearly an appetite for more relief funding at the state and local levels.

In Colorado, Gov. Jared Polis, along with representatives for county and municipal groups, signed onto a letter last week urging the state's congressional delegation to back at least \$500 billion in aid for state and local governments—including those with populations below 500,000.

Rep. Joe Neguse, a Colorado Democrat, is one of the sponsors of the new House bill that aims to provide additional funding to local governments. Neguse's office noted that mid-sized municipalities in his district, like Boulder, Fort Collins and Loveland, are too small to have access to direct funds through the existing Coronavirus Relief Fund program.

The bill that Neguse and at least three other Democratic lawmakers are backing would make \$250 billion available specifically for local jurisdictions with 500,000 people or less.

NLC has been working with staff for the lawmakers who are supporting that bill, and one of the advocacy group's goals is to get direct federal aid funding for localities with populations under 500,000 people included in the next federal relief package.

Williams, the mayor in Georgia, said it is not clear to him yet whether he would have to go through the county where Union City is located, or the state government, to try to secure money from the relief fund. But either way, he's dissatisfied with the status quo. "I'm totally opposed to them leaving this as only cities of 500,000 or more will get direct funding," the mayor said.

Michael Wallace, NLC's legislative director for community and economic development, said that it has been clear that the \$150 billion relief fund would not provide enough assistance for states and localities to get through the public health crisis.

"Small towns, very small cities and towns, are having to do the exact same things cities over 500,000 are doing. It's just a different scale," he added.

The legislation that created the fund—the Coronavirus Aid, Relief, and Economic Security, or CARES, Act—does also contain other provisions to help state and local governments.

For instance, there's \$25 billion for transit infrastructure grants, \$5 billion for Community Development Block Grants and \$4 billion for homeless assistance grants. The bill also opens the door for around \$454 billion to go towards Federal Reserve initiatives designed to bolster lending to eligible states and municipalities, as well as businesses.

Wallace described the CARES Act as good legislation for helping communities deal with the immediate economic blow that the coronavirus has dealt. But the financial challenges for state and local governments keep stacking up as the virus outbreak drags on.

Across the country, authorities have ordered a range of business to shut their doors and are urging people to stay at home as much as possible, as the nation battles the spread of Covid-19, the highly contagious respiratory illness the virus causes.

With businesses closed and unemployment skyrocketing, government revenues like sales and income taxes are expected to drop sharply compared to projected levels.

"Think about all the sales taxes we're going to miss," said Williams, the Union City mayor.

Meanwhile, local governments are covering costs tied directly to the public health response, as well as trying to assist small businesses and renters. They're also waiving fines and fees and granting leeway on utility payments to reduce financial pressure on residents.

"All of these things are good public policy, but all of them negatively impact local budgets," Wallace said. "Every kind of revenue is down," he added.

A plain reading of the language in the CARES Act doesn't seem to provide flexibility for states and localities to use the relief fund money to backfill lost tax revenues. NLC's Gleeson said that, based on what he's hearing, that's the way that the Treasury Department sees things as well.

This stands in contrast to the "mitigate lost revenue" wording that Pelosi and Schumer used to describe the additional state and local aid that they proposed on Wednesday.

Tom Kozlik, head of municipal strategy and credit with Hilltop Securities suggested in a brief last week that federal lawmakers will need to deliver a fourth relief package that includes at least an additional \$300 billion to \$600 billion of "unencumbered aid" for state and local governments.

Like other cities in Ohio, Dayton relies heavily on income taxes. When people aren't working, Whaley said, it undercuts revenue and hampers the city's ability to provide services. The virus has dealt at least a temporary blow to Dayton's municipal workforce. Whaley said the city has furloughed the equivalent of 479 full-time employees of its roughly 1,900 workers.

The mayor said she hadn't seen figures yet for how severely the outbreak will affect tax collections. But asked about what spending cuts the city might make to offset revenue declines, she said Dayton's budget was already stretched tight. "There is nothing to cut but police, fire, and trash," Whaley said. "There's nothing left. And that's the challenge."

It's a similar story elsewhere in Ohio, she added, noting that cities received less support from the



state after the last recession and that the job market in Dayton still hadn't recovered to pre-2009 levels.

"One of the things this pandemic is displaying," Whaley said, "is where we have not invested in the safety net, and where we don't have depth of government services anymore."

## **Route Fifty**

by Bill Lucia

APRIL 8, 2020

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### **[Client Alert: Federal Reserve Creation of a Municipal Liquidity Facility](#)**

Effective April 9, 2020, the Federal Reserve created a Municipal Liquidity Facility (the "Facility") to purchase state and local municipal debt. The Municipal Liquidity Facility was authorized pursuant to Section 13(3) of the Federal Reserve Act and will provide lending to states and cities with populations over 1 million, and counties with populations over 2 million using funds appropriated under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), enacted March 27, 2020. The terms described herein may be adjusted by the Board of Governors of the Federal Reserve System (the "Board") and the Secretary of the Treasury, which such changes will be announced on the Board's website.

**Lending Under the Facility.** The Federal Reserve Bank (the "Reserve Bank") will lend money to a Special Purpose Vehicle ("SPV") on a recourse basis and the SPV will purchase Eligible Notes directly from Eligible Issuers at the time of original issuance. The Reserve Bank will be secured by all of the assets of the SPV. The Department of the Treasury will make an initial \$35 billion equity investment in the SPV in connection with the Facility. The SPV will have the ability to purchase up to \$500 billion of Eligible Notes.

**Eligible Notes.** Eligible Notes are TANS (tax anticipation notes), TRANS (tax and revenue anticipation notes), BANS (bond anticipation notes), and other short-term notes with a maximum maturity of 24 months from the date of issuance. Each note's eligibility will be subject to review by the Federal Reserve and will require relevant legal opinions and disclosures, as determined by the Federal Reserve, prior to purchase.

**Eligible Issuers.** An Eligible Issuer is a state, city, or county, or an instrumentality that issues on behalf of a state, city, or county for the purpose of managing its cash flows. ONLY ONE ISSUER PER STATE, CITY, OR COUNTY IS ELIGIBLE. However, an Eligible Issuer may use the proceeds of its purchased notes to purchase similar notes or otherwise to assist political subdivisions or instrumentalities of the relevant state, city, or county for the uses specified below.

**Limitations.** The Federal Reserve limits the amount of purchase to one or more issuances up to an aggregate of 20 percent of general revenue or utility revenue from the state, city, or county's own sources, measured by fiscal year 2017 revenues. States may request purchases in excess of the limit to assist political subdivisions and instrumentalities not otherwise eligible for the facility.

**Terms of the Notes.** Pricing will be based on the issuer's rating at the time of purchase with details to be provided later. The notes are callable at any time at par.

**Fees.** There is an origination fee of 10 basis points of the principal amount of notes purchased, payable from note proceeds.

**Uses.** The proceeds of the notes may be used to help manage the cash flow impact of income tax deferrals, the potential reduction of tax, and other revenues or the increases of expenses resulting from Covid-19, and debt service payments on obligations of the relevant state, city, or county.

**Termination Date.** The SPV will cease purchasing Eligible Notes on September 30, 2020, unless the Board of Governors of the Federal Reserve System and the Treasury Department extend the Facility. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

April 9 2020

**Shumaker Loop & Kendrick - Sheila Kles**

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## **[The Fed Will Buy State and Local Muni Bonds. It Might Not Cover the Virus Shortfall.](#)**

State and local governments will get budgetary breathing room from the Federal Reserve to cover at least some revenue lost in coronavirus-related shutdowns, but likely not enough to fully plug shortfalls.

The Fed's program, called the municipal liquidity facility, can directly buy up to \$500 billion in municipal bonds from states, cities with more than one million people, and counties with more than two million people. That means the program isn't open to most local governments as there are only [10 cities](#) and [16 counties](#) in the U.S. that meet the Fed's criteria. Each muni-bond issuer must obtain Fed approval to use the facility, and states can ask the Fed to lift their borrowing caps on behalf of smaller municipalities and other entities that are ineligible.

State and local governments will be able to sell only bonds maturing in two years or less to the Fed. Each transaction's pricing will depend on the credit rating of the state or municipal government at the time of the bonds' purchase, according to the [central bank's term sheet](#).

It isn't clear whether the \$500 billion will be enough to cover the shortfall that state and local governments will face from the pandemic. The answer to that question depends on the size of the budget gaps that remain once [Congress's \\$150 billion appropriation](#) for coronavirus relief for domestic governments is taken into account.

There is a threshold for Fed success, however: The Fed's facility will be able to cover municipalities' budget gaps if they lose no more than 20% of their normal tax revenues.

Here's why: The Fed says it will buy new municipal notes worth up to 20% of each municipality's 2017 revenues, the [most recent data available](#), excluding intra-governmental transfers and including utility revenues. For state and local governments across the entire country, those revenues added up to nearly \$2.6 trillion in 2017. And 20% of that total is \$515 billion, only a slightly larger sum than the \$500 billion of financing the Fed will make available.

In other words, if state and local governments lose nearly 20% of one year's revenues from income taxes, property taxes, sales taxes and utilities, the Fed should be able to lend them money to cover

all of that with a two-year loan.

But once that two years is over, the municipalities will need to either refinance their Fed-owned notes with bonds, or hope that the economy has recovered enough to repay the principal.

What's more, some Wall Street strategists don't think the program will even be enough to patch up the hole that the coronavirus will create near-term state and municipal budgets.

"This program does not plug state government budget gaps," wrote Goldman Sachs. "We continue to expect Congress to provide [an additional] \$100-200bn in fiscal aid."

## **Barron's**

By Alexandra Scaggs

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### **Fed to Buy Municipal Debt for First Time, Underscoring Peril Facing Cities.**

**The central bank is targeting short-term debt because states and cities nationwide have seen an alarming drop-off in revenue.**

The Federal Reserve will directly buy bonds issued by states and cities for the first time, in a move that highlights the danger faced by local governments as the fallout from the coronavirus pandemic slams their budgets.

The Fed said Thursday it would purchase up to \$500 billion in short-term municipal debt to ease turmoil in the market. It was part of a slew of emergency facilities totaling more than \$2 trillion that the central bank unveiled, mainly to boost small and medium-sized companies that are especially vulnerable to a severe economic slump.

The central bank is targeting short-term debt because states and cities nationwide have seen an alarming drop-off in revenue as businesses shutter due to the virus outbreak. Job losses have cut deeply into sales tax income, with the federal government announcing Thursday that more than 16 million Americans have filed jobless claims in the last three weeks. A shift in the federal tax deadline also created unexpected holes in local budgets as officials chose to delay their own deadlines in tandem.

"This is a significant move by the feds to enter the municipal market and in a pretty big way," said Micah Green, a partner at Steptoe & Johnson and former co-head of the Securities Industry and Financial Markets Association. Still, he said, "There's much more to be seen as to what role, if any, they will play in the longer-term debt market, which would be an even further step of unprecedented activity by the Federal Reserve."

The Fed has come under increasing pressure to help out municipalities, but it has long resisted that because of concern about getting involved in political issues that come along with local financing decisions. But now it is skirting the need to make political decisions about which debt to buy by setting up a program under its emergency powers that will allow any state or large city that meets

the qualifications to participate.

Federal Reserve Chair Jerome Powell said in February at a House oversight hearing that the Fed has “limited authority” to buy short-term municipal debt and historically hasn’t waded very deeply into state and local government finance. And nine years ago, then-Chair Ben Bernanke told the Senate Budget Committee that “we have no expectation or intention to get involved in state and local finance,” as local budgets were flailing after the Great Recession.

Regulators sounded a different note today, saying the emergency lending would be accessible to states and the District of Columbia, as well as cities with populations over 1 million residents and counties with populations over 2 million residents. The Treasury Department will use \$35 billion from the stimulus package enacted in late March to cover any losses from states or cities that default.

Eligible kinds of debt include tax anticipation notes, tax and revenue anticipation notes, bond anticipation notes and “other similar short-term notes” with maturities no longer than 24 months.

Generally, those kinds of notes allow governments to access a larger amount of money upfront in the form of debt instruments using estimations of future revenue. Each debt issuance will be subject to Fed review.

Total debt issuance will be capped at 20 percent of the “general revenue from own sources and utility revenue” of each government applying for the aid, based on fiscal year 2017, the Fed said.

Some issues to watch as this facility rolls out include which individual states the central bank will allow to seek debt purchases in excess of the cap, an exception it provided to help ineligible governments access credit. And the Fed said in its announcement that pricing details for issuing this debt will be provided later.

Analysts and research groups have cited Tennessee, Illinois and New Jersey as among the states at particular risk in the downturn, citing a heavy dependence on sales tax revenue, low level of reserves or high levels of debt.

“We are hopeful this facility will provide needed help to municipal issuers,” the Bond Dealers of America, a Washington-based trade group representing banks and securities firms active in the bond market, said in a statement. “We are looking particularly at how smaller issuers will access the facility.”

Looking beyond the short-term lending action, the Bond Dealers of America urged the central bank “to use its CARES Act authority to provide support as needed for the secondary market for municipal bonds — providing much needed liquidity, benefiting the overall market,” referring to the stimulus bill that President Donald Trump signed into law last month.

Bolstering state and local balance sheets will help the secondary market, but the Fed clearly left open the possibility of broader action, according to its announcement.

“The Federal Reserve will continue to closely monitor conditions in the primary and secondary markets for municipal securities and will evaluate whether additional measures are needed to support the flow of credit and liquidity to state and local governments,” the central bank said.

Unless extended, purchases established by this facility cease on Sept. 30, 2020.

POLITICO.COM

By KELLIE MEJDRICH and VICTORIA GUIDA

04/09/2020 06:52 PM EDT

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## **[Muni-Bond Market Reviving After Fed Moves to Ease Cash Crunch.](#)**

(Bloomberg) — The Federal Reserve is helping revive the \$3.9 trillion municipal bond market.

Underwriter Raymond James Financial Inc. estimates that as many as 200 new negotiated state and local debt offerings will price over the next few days, almost double the amount issued last week, fixed-income strategist Kevin Giddis said in a note to clients.

That would mark a turnaround for a segment of the capital markets that had virtually shut down after concerns about the coronavirus prompted a series of steep sell-offs last month when investors pulled out their funds. The market has since been steadied, with the Federal Reserve last month moving to increase liquidity for money-market funds and last week rolling out a plan to lend as much as \$500 billion to states and local governments to help them avoid a cash crunch in the middle of the pandemic.

Since March 9, there have only been about \$15 billion of new municipal bonds issued, a drop of 56% from the same period a year earlier. Many big sales have been placed on so-called day-to-day status, meaning underwriters will sell them when market conditions warrant.

“This improvement in issuance is largely due to the Fed and Treasury’s unprecedented support for these markets and it appears to be working,” Giddis wrote.

### **Bloomberg Markets**

by Danielle Moran

April 13, 2020

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## **[Complimentary Resource for NFMA Members.](#)**

IMTC’s NOVA platform is a cloud-based fixed income portfolio management tool designed to help investment professionals save time and focus on high-value work.

**During the Coronavirus crisis, IMTC is providing investment managers with free fixed income market data to combat the WFH struggles brought on by legacy technology systems.**

Benefits of IMTC’s Market Data:

- Access over 1m Municipal bonds with complete pricing and reference data
- Gain insights into rating changes and market movements
- Identify relative value or source liquidity with comparable bond functionality
- Accomplish in-depth credit analysis with access to issuer financial statements

If you or a colleague is interested in learning more about our free market data offering, please follow the link to get in touch: [click here](https://imtc.com/contact) (or cut and paste <https://imtc.com/contact> into your browser).

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## **[NABL Sends Suggestions for COVID-19 Relief to Congress & Treasury.](#)**

Today NABL sent a letter to Congress and the Treasury as they continue to develop additional legislative and regulatory initiatives to provide economic stimulus and fiscal relief as a result of the economic impact of the COVID-19 pandemic.

This letter follows up on our [March 22, 2020 letter](#) in which we identify proposals that will allow state and local governments to access much needed capital now, while also mitigating damages affecting our nation in the longer term.

Today's letter provides a more robust explanation of how certain proposals will assist in getting our nation through these uncertain times.

**You can find NABL's letter [here](#).**

**Please send this letter to your Representative and Senators:** As Congress continues to work on the next stimulus package, it is imperative that they hear from you. Please forward this letter on NABL's behalf to demonstrate strength in our advocacy efforts.

If you do not know who your representatives in Congress are, you can find your House representative [here](#) and Senator [here](#).

For any questions, please contact Jessica Giroux, Director of Governmental Affairs at [jgiroux@nabl.org](mailto:jgiroux@nabl.org), (518) 469-1565.

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## **[The GASB Continues to Address Practice Issues Arising from COVID-19 Pandemic.](#)**

**Norwalk, CT, April 6, 2020** — The Governmental Accounting Standards Board (GASB) continues to share concerns about the stakeholder impact of the coronavirus (COVID-19) pandemic. The GASB is actively addressing and responding to the evolving situation. We are committed to supporting and assisting stakeholders during this uncertain period.

The GASB is working on several fronts to provide relief to governments and other stakeholders and to assist them in identifying accounting and financial reporting guidance that is particularly relevant at this time.

### **Postponement of Effective Dates**

The Board is reviewing a proposed Statement that would postpone the effective dates of provisions in certain pronouncements and will consider releasing it for public comment during the April 14, 2020, teleconference meeting.

The proposal tentatively has identified provisions that became effective or will become effective for reporting periods beginning after June 15, 2018, through Statement No. 92, *Omnibus 2020*, and



Implementation Guide No. 2019-3, *Leases*. Most notably, that includes Statement No. 84, *Fiduciary Activities*, and Statement No. 87, *Leases*, as well as their related Implementation Guides. In all, the draft would postpone the effective dates of provisions in eight Statements and five Implementation Guides. The Exposure Draft continues the encouragement of early implementation, which is important to governments that already have implemented some of those provisions or intend to proceed with implementation under the original effective dates.

In its active standards-setting activities, the GASB also has considered or is considering lengthening effective dates. During its March 2020 meeting, the GASB approved Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, which includes an extended effective date of reporting periods beginning after June 15, 2022, one year later than had been originally proposed. The GASB will consider similar changes as it reviews upcoming drafts of final Statements (such as for subscription-based information technology arrangements) and due process documents (most notably, an Exposure Draft from the Financial Reporting Model Reexamination project).

### **Impact on Other Standards-Setting Activities**

The GASB has decided to extend to June 30, 2020, the comment deadline for the Exposure Draft of a Proposed Concepts Statement, *Communication Methods in General Purpose External Financial Reports That Contain Basic Financial Statements: Notes to Financial Statements*. The GASB also will postpone the public hearing on the document. The hearing has been tentatively rescheduled to July 28, 2020.

The Board also has instituted a hiatus for planned stakeholder research activities, such as interviews and surveys, until at least June 1 (for pre-agenda research) and at least July 1 (for Post-Implementation Review).

### **“Toolbox” Coming Soon**

The GASB soon will be posting a “toolbox” on its website to assist governments and other stakeholders to identify the guidance that they can draw on to address the issues they are facing during this difficult period.

In the meantime, the GASB encourages stakeholders to connect by using its web resources, including the GASB’s [technical inquiry service](#), through which stakeholders can submit questions directly to the GASB staff regarding standards implementation or other issues.

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## **[Capitol Hill Update: Infrastructure Push Slowed](#)**

### **Congress Turns Focus Back to Direct Funding to Cities**

Last week, the House of Representatives announced its push to include a massive [infrastructure package](#) into a future “stimulus phase 4” bill. This idea ran into [strong Republican push-back](#) in the Senate, and seems to have been tabled for the potential April stimulus legislation.

This week, both Chambers [seem to be coalescing](#) around the idea of more direct funding to cities, particularly smaller cities that were left behind in “phase 3,” and the potential for another round of checks to qualified Americans.

While a major infrastructure package now seems unlikely, the BDA and our partners in the issuer community continue to push for member priorities in the potential phase 4 package including:

- The restoration of tax-exempt advance refundings
- Increase in the cap for bank qualified debt;
- Expansion of the use of Private Activity Bonds; and
- Potential exploration of the reinstatement of direct-pay bond and ending exposure to sequestration.

#### Administration Considering “Coronavirus Bonds”

Yesterday, Larry Kudlow, Director of the National Economic Council teased an idea of Treasury creating a long duration [Coronavirus bond program](#) equivalent to a war-bond to help spur the economy. While Congress has yet to adopt this thinking, the administration continues to look at long-term paper options if the initial \$2 trillion dollar stimulus package fails to deliver enough economic punch.

The BDA will continue to provide updates as they become available

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

April 7, 2020

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### **[BDA Hosts Call with MSRB on Unique Challenges Posed by COVID-19.](#)**

Today, a group of BDA Municipal Bond Division and Legal & Compliance leadership hosted a call with the MSRB to discuss the unique challenges dealers are encountering because of the volatility in the market and the move to work from home for many market participants.

The MSRB shared its focus during these challenges, which primarily focuses on collecting data from the municipal securities market which it makes available to other regulators and the market as a whole.

On the call, dealers shared a variety of concerns, such as:

- The duration of the suspension of the Price Variance Alerts,
- Some current challenges in filing Form G-32; and
- Suggestions concerning additional data that the MSRB could provide

The MSRB is encouraging market participants to share concerns they are experiencing so that the MSRB can consider whether any regulatory response is needed to address those concerns.

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

April 7, 2020

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### **[Amendments to CA Proposed Legislation Would Change Municipalization / Eminent Domain Takeovers of Electric, Gas and Water Utilities: Nossaman](#)**

We've previously reported on [Senate Bill 917](#), which was introduced on February 3, 2020, by Senator Wiener (D-San Francisco) to establish a process for a potential government takeover of investor-owned electrical, gas and water corporations. While the stated intention of the bill was to facilitate an eminent domain acquisition of PG&E by the state government, its wording goes much further. Additionally, on April 3, a series of amendments were introduced that would potentially significantly change the burden of proof on a municipalization takeover effort.

Specifically, the amendments to SB 917 would make changes to Sections 1240.650, 1245.210, 1245.250, and 1268.610 of the Code of Civil Procedure, which govern the standard of proof and different evidentiary presumptions relevant for eminent domain actions. Under existing law, when the government takes private property for private use, if that property is used for the same purpose (e.g., continuing to use a water supply system to provide water), then there is a **rebuttable** presumption that it is a "more necessary use," thus fulfilling one of the requirements to allow the government to condemn it. The proposed new language changes that and states:

(c) Where property that has been appropriated to a public use is electrical, gas, or water public utility property which the public entity intends to put to the same use, the presumption of a more necessary use established by subdivision (a) is **conclusive, and not rebuttable**, including in the circumstances when (1) the acquiring public entity is a sanitary district exercising the powers of a county water district pursuant to Section 6512.7 of the Health and Safety Code, and (2) the public utility that owns the public utility property has been convicted of one or more felony criminal violations of laws enacted to protect the public safety within 10 years of the date the condemnation action is commenced.

This proposed language would result in a significant change for investor-owned utilities, as it negates the utility's ability to introduce evidence and contradict the public agency's findings regarding whether the agency really needs to undertake the takeover of the utility to provide the same service. The existing "rebuttable" presumption has been used by utilities to defeat a public agency's right to take, primarily by introducing evidence that the public agency would not be able to provide better or more cost-effective services. By eliminating this rebuttable presumption, and making it "conclusive," the utility would arguably lose the ability to contest the public agency's determinations.

While the intention of this proposed new language appears to be aimed at making the conclusive presumption regarding "a more necessary use" applicable to public utilities that have been convicted of a felony, the language is ambiguous in that it uses the word "including" those situations — not "limited to" those situations. Therefore, a government entity may attempt to interpret this proposed statute to make all municipal takeover eminent domain actions involving "electrical, gas, or water public utility property" subject to the same "conclusive" presumption. This would, in effect, make contesting any municipalization takeover effort incredibly difficult and would effectively eliminate a significant potential defense that was previously available.

There are also several other amendments to the initial SB 917 language, including:

- **Community Choice Aggregation Providers (CCAs)** - The amendments would authorize CCAs to own and operate electrical distribution and transmission equipment that they acquire from public utilities. The new amendment would also allow CCAs to take part in the eminent domain acquisitions of electric corporation assets under the process previously contemplated in SB 917.
- **Acquired Employee Protections** - The amendments add several significant provisions regarding

employee protections for employees of acquired utility systems, including requiring identical salaries and benefits as they had when they were still employed by the public utility until a collective bargaining agreement can be reached.

- **NCLEUD Participation in Wildfire Fund** - The amendments would authorize the Northern California Local Energy Utility District (NCLEUD) (an entity that would be formed under SB 917 to own and operate the assets) to participate under the wildfire fund created in Assembly Bill 1054 (2019).
- **NCLEUD Low-Income Customer Assistance Program** - Authorizes the Northern California Local Energy Utility District to implement a low-income customer assistance program for any acquired service.
- **Prohibition on Sale of Hydro-Electric Assets by PG&E** - The amendments include language that would effectively prohibit PG&E from selling hydro-electric assets until 2030 except to the Northern California Local Energy Utility District that would be formed under SB 917.

You can view the April 3, 2020 amendments to the initial SB 917 language introduced in February [here](#) or view how the amended language would change existing statutory codes [here](#).

by Bradford B. Kuhn and Willis Hon

April 9 2020

**Nossaman LLP**

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## **Federal Tax Law Considerations for Financings COVID-19 Costs on a Tax-Exempt Basis: What Issuers Need to Know - Orrick**

States, municipalities and 501(c)(3) organizations (Issuers) likely will have to incur significant expenses in their fight against COVID-19. Even if Issuers have reserves available for these costs, there are a few different avenues to financing these expenses on a tax-exempt basis. The federal tax limitations relating to capital and working capital financing are discussed in the FAQs below, including using long-term, tax-exempt debt to finance short lived capital assets or working capital expenditures.[1]

### **CAPITAL EXPENDITURES**

When financing capital expenditures made to fight COVID-19, are there any special considerations to take into account?

Issuers likely will incur significant capital costs during their fight against COVID-19. These expenses may include the purchase of equipment and construction of improvements. All such costs may be financed on a tax-exempt basis, but the federal tax law generally limits the maximum term of the borrowing to only a few years for short-lived assets or assets that will only be owned and used by the Issuer for a short period of time before being decommissioned or sold. Note that supplies, such as hospital personal protective equipment, are treated differently, as discussed below. Construction costs for temporary facilities need to be addressed on a case by case basis.

### **What if an Issuer is buying a lot of short-lived assets?**

It is likely that Issuers will be buying large quantities of COVID-19 fighting equipment at the same time revenues will be drastically reduced. Accordingly, there may be a benefit to such entities to be able to finance their purchases on a long-term basis. There are a few strategies that allow for longer

term financing of short useful life assets. One strategy is to combine short and long-life assets in the same tax-exempt financing, because the tax law maturity limitation compares the average maturity of bonds to the average useful life of the financed assets. See the Reimbursement Resolutions and Lines of Credit discussions immediately below. Another strategy is to treat the transaction as a long-term working capital financing, discussed further below, but that strategy only works for governmental purpose bonds.

*Reimbursement Resolutions* –All Issuers with these expenditures should adopt reimbursement resolutions as soon as possible. This will allow the Issuer to finance the expenditures at a later date. One strategy for extending the average maturity of bonds is to combine the reimbursement for expenditures for short-lived assets with expenditures for long-lived assets. Reimbursement resolutions do not obligate an Issuer to issue bonds, but reimbursement resolutions will preserve the ability of the Issuer to do so if later desired. Without a reimbursement resolution, an Issuer may not be able to finance prior expenditures on a tax-exempt basis.

*Lines of Credit* – Issuers may consider short-term lines of credit, or increasing capacity under existing lines of credit, in an effort to better manage cash flow in the coming months. Issuers that use lines of credit (whether taxable or tax-exempt) may allocate draws under the line to capital expenditures and refinance such draws on a tax-exempt basis in the future. However, the Issuer will have to allocate draws on the line to capital expenditures no later than 60 days after the expenditure. See more information on this topic [here](#). By preserving the ability to finance these costs at a later date, the refinancing of short-lived assets can be combined with a financing for long-lived assets.

#### **What if an Issuer will only need to use the financed assets for a short period of time?**

It is reasonable to assume that many of the assets being purchased to fight COVID-19 will be decommissioned from use at some point and will be put into reserves so that they may be recommissioned during the next emergency. These assets may be financed with tax-exempt bonds on the same basis as if the Issuer expected to use the assets for their intended purpose continuously. Assets stored in a strategic reserve are considered to be used appropriately for federal tax law purposes.

#### **What if an Issuer wants to sell the financed assets after the crisis is over?**

Tax-exempt financed capital assets purchased for use for a short period of time with the expectation that the assets will be sold are subject to a different analysis depending if the assets were financed with governmental purpose bonds or qualified 501(c)(3) bonds.

#### *Governmental Purpose Bonds*

Generally, such assets may be financed with governmental purpose bonds if on the date the bonds are issued the Issuer reasonably expects it will sell few enough assets to fit within certain de minimis limitations or the Issuer meets a specialized rule. The rule requires that:

1. The municipality reasonably expects, as of the issue date, that the financed property will be used appropriately for a substantial period before the sale;
2. The municipality is required to redeem all the related bonds within 6 months of the sale;
3. The municipality has not arranged for the sale of the assets as of the issue date; and
4. The sale is for a fair market value price (and certain other technical and minor requirements).

Issuers should consult their Orrick tax counsel early in the financing process so that the specific tax requirements that apply to each situation may be determined.

## *Qualified 501(c)(3) Bonds*

Unlike governmental purpose bonds, all property financed with the proceeds of qualified 501(c)(3) bonds must be owned by a state or local governmental entity or a 501(c)(3) entity for the entire time the bonds are outstanding. Accordingly, tax-exempt qualified 501(c)(3) bonds generally should not be used to finance the purchase of capital assets that are intended to be used for a short period of time and sold unless the final maturity of the bonds is at the same time as, or occurs before, the sale of the asset.

### **May personal protection equipment (PPE) be financed on a tax-exempt basis?**

Given the current urgent need for personal protective equipment (PPE) that is being experienced by our healthcare providers, it is important to talk about PPE. PPE includes gloves, masks, gowns and other such equipment that is used up quickly and does not have an expected useful life of more than one year. In fact, much of the PPE is considered single use only. Accordingly, PPE is considered a supply item rather than a capital asset and therefore expenditures made for PPE are considered working capital expenditures, which are discussed in more detail below.

## **WORKING CAPITAL EXPENDITURES**

### **May working capital expenditures be financed on a tax-exempt basis?**

The ability to issue tax-exempt bonds for working capital expenditures is limited. Generally, these financings fall into one of three categories:

1. Capital financings that include a de minimis amount of working capital (no more than 5% of the bond proceeds) that are directly related to the capital expenditures being financed;
2. Financing cash flow deficits (short-term or long-term); and
3. Financing extraordinary, nonrecurring working capital expenditures.

We will limit this discussion to deficit financings and financings for extraordinary working capital expenditures. Note that the discussion below applies to 501(c)(3) organizations as well as state and local government entities.

### **What options are available to finance a short-term cash flow deficit?**

Short-term deficits that are not expected to persist for more than a fiscal year may be financed on a tax-exempt basis with short-term notes that have a maturity not in excess of 13 months. This is the typical tax revenue anticipation note (TRAN) or revenue anticipation note (RAN) transaction. Generally, the maximum size of these financings is limited by the size of the deficit plus a reasonable working capital reserve that is not in excess of 5% of expenditures paid out of current revenues during the preceding year.

### **What options are available to finance a long-term cash flow deficit?**

Current deficits that are projected to recur in future years may be financed on a longer-term basis, subject to an annual re-testing requirement:

1. On the first day of each fiscal year after the debt is issued, the Issuer must determine whether its "available amounts" of unrestricted funds are more than 5% of its operating expenditures during the prior fiscal year. This annual testing can be delayed up to five years depending on deficit projections.
2. Except as required below, within the first 90 days of that fiscal year, the Issuer must apply the available amounts in excess of the 5% amount (or if less, the available amount on the date of the required redemption or investment) to redeem or to invest in eligible tax-exempt bonds (as defined below). For this purpose, available amounts in a debt service fund for other bonds

generally are not treated as available amounts.

3. With two exceptions, amounts invested in eligible tax-exempt bonds (instead of being used to redeem bonds) must be invested continuously in such tax-exempt bonds. The first exception allows amounts to be uninvested for no more than 30 days each fiscal period pending reinvestment in eligible tax-exempt bonds. The second exception allows Issuers to spend amounts previously invested in eligible tax-exempt bonds to cover expenses during future deficit periods, essentially to use the tax-exempt investments as a cash deficit line of credit, or to redeem the Issuer's tax-exempt bonds.
4. An eligible tax-exempt bond is (i) a tax-exempt, non-AMT bond; (ii) an interest in a tax-exempt, non-AMT money market fund; or (iii) a Demand Deposit State and Local Government Series (SLGS) investment.

### **What are the ways to finance working capital expenditures long term without worrying about cash flow deficits?**

Long-term tax-exempt bonds may be used to finance "extraordinary, nonrecurring items that are not customarily payable from current revenues." Said another way, an Issuer can use tax-exempt bonds to finance extraordinary expenses without regard to an actual cash flow deficit! The regulations use casualty losses and extraordinary legal judgments in excess of reasonable insurance coverage as example of such expenditures. However, it seems reasonable to assume that working capital expenditures made to finance the fight against COVID-19 also will qualify.

If an Issuer maintains a reserve or has otherwise set aside funds for items of the same nature as the extraordinary expenditures (e.g., a self-insurance fund or a pandemic relief fund), those funds must be used before the bond proceeds may be allocated to the extraordinary expenditures.

One of the most common issues that arises with respect to these financings is how long the bonds may be outstanding before running into certain anti-abuse rules. However, the answer can't be worse than requiring the Issuer to comply with the requirements in the immediately preceding section, and therefore we believe that this type of working capital financing may be quite useful for Issuers to help finance their fight against COVID-19. The IRS has been asked to give guidance on this and other issues on an emergency basis in order to help Orrick bond counsel help their clients structure bonds issued under this provision. We will update this discussion after this guidance is received.

### **OTHER ISSUES**

#### **What if Issuers expect to receive reimbursements from FEMA that will be used to pay the tax-exempt bonds?**

FEMA reimbursements may impact tax-exempt financings of both capital and working capital expenditures made to fight COVID-19. Generally, bonds may not be issued on a tax-exempt basis if the payment of such bonds is directly or indirectly guaranteed by the federal government. Reimbursements to Issuers by FEMA, even if expect to be used to pay debt service, do not automatically cause a direct or indirect federal guarantee, but Issuers should let their Orrick bond and tax counsel know about the reimbursements early in the financing so that the bonds may be carefully structured to not run afoul of this prohibition.

#### **May Issuers use tax-exempt bond proceeds to make grants to individuals and businesses?**

Yes, subject to state law constraints, Issuers may use tax-exempt bond proceeds to make grants to individuals and business if the grants further a governmental purpose for governmental purpose bonds or further the exempt purpose of the 501(c)(3) entity for qualified 501(c)(3) bonds. Well-designed grant programs can help Issuers prove compliance with a number of tax requirements and reduce record-keeping requirements for Issuers. For long-term bonds issued to finance grants for



working capital purposes, the tax requirements described above for working capital financing generally apply. Orrick bond and tax counsel should be consulted to help design a grant program that will allow the Issuer to make grants with the least administrative burden possible.

## **Public Finance Alert | April.03.2020**

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[1] To address any questions about the difference between a capital expenditure and a working capital expenditure, a capital expenditure is capitalized into the assets on the Issuer's balance sheet and a working capital expenditure is treated as an operating expense on the Issuer's income statement.

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### **Disclosing COVID-19 Risks and Impacts in Connection with Municipal Securities.**

Given the far-reaching consequences of the COVID-19 pandemic, including unprecedented financial and operational impacts, volatile municipal market conditions and the potential for a significant economic contraction, many issuers and other obligated persons in the municipal market are faced with the challenge of not only managing their financial health, operations and the safety of their employees, residents, customers, patients, students, clients and other personnel, but also complying with federal antifraud securities laws in both the primary market and secondary market and avoiding potential securities law liability.

Due to the rapidly evolving facts and circumstances relating to COVID-19, obligated persons often struggle to determine what COVID-19 related disclosures—whether in offering documents for primary offerings or in secondary market disclosures—may be appropriate and informative to the market.

#### ***Am I required to post notices to EMMA about COVID-19?***

Obligated persons must comply with their undertakings as written, including the timely filing of annual disclosures of operating and financial data and financial statements, as well as any interim disclosures covered thereby. While the material event categories enumerated under SEC Rule 15c2-12 do not include pandemics, the impact COVID-19 may have on an obligated person's financial health or operations may eventually give rise to a material event required to be disclosed. Recently, when asked about how the COVID-19 pandemic would impact obligated persons' undertakings to provide secondary market disclosures under continuing disclosure agreements, staff from the Office of Municipal Securities (OMS) of the Securities and Exchange Commission (SEC) demurred, noting that the SEC lacks the regulatory authority to provide relief with respect to continuing disclosure undertakings, as these agreements are private contracts and the SEC has no authority over obligated persons in connection with contractual undertakings.

COVID-19 impacts may result in delays in an obligated person's ability to timely file annual reports or financial statements. Any delay in filing annual disclosures or audited financial statements due to COVID-19 should be treated in the same way as any other delay—if there is a failure to file annual disclosure by the required date, an obligated person must file a "failure to file" notice, and may include an explanation of the relevant facts and circumstances causing the delay. When an obligated person eventually files its annual financial and operating data, that filing may also include a similar

explanation. Upon determining that a late filing is material, the obligated person should also include disclosure of the late filing in its offering documents for the next five years as required by Rule 15c2-12.

### ***What should I say in my Offering Documents about COVID-19?***

Obligated persons entering the primary market, as well as those who remain committed to providing the secondary market with current information on a voluntary basis, can apply a consistent analysis to their disclosure decisions concerning COVID-19. As the market can fairly be presumed to be aware of COVID-19 generally, general information about the pandemic and risks applicable to any obligated person, regardless of its particular facts and circumstances, are not necessary, nor particularly probative. Risk factors should be as specific to the obligated person as possible; and general risk factors should be discouraged. An obligated person who simply parrots general risk factors used by others in its industry, without evaluating its own unique situation and market and risk profile, is not providing the market with material information. Rather, obligated persons should disclose (i) how COVID-19 is directly and indirectly impacting their current business and operations, (ii) how they currently assess the near-term and long-term impacts on their financial condition, results of operation, and business prospects as a result of COVID-19, and (iii) how they are managing or mitigating the impacts from COVID-19 on their business and operations.

On March 25, 2020, the SEC's Division of Corporate Finance provided [disclosure guidance](#) to corporate registrants concerning the COVID-19 disclosures. While not directly applicable to municipal securities obligated persons, this guidance provides valuable insight into the level of diligence the SEC believes an obligated person should undertake with respect to COVID-19. All obligated persons in the municipal market should consider the following inquiries carefully in preparing their own primary and secondary market disclosures.

#### ***How has COVID-19 impacted **your financial condition and results of operations**?***

In light of changing trends and the overall economic outlook, how do you expect COVID-19 to impact your future operating results and near-and-long-term financial condition?

- Do you expect that COVID-19 will impact future operations differently than how it affected the current period?
- How has COVID-19 impacted **your capital and financial resources**, including your overall liquidity position and outlook?
- Has your cost of or access to capital and funding sources, such as revolving credit facilities or other sources changed, or is it reasonably likely to change?
- Have your sources or uses of cash otherwise been materially impacted?
- Is there a material uncertainty about your ongoing ability to meet the covenants of your credit agreements?

If a material liquidity deficiency has been identified, what course of action has the company taken or proposed to take to remedy the deficiency?

- Consider the requirement to disclose known trends and uncertainties as it relates to your ability to service your debt or other financial obligations, access the debt markets, including commercial paper or other short-term financing arrangements, maturity mismatches between borrowing sources and the assets funded by those sources, changes in terms requested by counterparties, changes in the valuation of collateral, and counterparty or customer risk.
- Do you expect to disclose or incur any material COVID-19-related contingencies?

How do you expect COVID-19 to affect assets on **your balance sheet** and your ability to timely account for those assets?

- For example, will there be significant changes in judgments in determining the fair-value of assets measured in accordance with U.S GAAP or IFRS?

Do you anticipate **any material impairments** (e.g., with respect to goodwill, intangible assets, long-lived assets, right of use assets, investment securities), increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had or are reasonably likely to have a material impact on your financial statements?

Have COVID-19-related circumstances such as **remote work arrangements** adversely affected your ability to maintain operations, including financial reporting systems, internal control over financial reporting and disclosure controls and procedures?

- If so, what changes in your controls have occurred during the current period that materially affect or are reasonably likely to materially affect your internal control over financial reporting? What challenges do you anticipate in your ability to maintain these systems and controls?

Have you experienced challenges in implementing your **business continuity plans** or do you foresee requiring material expenditures to do so?

- Do you face any material resource constraints in implementing these plans?

Do you expect COVID-19 to materially affect the **demand for your products or services**?

Do you anticipate a material adverse impact of COVID-19 on **your supply chain** or the methods used to distribute your products or services?

Do you expect the anticipated impact of COVID-19 to materially change the **relationship between costs and revenues**?

Will your operations be materially impacted by any constraints or other impacts on **your human capital resources and productivity**?

Are **travel restrictions and border closures** expected to have a material impact on your ability to operate and achieve your business goals?

In preparing its disclosure, an obligated person should consider not just its particular facts and circumstances, but also assess the potential magnitude and likelihood of future COVID-19 impacts. The level of disclosure should be directly proportional to magnitude and probability of such impacts. Information concerning the efforts an obligated persons is undertaking to manage—and mitigate—the magnitude and probability of COVID-19 impacts is particularly well suited for inclusion under a “Management Discussion and Analysis” section in the offering document.

### **What about COVID 19 information in other forms of communications?**

Obligated persons must also consider that antifraud liability may attach not only to their public statements, whether specifically incorporated into offering documents, posted on EMMA or an obligated person’s website, but may also arise in connection with any communication of information. Compliance with effective (and updated) policies and procedures regarding municipal securities disclosures should be the starting point, as noted in this recent White Paper analyzing a recent staff legal bulletin from OMS regarding the application of antifraud rules to all communications by obligated persons that may reasonably be expected to reach the market, even if not intended for that purpose.

## ***While the impacts from COVID-19 remain uncertain, is it better to remain silent?***

Obligated persons must also recognize that liability under the federal securities law can attach for the omission of material information. An omitted fact is considered material if there is a substantial likelihood that the missing information would have been viewed by a reasonable investor as having significantly altered the total mix of information available. In the case of municipal issuers, the “total mix” analysis, which is a facts and circumstances test, can differ greatly among the enormous number—and variety—of issuers in the municipal market. Following the guidance set forth above, however, should assist obligated persons in developing effective disclosures of all material information, including risks and impacts of COVID-19.

**www.ballardspahr.com**

by Teri M. Guarnaccia, William C. Rhodes, and Kimberly D. Magrini

April 8, 2020

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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.

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## **[MSRB Provides Temporary Regulatory Relief to Market Participants Affected by COVID-19.](#)**

Washington DC — In light of the disruptions to normal business operations as a result of the coronavirus disease (COVID-19) pandemic, today the Municipal Securities Rulemaking Board (MSRB) [sought immediate authorization from the Securities and Exchange Commission \(SEC\) to provide temporary regulatory relief to market participants](#) by extending certain MSRB compliance and testing deadlines.

The actions announced today provide for an extension of time to implement certain amended rules and interpretive guidance, and additional time to complete certain professional qualification and supervisory requirements. MSRB-regulated firms will now have additional time to:

- Prepare to operationalize the submission of additional data related to primary offerings of municipal securities under amendments to [MSRB Rule G-32](#);
- Prepare to operationalize compliance with amended and restated guidance regarding the fair dealing obligations underwriters owe to issuers of municipal securities under [MSRB Rule G-17](#);
- Take and pass certain qualification exams and continuing education modules required by [MSRB Rule G-3](#);

- Conduct the annual needs analysis and the delivery of continuing education content pursuant to [MSRB Rule G-3](#);
- Conduct the annual compliance meeting and branch inspections pursuant to [MSRB Rule G-27](#);
- Provide the annual report related to the dealer's review of the firm's supervisory controls under [MSRB Rule G-27](#); and
- Provide the annual certification related to the municipal advisor firm's compliance policies and procedures under [MSRB Rule G-44](#).

"The MSRB appreciates the unusual circumstances that municipal market professionals find themselves in today," said Chief Compliance Officer Gail Marshall. "Targeted regulatory relief allows dealers and municipal advisors to more effectively allocate resources to meeting the needs of their employees and clients while continuing to focus on investor protection and market transparency goals."

Additionally, the MSRB sought SEC approval to temporarily waive late fees for any registration, annual and market activity-based fees billed for the period of March 1, 2020 to July 31, 2020 under MSRB Rules [A-11](#), [A-12](#) and [A-13](#).

Previous regulatory action taken by the MSRB in response to the COVID-19 outbreak include [suspending price variance alerts for dealers](#), [extending the comment deadline on request for comment on proposed governance enhancements](#) and [reminding regulated entities of application of supervisory requirements in light of coronavirus](#).

The MSRB has created a dedicated [COVID-19 information page](#) and has begun publishing a daily [Municipal Securities Market Trading Summary](#) and weekly [Municipal Securities Market COVID-19-Related Disclosure Summary](#) based on filings made to the MSRB's Electronic Municipal Market Access (EMMA®) website.

[Read the notice.](#)

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Date: April 9, 2020

Contact: Leah Szarek, Director of Communications  
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[lszarek@msrb.org](mailto:lszarek@msrb.org)

*The MSRB protects investors, state and local governments and other municipal entities, and the public interest by promoting a fair and efficient municipal securities market. The MSRB fulfills this mission by regulating the municipal securities firms, banks and municipal advisors that engage in municipal securities and advisory activities. To further protect market participants, the MSRB provides market transparency through its Electronic Municipal Market Access (EMMA®) website, the official repository for information on all municipal bonds. The MSRB also serves as an objective resource on the municipal market, conducts extensive education and outreach to market stakeholders, and provides market leadership on key issues. The MSRB is a self-regulatory organization governed by a board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is overseen by the Securities and Exchange Commission and Congress.*

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## **MSRB Publishes Summary of State and Local Disclosures to Its EMMA System about Impact of COVID-19.**

Washington, DC - Disclosures submitted to the Municipal Securities Rulemaking Board's (MSRB) free Electronic Municipal Market Access (EMMA®) system provide a window into how states and municipalities are grappling with the impact of the novel Coronavirus Disease (COVID-19) on their revenues and ability to finance essential public services. The MSRB today began publishing a weekly summary to assist market participants, policymakers and the general public with identifying disclosures submitted to the EMMA system by issuers of municipal securities that reference COVID-19.

The disclosures in the MSRB's summary are accessible to the public at no cost on the EMMA website. The MSRB searched the approximately 40,000 disclosures the EMMA system received from January 2020 to March 2020 to identify those that referenced COVID-19 or related keywords.

"This disclosure summary is a great example of the kind of enhanced search capabilities and data analysis the MSRB hopes to offer EMMA users as a self-service tool in the future once we complete our enterprise-wide migration to the cloud," said MSRB Board member Meredith Hathorn. "We see tremendous potential for the EMMA website to continue to evolve and deliver market insights that are never more valuable than at times of market disruption like we are experiencing now."

MSRB data show that over the three-month period from January 1, 2020 through March 30, 2020, the EMMA system received 506 COVID-19-related continuing disclosures out of a total of 43,667 continuing disclosures, and 125 COVID-19-related primary market disclosures out of 2,548 total primary market disclosures. Issuers in the state of California submitted the highest number of disclosures across all states with a total of 97 COVID-19-related primary market and continuing disclosures. [View the MSRB's disclosure analysis here.](#)

The MSRB also recently began publishing daily analysis of municipal market trade activity to assist market participants, policymakers and the general public with understanding the impact of the COVID-19 on the liquidity of the market following days of unprecedented volatility.

[View the first COVID-19-related disclosure summary \(January 2020 - March 2020\).](#)

[View the MSRB's dedicated webpage for COVID-19-related information and market analyses.](#)

Date: April 2, 2020

Contact: Leah Szarek, Director of Communications  
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## **Telework Due To COVID-19 Spawns Employer Nexus Worries.**

Whether states can and will assert nexus on businesses whose employees are working remotely at home has emerged as a top concern among state tax professionals amid the COVID-19 pandemic.

In the last few weeks, the mass shift to working from home as governments, businesses and individuals seek to comply with "stay at home" orders to avoid spreading the novel coronavirus has

created a situation in which businesses now have presence in states that they didn't have before. This turn of events has created confusion and worry about how states will respond, especially since COVID-19 is causing a collapse of state tax revenues at the same time as this opportunity for states to reach new business taxpayers by asserting nexus.

In response, state tax professionals are pleading with states to issue guidance declaring that they will not assert nexus to impose tax reporting and payment obligations on previously untaxed businesses if an employee is working remotely only because of safety considerations. That would be an effective form of relief for businesses and employees in what for many continues to be the most uncertain time in their histories, state tax professionals are saying.

[Continue reading.](#)

**law360.com**

By Maria Koklanaris · April 7, 2020, 2:15 PM EDT

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## **COVID-19 Pandemic May Imperil Opportunity Zone Projects.**

Qualified opportunity zone investors face difficulty in meeting project deadlines amid the novel coronavirus pandemic and may face losing tax benefits or being forced to pull the plug on some projects if deadlines are not extended.

The Internal Revenue Service has responded to the pandemic of COVID-19, the respiratory disease caused by the novel coronavirus, by postponing tax filing and payment deadlines to July 15 from April 15. But the IRS has not overtly provided any deadline relief for opportunity zones, which allow an investor to reinvest capital gains within a 180-day window into designated low-income areas in exchange for certain tax benefits that grow the longer the money is invested in a qualified opportunity fund, up until Dec. 31, 2026.

If investments in the opportunity zone funds are held for five years, then 10% of capital gains on the prior investment will be forgiven, while 15% of capital gains will be forgiven if the investments are held for seven years. Thus an investor had until Dec. 31, 2019, to receive the higher 15% tax benefit.

[Continue reading.](#)

**law360.com**

By Amy Lee Rosen · April 6, 2020, 8:00 PM EDT

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## **Opportunity Zone Strategies for Community Development, with Jeanne Bonds.**

How can investors, financial institutions, and other local stakeholders leverage the Opportunity Zone incentive to improve community development results? Jeanne Bonds is a professor of the Practice of Impact Investment and Sustainable Finance at UNC's Kenan-Flagler Business School in Chapel Hill. She was formerly director of community economic development for the Federal Reserve Bank of Richmond. Click the play button below to listen to my



[Read More »](#)

## **Opportunity Db**

April 8, 2020

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### **[COVID-19 And Marijuana: Can Cannabis Municipal Bonds Help Government Budgets?](#)**

Cannabis Based Municipal Bonds (CMBs) could offer governments and financial institutions a viable and creative way to aid in the recovery of lost revenues due to the COVID-19 pandemic, says a newly released report from cannabis and hemp advisory firm MPG Consulting.

As the cannabis industry continues to grow at a rapid pace and regulations mature, it is time for state and local governments, as well as traditional financial institutions, to start taking a serious look at the validity of CMBs as a source of financing for local initiatives and infrastructure, MPG analysts argue. In fact, they point to similar initiatives in place in the form of special tax bonds, typically backed by taxes, on certain activities or assets classes like tobacco, alcohol and gaming — the so called “sin taxes.”

#### **How This Could Work**

To demonstrate how this could work, MPG conducted a theoretical analysis, using Denver as an example.

[Continue reading.](#)

## **Forbes**

Javier Hasse

Apr 7, 2020

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### **[Aging Populations Strain State Budgets, Pension Funding Varies.](#)**

Link to Fitch Ratings’ Report(s): [Demographic Trends and Pension Pressures \(Aging Populations and Underfunded Pensions May Present Fiscal Challenges for States\)](#)

Fitch Ratings-New York-25 February 2020: The aging US population poses a range of challenges to state finances, including providing pensions for the swelling ranks of retired public workers. However, a state’s demographic profile does not necessarily determine its pension funding, Fitch Ratings says. States with weaker demographic profiles are likely to face slower revenue growth and expenditure pressures but some of these states have maintained an approach to pension funding that alleviates pension pressure.

The population profiles of pension systems are aging, with the number of retirees drawing benefits growing, even as the number of active workers lags behind. For many plans, the number of retirees now exceeds the number of active employees. As states see populations age, revenue growth

prospects slow and demand for services climb the concurrent demand for higher pension contributions in order to address underfunding may limit fiscal flexibility.

Fitch's report assesses these pension burdens and demographic trends and differentiates states based on their position relative to 50-state medians, highlighting examples that illustrate the nuances of states' funding considerations and the importance of sustained policy actions in managing the trajectory of pension burdens over time.

States are categorized by their position above or below the median projected labor force growth of 0.12% annually over the 2017-2026 period as projected by the US Census, and the median pension burden, which Fitch defines as the ratio of state net pension liabilities adjusted to a standard 6% discount rate as a percentage of personal income. The median pension burden measured 3.1% in 2018. Quadrants created by this comparison indicate whether states are well placed to manage their pension obligations based on the size of the liability and their active population.

States with the twin challenges of weaker demographics and higher underfunded pensions are arguably more vulnerable to fiscal pressures over time. Dominated by those in the Northeast and Midwest, many of these states are aging faster than the median, with a rising share of the population aged 65 and older, and barely growing or even declining working age populations. Some states within this quadrant, however, have shown commitment to pension funding that has resulted in an improved funding status.

An equal number of states are in the relatively more favorable situation of having both stronger demographic trends and carrying relatively lower pension burdens. Fiscal vulnerabilities stemming from either demographic trends or pension contributions pressures are likely to be lower for states in this quadrant. Pensions are either well funded, or if not, represent a smaller burden relative to the state's wealth base.

The remaining states in the other two quadrants either have solid demographic trends but higher pension burdens, or lower pension burdens, despite weaker demographic trends. While still vulnerable based on weakness that could hamper full pension funding, these states arguably retain more fiscal flexibility than those in the upper left quadrant.

Most governments have taken steps to shore up their pensions by shifting to more reasonable assumptions, increasing contributions to the actuarial level and cutting future benefits for new workers. These corrective actions have less of an effect in the context of maturing pension systems. The problem is magnified for states in which pensions are a material burden relative to the state's resource base.

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

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- [GFOA Debt Committee Releases Urgent Member Guidance for COVID-19 Debt Service and Disclosures.](#)
  - [COVID-19 and Secondary Market Disclosure: Butler Snow](#)
  - [Orrick: Waivers, Deferrals and Changes to Tax-Exempt Bonds During COVID-19](#)
  - [COVID-19 and Municipal Securities Disclosure.](#)
  - [GASB Issues Guidance for Transition from Interbank Offered Rates.](#)
  - [Helping Public Entities Navigate the COVID-19 Financial Crisis: Squire Patton Boggs](#)
  - [S&P: All U.S. Public Finance Sector Outlooks Are Now Negative](#)
  - [Tax Anticipation Notes: An Option to Alleviate Municipal Cash Flow Shortages Due to the COVID-19 Outbreak – Day Pittney](#)
  - [A Proposal for the Coronavirus Anticipation Note \(CAN\).](#)
  - And finally, This week's episode of Honolulu's Finest is brought to us by [Hyun Ju Park v. City and County of Honolulu](#), which features these glorious sentences, "After consuming seven beers over the course of two hours, one of the officers, Anson Kimura, decided to inspect his personal revolver, which the department had authorized him to carry. He apparently did so to ensure that it was loaded." The perforated bartender would now like to take this opportunity to ensure you that it was indeed loaded. She's ok now, but was understandably aggrieved. Mahalo for nothing, officer.

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## ELECTIONS - CALIFORNIA

### [City of Redondo Beach v. Padilla](#)

**Court of Appeal, Second District, Division 7, California - March 23, 2020 - Cal.Rptr.3d - 2020 WL 1328970 - 20 Cal. Daily Op. Serv. 2581 - 2020 Daily Journal D.A.R. 2620**

Charter city filed petition for writ of mandate against the Secretary of State, seeking to prohibit the Secretary from applying to the city the California Voter Participation Rights Act (VPRA), requiring political subdivisions to consolidate local elections with statewide on-cycle elections if the local jurisdiction's turnout falls at least 25% below the locality's average voter turnout in the previous four statewide general elections.

The Superior Court issued writ of mandate. Secretary appealed.

The Court of Appeal held that Legislature did not demonstrate clear intention to apply the VPRA to charter cities.

Legislature did not demonstrate clear intention to apply to charter cities the California Voter Participation Rights Act (VPRA), requiring political subdivisions to consolidate local elections with statewide on-cycle elections if the local jurisdiction's turnout falls at least 25% below the locality's

average voter turnout in the previous four statewide general elections; in other statutes, Legislature used specific language when intending the term “political subdivision” to include charter cities, Legislature made contemporaneous amendment of the California Voting Rights Act (CVRA) to expressly include charter cities, and senator’s comments suggested that Legislature deliberately left unresolved the question whether VPRA applied to charter cities.

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## **LIABILITY - GEORGIA**

### **[City of Lafayette v. Chandler](#)**

**Court of Appeals of Georgia - March 9, 2020 - S.E.2d - 2020 WL 1129674**

Driver brought action for damages against city arising from collision with fire truck driven by city firefighter.

The State Court denied city’s motion to dismiss. City appealed.

The Court of Appeals held that driver’s ante litem notice of action strictly complied with statutory requirement to provide specific amount of monetary damages sought.

Driver’s ante litem notice of action for damages against city arising from collision with fire truck driven by city firefighter, which stated that driver would seek to recover \$1,000,000 in monetary damages, strictly complied with statutory requirement to provide specific amount of monetary damages sought as an offer of compromise, despite city’s argument that the figure was only a “generalized stab” at the presumptive limits of its insurance policy; requirement did not require driver to provide actual dollar amount of damages allegedly incurred, but only to provide specific amount of monetary damages being sought.

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## **LIABILITY - HAWAII**

### **[Hyun Ju Park v. City and County of Honolulu](#)**

**United States Court of Appeals, Ninth Circuit - March 13, 2020 - 952 F.3d 1136 - 20 Cal. Daily Op. Serv. 2177 - 2020 Daily Journal D.A.R. 2235**

Bartender brought § 1983 action alleging that city and county government and police officers violated her substantive due process right to bodily integrity under Fourteenth Amendment when one off-duty officer shot her while reloading his police department firearm in reckless and dangerous manner, and other officers failed to intervene.

After plaintiff settled with first officer, the United States District Court for the District of Hawai’i dismissed remaining claims, and plaintiff appealed.

The Court of Appeals held that:

- Officers were not acting under color of state law when they failed to stop fellow officer from recklessly attempting to load his already-loaded firearm while intoxicated;
- Facial deficiencies of police department policy regarding off-duty carry of service weapons were not obvious;
- Evidence that officer had drunkenly brandished his firearm in presence of other officers while off-duty was insufficient to establish pattern of prior, similar incidents; and

- Evidence of three prior instances in which officers attempted to conceal each other's misconduct was insufficient to demonstrate police chief's deliberate indifference.

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## **PUBLIC UTILITIES - MAINE**

### **[NextEra Energy Resources, LLC v. Maine Public Utilities Commission](#)**

**Supreme Judicial Court of Maine - March 17, 2020 - A.3d - 2020 WL 1270497 - 2020 ME 34**

Power company petitioned for a certificate of public convenience and necessity (CPCN) for the construction and operation of a clean energy connection project to deliver 1,200 megawatts of electricity from Québec to the New England Control Area.

The Public Utilities Commission granted the petition, and intervenor appealed.

The Supreme Judicial Court held that:

- Intervenor had standing to appeal from the issuance of a CPCN;
- Commission did not legally err when it found power company was not required to submit the statutorily required results of an independent third-party investigation into the use of nontransmission alternatives;
- Commission did not err as a matter of law by concluding the term public need was a general standard of meeting the public interest;
- The statute governing construction of power transmission lines did not require the Commission to undertake consideration of any mitigation of adverse impacts;
- Substantial evidence existed to support the Commission's finding that a proposed power transmission line project would not adversely impact the State's renewable energy generation goals; and
- Parties to a stipulation that recommended approvals and findings regarding issuance of the CPCN, CPCN conditions, and nontransmission alternatives, represented a sufficiently broad spectrum of interests.

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## **INDEMNIFICATION - OHIO**

### **[Ayers v. City of Cleveland](#)**

**Supreme Court of Ohio - March 25, 2020 - N.E.3d - 2020 WL 1445287 - 2020 -Ohio- 1047**

After prevailing in action against city detectives on civil claims alleging police misconduct in the course of criminal investigation, judgment creditor brought statutory indemnification claim against city.

The Court of Common Pleas entered summary judgment in favor of judgment creditor. City appealed and judgment creditor cross-appealed. The Court of Appeals reversed and remanded. Creditor sought further review.

The Supreme Court held that creditor could not enforce detective's indemnity rights against city under political-subdivision employee indemnification statute.

Political-subdivision employee indemnification statute did not permit judgment creditor to enforce police detective's indemnification rights directly against city; statute provided that a political subdivision was required to "indemnify and hold harmless an employee," so that the right of

indemnification was personal to the employee, statute did not require political subdivisions to indemnify any judgment against an employee, and statute did not provide that a third party could enforce the right of indemnification on behalf of an employee.

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## **IMMUNITY - RHODE ISLAND**

### **[Diorio v. Hines Road, LLC](#)**

**Supreme Court of Rhode Island - March 30, 2020 - A.3d - 2020 WL 1501920**

Landowners brought action against town, town solicitor, and town's building and zoning official for declaratory judgment and injunctive relief, negligence, private nuisance, trespass, and intentional infliction of emotional distress arising from dispute with neighbor about a retaining wall that was subject of settlement agreement with town.

The Superior Court granted summary judgment for defendants. Landowners appealed.

The Supreme Court held that:

- Solicitor had prosecutorial immunity;
  - Building official did not have prosecutorial immunity; and
  - Monetary claims against town were subject to abatement and dismissal due to failure to name town treasurer as defendant.
- 

## **WATER DISTRICTS - TEXAS**

### **[City of Conroe v. San Jacinto River Authority](#)**

**Supreme Court of Texas - March 27, 2020 - S.W.3d - 2020 WL 1492411**

Conservation and water reclamation district brought action under Expedited Declaratory Judgments Act (EDJA) seeking declaration that city was liable for breaching its water-sale contract and seeking declarations regarding legality and validity of contracts.

The District Court denied pleas to the jurisdiction and motions to transfer venue. Cities and utility companies filed interlocutory appeal and petition for writ of mandamus. The Court of Appeals denied mandamus petition, and affirmed in part and reversed in part.

The Supreme Court held that:

- Trial court could exercise jurisdiction over declaration that district was authorized to set rates for water-system operators;
- Trial court lacked jurisdiction to declare whether specific rate amount set in particular rate was valid; and
- City was not immune.

Execution of bilateral groundwater reduction plan contracts between water-system operators and legislatively created conservation and reclamation district charged with regulating water resources of San Jacinto River Basin to provide operators with surface water in exchange for monthly payments constituted public security authorization under Expedited Declaratory Judgment Act (EDJA), and therefore trial court could exercise jurisdiction over declaration that district was authorized to set rates for water-system operators pursuant to procedures set forth in those

contracts, since contracts were executed in close temporal proximity to bonds' issuance and their revenues were immediately pledged as sole source of repayment securing district's bonds.

Rate order and rates established under bilateral groundwater reduction plan contracts between water-system operators and legislatively created conservation and reclamation district charged with regulating water resources of San Jacinto River Basin to provide operators with surface water in exchange for monthly payments did not constitute public security authorizations under Expedited Declaratory Judgment Act (EDJA), and therefore trial court lacked jurisdiction to declare their legality or validity, since rate order and rates did not have authorizing connection with bonds and did not implicate district's statutory authority to impose rate.

City was not immune to action brought by conservation and water reclamation district under Expedited Declaratory Judgments Act (EDJA) seeking declaratory judgment that city was liable for breaching its water-sale contract and seeking declarations regarding legality and validity of contracts, since EDJA proceedings were in rem and did not impose personal liability.

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### **Bonds Backed By Special Taxes Hit By Virus, Moody's Says.**

The economic slowdown resulting from the COVID-19 pandemic will challenge state and local governments to service their municipal bonds, especially those secured by taxes on hospitality, travel and leisure businesses, a report by Moody's has said.

Tax revenues from hotel occupancy and restaurant sales are the most vulnerable to the slowdown, with monthly collections expected to fall by up to 85% through midsummer and not recover until March 2021, the report issued Monday by Moody's Investors Service said.

Sales and income tax revenues will decline to a lesser extent because they rest on broader tax bases, the report added.

Municipal special tax revenue will be sharply curtailed by "unprecedented restrictions" on social interaction and travel, the report said. The downturn will be especially strong in economic areas connected to the hospitality industry: hotels, casinos, car rentals, parking, and food and beverage services, it said.

Declines in consumption will be marginally offset by [federal stimulus measures](#) such as the Coronavirus Aid, Relief and Economic Security Act, it said.

Most bonds backed by special taxes have a reserve for debt service that boosts their creditworthiness against a temporary tax revenue shortfall, Moody's said.

If state or local governments lack the reserves to make bond payments, their willingness to cover any shortfalls can boost a bond's ratings, the report said. A parent government's willingness to step in is not guaranteed, however, and depends on political factors and others that are unpredictable, the report said.

How long the decline lasts depends on the steps taken to contain the virus, Moody's said. It has already projected a 4.3% decline in the U.S. economy for the first two quarters of 2020 and a 2% drop for all of 2020, it said.

A Moody's representative did not respond to requests for comment.



State and local governments have reported tax revenues declining due to the COVID-19 pandemic. New York state's tax receipts will [fall by at least \\$4 billion](#) for the 2020-21 budget year, Comptroller Thomas P. DiNapoli said in March. A more severe decline in stock markets or a sharp recession could lower revenue by up to \$7 billion, he said.

Florida also faces a [decline in sales tax revenues](#) as business for its tourist attractions dries up from the COVID-19 pandemic. The state will need to draw from its \$4 billion reserve fund to make up the shortfall, a sales tax compliance expert recently told Law360.

## **Law 360 Tax Authority**

By David Hansen · April 1, 2020, 6:03 PM EDT

-Editing by Robert Rudinger.

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### **[S&P: Outlooks Revised To Negative On Transportation-Related GO Special District Ratings Due To COVID-19, Global Recession](#)**

CENTENNIAL (S&P Global Ratings) March 31, 2020-S&P Global Ratings revised its outlook to negative from stable on several long-term and underlying general obligation (GO) ratings. The affected ratings consist primarily of debt secured by ad valorem property tax revenue, issued by special districts that have transportation-related operations, regardless of the purpose of issuance. These issuers include airport authorities, port districts, and mass transit operators. The negative outlooks provide notification to market participants 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).

This action applies to the ratings of 18 issuers, and 86 issue level ratings.

[Continue reading.](#)

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### **[S&P: All U.S. Public Finance Sector Outlooks Are Now Negative](#)**

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- Transportation
- Long-Term Pools

Following mobility restrictions and closure of large segments of the economy due to COVID-19 and the swift onset of recession, all of S&P Global Ratings' sector outlooks in U.S. public finance are now negative. At the start of 2020 all sector outlooks were stable with the exception of higher education, ports, and mass transit. The shift in our outlooks to end the first quarter reflects the expectation of sharp decline in the economy through at least the second quarter and uncertainty about the rate of spread and peak of COVID-19 as well as the timing of economic recovery.

Sector outlooks are an indication of credit trends in the year ahead and may be informed by existing outlook distributions or existing and emerging risks that could influence rating actions. By themselves, we do not expect that these sector outlook revisions will lead to immediate issuer- or issue-specific negative rating actions. However, given the confluence of events from COVID-19 and the ensuing recession, we believe that rapid expenditure increases and precipitous revenue declines will generate more negative than positive rating actions across U.S. public finance for the remainder of 2020.

The financial position of governments and not-for-profits was generally healthy at the beginning of the year, which we believe provides flexibility to respond to the evolving situation. However, we see real fiscal challenges ahead across all sectors (see table 1). The rapid onset of the recession with projections of sharp GDP decline, surging unemployment, and decreased consumer spending will pressure credit quality.

[Continue reading.](#)

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## **S&P: Outlooks On Certain U.S. Convention Center And Sports Authorities Revised To Negative From Stable On COVID-19 Impact**

### **Table of Contents**

- Key Takeaways
- As Events Are Cancelled Or Pushed Off To Later Dates, Revenue Streams Suffer
- Length And Severity Of Impact Are Largely Out Of Authorities' Control

FARMERS BRANCH (S&P Global Ratings) April 1, 2020-S&P Global Ratings revised the ratings outlook to negative from stable on certain U.S. convention center and sports authorities in the wake of the COVID-19 pandemic. The negative outlooks provide notification to market participants that the affected entities face at least a one-in-three likelihood of a negative rating action over the medium term (generally up to two years). At the same time, S&P Global Ratings affirmed its ratings on the entities.

"The negative outlook reflects our belief that the advent of "social distancing" and subsequent cancellations of major events, as well as material declines in travel and closing of businesses in response to the global spread of COVID-19, have affected, and will negatively affect convention center and sports authorities' revenue streams," said S&P Global Ratings credit analyst Andy Hobbs. The current negative outlooks are reflective of entities where the operating risk is associated with the particular convention center or sports authority. S&P Global Ratings recognizes that 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 the new coronavirus, the longest economic expansion in U.S. history has come to an abrupt end. The toll on GDP will be far more severe than we once thought—with the contraction showing up in the first-quarter figure and worsening substantially in the April-June period. (see “It’s Game Over For The Record U.S. Run; The Timing Of A Restart Remains Uncertain ,” published on March 27, 2020, on RatingsDirect).

[Continue reading.](#)

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## **Fitch U.S. Water and Sewer Rating Criteria.**

This criteria report details Fitch Ratings’ methodology for assigning Issuer Default Ratings (IDRs), Standalone Credit Profiles (SCPs), and issue- and obligation-specific ratings to U.S. municipal water and sewer (including wastewater and stormwater) utilities, whether operating as a stand-alone legal entity or an enterprise of a local government. This rating methodology also applies to certain municipally owned combined utilities, for which water and sewer revenue accounts for, or is expected to account for, the largest share of total revenue on an ongoing basis.

[Read the Report.](#)

April 3, 2020

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## **Fitch U.S. Public Power Rating Criteria.**

This criteria report details Fitch Ratings’ methodology for assigning Issuer Default Ratings, (IDRs), Standalone Credit Profiles (SCPs) and issue- and obligation-specific ratings to U.S. public power utilities, including electric systems that are municipally or federally owned, and electric cooperatives.

[Read the Report.](#)

March 30, 2020

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## **Helping Public Entities Navigate the COVID-19 Financial Crisis: Squire Patton Boggs**

As we’ve said, [The Thing touches everything](#). Indeed, to quote *No Country For Old Men*: [“It’s the dismal tide. It’s not the one thing.”](#) State and local governments are no exception. Our public policy and public finance groups have a [four-point action plan](#) for state and local governments to start to pick up the pieces. We’re ready to help.

**The Public Finance Tax Blog**

**By Johnny Hutchinson on March 29, 2020**

## **Tax Anticipation Notes: An Option to Alleviate Municipal Cash Flow Shortages Due to the COVID-19 Outbreak - Day Pittney**

As a result of the governmental and business shut downs employed to ease the outbreak of COVID-19, municipalities face the grim possibility of reduced or delayed revenues resulting in cash flow shortages. Faced with lower and/or slower tax collections, municipalities will still need to meet current operating expenses. Short-term tax anticipation notes (TANs) may be a means to bridge this timing gap.

Connecticut municipalities, as well as any political subdivision empowered to lay taxes, are authorized to issue notes in anticipation of their receipt of tax collections. See Conn. Gen. Stat. § 7-405a. TANs are authorized by resolution or ordinance adopted by the municipality's legislative body and are limited to the amount required to pay current expenses and obligations. TANs may be renewed from time-to-time, but all TANs must mature and be payable by the end of the fiscal year in which the applicable tax collections are payable. The amount of TANs issued is limited to the total levy of the then current fiscal year. However, if no tax levy has been made at the time of issue, the size is limited to the tax levy of the prior fiscal year.

For purposes of authorizing TANs, a municipality's legislative body is: (1) for towns, the town meeting; (2) for cities, the board of aldermen, the city council or other body charged with the duty of making annual appropriations; (3) for boroughs, the board of burgesses; and (4) for municipal districts, the district committee or other body charged with the duty of making annual appropriations. See Conn. Gen. Stat. § 1-1(m).

In order to issue TANs on a federally tax-exempt basis, additional requirements must be met. TANs are working capital financings, which are governed by the arbitrage regulations, more specifically those concerning replacement proceeds, temporary periods and accounting rules. These regulations determine both the sizing and the required method for accounting for expenditures.

The proceeds derived from a short-term working capital borrowing are generally permitted a 13-month temporary period. See Treas. Regs. § 1.148-2 and Rev. Proc. 2002-31. During a temporary period, the proceeds are permitted to be invested without any restriction as to yield, provided the issuer reasonably expects to spend those proceeds within the 13-month temporary period. As such, TANs should be sized to meet this 13-month spending requirement.

In order to meet the 13-month spending requirement, the municipality must demonstrate that, absent the issuance of the TANs, a zero balance or operating cash flow deficit would have occurred during the period the TANs are outstanding. The timing of the expenditures is determined by the application of a "proceeds-spent-last" accounting rule. See Treas. Regs. § 1.148-6. Pursuant to this rule, proceeds cannot be considered spent until there are no "available amounts" that could be used in place of those proceeds. "Available amounts" are, subject to limited exclusion, generally funds available to the issuer to pay the type of working capital expenditure being financed. However, a municipality is permitted to maintain a "working capital reserve." The amount in this reserve is limited to 5 percent of the sum of the municipality's working capital expenditures plus capital expenditures paid out of current revenues during the preceding fiscal year. In addition, the amount in the reserve may not exceed the municipality's average balance of "available amounts" during prior annual periods of at least one year.

The 13-month period is also within the safe harbor provided in the regulations against the creation of “other replacement proceeds,” which can be the product of an issue being outstanding for a period that is longer than necessary. See Treas. Regs. § 1.148-1.

Even though the statutory time limitation for paying off a TAN should result in the issue meeting the 13-month temporary period, consideration still must be given to the amount expected to be expended during that period when determining the issue’s size.

TANs are a borrowing and not a replacement for lost revenues, they do address the timing issues created by delays in revenue collections. For more information, please contact any of the municipal finance attorneys at Day Pitney.

March 25, 2020

Day Pitney Author(s) Glenn G. Rybacki, Judith A. Blank, Douglas W. Gillette, Namita Tripathi Shah, Richard J. Wasserman

**Publisher: Day Pitney Alert**

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## **[A Proposal for the Coronavirus Anticipation Note \(CAN\).](#)**

John Mousseau and I have combined our professional experience with our views of the municipal finance market. With the help of our Cumberland staff, we want to offer a format for immediate assistance designed to address urgent state and local government financing problems. This proposal is only a framework. There are many skilled professionals who can quickly weigh in with ideas; and, ultimately, a final version of our proposed instrument will have to be crafted and brought to fruition at the federal level, combining the U.S. Treasury, the Federal Reserve, and the Congress (maybe?) if the CARES Act doesn’t have enough authority.

Here is the basic issue. Under these present emergency conditions, the nearly 90,000 separate municipal identities in the United States are experiencing deferred or permanently lost cash flow. Examples: Tax collections fall or cease. Revenues for services fall or cease. Use and sales taxes, various fees, and all associated sources of revenues decrease suddenly or cease for an unknown period of time. What can these diverse entities do to avoid reducing their important governmental functions and furloughing their labor forces, and to continue to provide essential services?

We propose the creation of a coronavirus cash-flow deficiency anticipation note. Let’s call it the Coronavirus Anticipation Note, or CAN, for short. We would model the CAN after other types of anticipation notes. That way, the system does not have to “discover a new wheel.” We are already used to tax anticipation notes (TAN), bond anticipation notes (BAN), revenue anticipation notes (RAN), tax increment financing (TIF), and various other types of financing instruments which raise money now and then get repaid after an event is completed or a project is fulfilled or some other target goal is met.

CAN needs a federal backup and a rapid issuance method, either through a national pooled vehicle or a state-by-state pooled vehicle. Because of diverse state taxation rules, we believe that the state-by-state method is probably more suitable. The federal government can backstop the state with a U.S. Treasury guarantee. The guarantee can be pooled. The states can determine allocation to cities and counties and to local or state agencies. Most states have such allocation mechanisms already in place for their various budgets and services. The CANs would have state income tax exemption in

the state where they are issued, in addition to being exempt from federal taxes.

Think of the national CAN pool in a form such that the Federal Reserve can add CAN pool notes to the assets on its balance sheet. The Treasury backstop transfers the default risk to the U.S. Treasury, and the states can direct their CAN usage internally, since each state has a better handle on where the cash flow deficiencies reveal themselves. The Treasury already has a municipal information arm in place with the Municipal Issuers Oversight Unit, which was formed in 2014.

Municipal entities are transparent and have audits and usually adopt their budgets in a public meeting. The databases for these entities already exist in regulatory filings of various types, such as MSRB and EMMA.

The idea is to provide a bridge loan to a municipal entity to cover the shortfall in its cash flow during the crisis period. The entity can issue CANs to fill the gap. The states can pool them, as they usually do now with the various forms of pooled vehicles that already exist in the states.

When we get to the other side of this crisis, the CANs can be repaid from revenues, or they can be “termed out” into longer-term bonds with easy amortization. The municipal market is quite capable of handling this process in the normal course of business.

CANs can be the gap funding mechanism for what may be one or two quarters, or one or two years. The timing for launching CAN is important, as those municipal entities are now seeing revenues shrinking every day. One final note: CANs must not be used to make up pension funding gaps or for other longer-term solutions for preexisting structural problems. The purpose of CAN financing is to raise the cash to bridge the coronavirus chasm and its funding gap. Keep it focused and not diluted or diverted to other purposes. There will be infrastructure program proposals for other types of long-term project financing.

We propose that CANs be discussed and developed as a manageable and timely tool for states and municipalities that must now weather both COVID-19 and its impacts on cash flow.

*David R. Kotok is the chairman and chief investment officer for Cumberland Advisors. He holds a B.S. in economics, an M.S. in organizational dynamics and an M.A. in philosophy. He serves as a Director of the Global Interdependence Center, is a member of the National Business Economics Issues Council, the National Association for Business Economics, and served on the Research Advisory Board of BCA Research. His monograph, “Lessons from Thucydides” detailing information asymmetries and their implications for investors and world affairs, is freely available in PDF form. He appreciates hearing from readers. Contact him at [feedback@cumber.com](mailto:feedback@cumber.com) or 941-926-6279.*

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## **Fitch: CARES Act Gives Higher Education Some Relief**

Fitch Ratings-Chicago/New York-06 April 2020: The \$2 trillion CARES Act, signed into law on March 27, provides some relief to colleges and universities facing budget pressures, as a result of the coronavirus pandemic and subsequent decisions to shut down campuses, but will not be sufficient to

fully compensate for revenue losses and increased expenses, according to Fitch Ratings.

A prorated decline in some student fees, auxiliary and other revenues, coupled with increased operating expenses, including the shift to online learning, without offsetting revenue has affected the higher education sector. These pressures will be most acutely felt by those with less liquidity, lower margins, and greater budget gaps, and smaller, residential colleges reliant on student-fee revenue. Many institutions are evaluating expense reduction actions, including support-staff layoffs or furloughs. Higher-rated institutions with strong financial cushions should have sufficient resources to cover budget gaps at least through the end of the 2020 fiscal year.

The CARES Act establishes a \$31 billion Education Stabilization Fund supporting both K-12 and higher education. Colleges and universities will receive \$14.3 billion, 10% of which is divided between historically black colleges and universities (HBCUs) and grants for small institutions with unmet needs related to coronavirus. Seventy-five percent of the remaining 90% will be distributed based on enrollment of full-time students who receive Pell Grants. We expect this will favor those with disproportionately large numbers of low-income students and community colleges. The remaining portion will be allocated by the relative share of enrollment that is not Pell Grant supported. Institutions must use half of the funding for student aid, before the remainder can be used to offset lost revenues or increased expenses.

Two federally chartered entities, Howard University (BBB-/Stable) and Gallaudet University, will receive direct appropriations of \$13 million and \$7 million, respectively. An additional \$99.5 million will benefit research universities that are conducting coronavirus research. Teaching hospitals may also benefit from a \$100 billion emergency fund for healthcare providers. Small universities with less than 500 employees may benefit from the Payroll Protection loan program under the Act with up to a maximum loan amount of \$10 million.

Using 2018-2019 enrollment data, Fitch estimates the enrollment-based aid equates to roughly \$1,400 per Pell student and \$200 per non-Pell student if applied uniformly across eligible students. Larger, highly-rated institutions are likely to have more resources available to manage through the coronavirus disruption but are also likely to receive the most aid. Smaller private colleges with thinner financial cushions, typically rated 'BBB' and lower, may be in more need of federal assistance. Even with funds earmarked specifically for small institutions with unmet coronavirus-related financial needs, the demand for, and method of, disbursement for these funds is yet unknown and may leave some smaller institutions to face heightened financial strain and rating pressure.

Budget pressures are likely to continue into fiscal 2021 without further federal aid if coronavirus restrictions persist beyond our current expectation of two to three months. Building a 2021 budget will be very challenging given uncertainty of fall enrollment prospects for both first time and returning students, and consequently some universities may have meaningful gaps next year, which would need to be addressed via other funding sources or significant expense reductions.

Broadly, we expect margins will tighten across the sector. Funding of \$3 billion provided to states under the Act does include a requirement that state governments not reduce funding for higher education, similar to the American Recovery and Reinvestment Act of 2009 stimulus funds provided during the prior recession. This should help stabilize this important source of funding, although states are facing their own budget and short-term liquidity crunch in the face of delayed tax revenues and coronavirus expenses. Public universities are generally less dependent upon state funding than they were heading into the 2008 recession, although the shift toward more tuition dependence may not be sustainable in the face of the economic crisis and its effects on individual income.



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

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## **[The Coronavirus Aid, Relief, and Economic Security Act: Assistance Available to Passenger Airlines and Airports - Mintz Levin](#)**

On March 27, 2020, President Trump signed into law the “Coronavirus Aid, Relief, and Economic Security Act” (the “CARES Act”), a \$2+ trillion stimulus package intended to ease the economic and social disruptions facing the country in the wake of the COVID-19 outbreak. Unsurprisingly, the new law includes funding and financing for passenger airlines and airports, which are among those expected to be hardest hit by the outbreak.

While the CARES Act includes targeted funding for certain transportation programs, such as \$56 million for the Essential Air Service program, the largest aviation related relief programs are:

- \$25 billion for loans and loan guarantees to passenger airlines;
- \$25 billion for wages, salaries and benefits of airline employees; and
- \$10 billion for aid to airports.

Below is a description of these programs.

[Continue reading.](#)

By Timothy J. McKeon, William W. Kannel

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## **[Cannabis Municipal Bonds Could Be The Future.](#)**

[MPG Consulting](#) has recently authored a report looking at the potential of Cannabis Municipal Bonds (CMB). Adam Orens, Founder of MPG and Sal Barnes, Managing Director, MPG have conducted a

theoretical analysis using Colorado showing how the state can translate its cannabis revenue into a short-term bond amount of \$166 million and long-term bond issued in the amount of \$591 million resulting in \$123 million and \$438 million available for educational initiatives and infrastructure, respectively.

States and municipalities already use revenue bonds as a way to pay for large projects. The investors of such bonds feel that the risk for these investments is lower since there is a captive source of revenue to pay the interest. The report gives Iowa as an example. That state allocates \$55 million in gaming taxes every year to pay the debt on revenue bonds that were issued in 2009 and 2010. That money raised selling these bonds was then used for community revitalization, flood mitigation, and bridge improvement efforts.

### **Test Case: Colorado**

MPG used Colorado as an example of how state and municipal governments could tap into this revenue stream as a way to fund large projects. Although the report stresses, that while Colorado makes a good test case because of its well-tracked tax revenue, it isn't necessarily a good candidate for a CMB. Mostly because the state has already been able to capitalize on the growing tax revenue for various projects – mostly involving education. The authors believe it is a concept worth exploring for newly legalized states.

In Colorado's case, Denver collected \$46.8 million in tax and license revenue in 2018. The estimated amount for 2019 is \$63.3 million. MPG suggests this revenue will grow 21.6% on an annual basis. Using these figures and calculating future growth, MPG thinks that Denver could offer three-year CMB's at a 1.5% interest rate. The city could issue a \$166 million three-year bond resulting in potentially giving \$123 million to the education allocation. A 10-year bond issue of \$591 million would result in \$438 million for education and other purposes.

Since Denver's education needs seem to be met with this new influx of cannabis tax revenue, a CMB would not have as much impact. However, a city that is new to legalization and has more pressing and expensive needs like housing – a CMB might be an attractive solution.

### **Minneapolis As An Example**

MPG Consulting looked at Minneapolis Minnesota as a city that could benefit from CMB. The state has not legalized cannabis, but if it did it could a large city like Minneapolis use the money to address its housing problems. MPG calculated that if the state legalized adult-use cannabis its first-year sales could hit \$64 million and eventually reach \$182 million in the tenth year. MPG believes that the tax revenue in the first three years would be roughly \$63million reaching \$343 million in ten years.

The hypothetical case for Minneapolis is that the city could issue \$49.4 million in three-year bonds raising \$44 million for affordable housing in year one. The current balance for the Affordable Housing Trust Fund is \$21 million, so an influx of \$49 million would be substantial. A ten-year bond could generate \$233 million in the first year. The report also looks at the state in the same hypothetical calculation where the state would reap \$385 million from a three-year bond and \$2 billion in a 10-year bond.

### **Banking**

Of course, the cannabis industry is challenged with a lack of banking and most of the major debt underwriters want nothing to do with cannabis until it is federally legal. With the current pandemic

crisis and an upcoming election, the possibility of any cannabis legislation getting enacted in the near term is remote. The authors though believe that CMB's could still be issued in the current environment.

"When state and local governments collect cannabis tax revenue, the funds are commingled in the general fund with revenue from other sources. The funds then enter the Federal Reserve System," said the report. "Capital raised from CMB's would be no different than any other tax revenue and therefore, in our opinion, would not require any sort of special regulation." The authors do concede that convincing the banks and underwriters to offer the products could still be difficult.

## **Potential CMB States**

The report notes that demand for such a bond could grow as cities and states grapple with the economic fallout of the COVID19 virus. The report suggests that seven states could see the potential in CMB's. These states hold the most promise of legalizing adult-use cannabis in the near term. Those states are Arizona, Connecticut, Montana, Missouri, New Jersey, New York, and Vermont. However, the report notes that only the major east coast markets, Missouri and Arizona could support the CMB. Vermont would not have the tax revenue to make it worthwhile.

"States looking to open adult-use cannabis markets should consider utilizing CMB's to finance crucial infrastructure or strategic public initiatives," read the report. "Strong and accurate estimation of cannabis demand, tax revenue, growth rates, and other market development factors are imperative to calculating proper bond issue size, yield and maturity dates. Finally, banks who sell CMB's must develop diligence methods and models to effectively price these securities."

MPG Consulting said that cannabis revenues are steadier than alcohol and tobacco and more like casino tax revenue. While the idea of Cannabis Municipal Bonds may be novel, it isn't completely unfeasible. The question isn't if they will happen, but when. MPG might be correct that COVID could push states and cities to issue CMB's. Financial institutions may also ease their opposition as they too may need additional underwriting revenue. CMB's could be the next step in legitimizing cannabis.

## **Green Market Report**

by Debra Borchardt

April 1, 2020

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## **[Bi-Partisan Push for Infrastructure Emerges.](#)**

### **BDA Leading Advocacy for Member Priorities**

The President and Congressional leaders have this week turned their focus to [infrastructure investments](#) as a major component of the next round of stimulus in response to the ongoing COVID-19 pandemic. Discussions are still in the initial phases, but bi-partisan support for a "phase 4" package that includes direct funding for infrastructure seems to be gaining support.

In anticipation of the next stimulus measures, the BDA is leading advocacy for member priorities, partnering with our state and local partners in calling for Congress to support such measures as:

- The restoration of tax-exempt advance refundings
- Increase in the cap for bank qualified debt;
- Expansion of the use of Private Activity Bonds; and
- Potential exploration of the reinstatement of direct-pay bond and ending exposure to sequestration.

The BDA will continue to provide updates as the become available and in the coming days, provide membership with a targeted, grassroots advocacy plan.

## **Bond Dealers of America**

April 1, 2020

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### **[Pelosi Says Infrastructure Talks With Mnuchin Are Accelerating.](#)**

House Speaker Nancy Pelosi said talks between Treasury Secretary Steven Mnuchin and Ways and Means Chairman Richard Neal on funding for infrastructure are accelerating.

Pelosi told reporters Thursday that she spoke with Mnuchin the previous night about implementing last week's coronavirus stimulus bill quickly and looking ahead to the next legislation, which could include infrastructure spending.

"Whatever communication we need to move forward, that will be happening," Pelosi said.

The California Democrat said she and Mnuchin also discussed making sure seniors won't need to file special tax returns to get the payments included in last week's stimulus law.

"We also have to implore the Fed to do what it can to help municipalities and states," she said. "They don't really need more debt."

She said Fed Chairman Jerome Powell told her to think big, "and we want him to think big, too."

On Wednesday, Pelosi and other Democratic leaders said the next coronavirus stimulus bill should include at least \$760 billion for water projects, broadband and transportation, as well as additional support for community health centers, education and housing to strengthen U.S. infrastructure and the economy.

Senate Majority Leader Mitch McConnell told the Washington Post later Wednesday that Pelosi's comments about a phase-four coronavirus response measure were "premature."

"She needs to stand down on the notion that we're going to go along with taking advantage of the crisis to do things that are unrelated to the crisis," McConnell told the Post.

## **Bloomberg**

By Billy House and Erik Wasson

April 2, 2020, 8:58 AM PDT

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## **Fitch: U.S. Local Government Liquidity to Face Stress Due to Coronavirus**

Fitch Ratings-New York-03 April 2020: Challenges to U.S. local governments' ability to maintain historically sound liquidity levels in light of the coronavirus pandemic will come from multiple sources, according to Fitch Ratings. As with states, Fitch considers liquidity to be the most significant near-term risk to local government credit quality related to the pandemic (see 'Tax Filing Delays Will Hit Near-Term Liquidity for State Govts', March 2020). While Fitch expects most local governments — with an average Issuer Default Rating (IDR) of 'AA' — to retain sufficient liquidity to offset significant near-term revenue declines, some will undergo enough strain to trigger rating downgrades. Fitch expects even financially stressed issuers to take whatever measures are possible and necessary to continue to make full and timely debt service payments during this challenging period, which may include deficit financing or other cash flow conservation measures considered unusual through normal economic cycles. Failure to create adequate liquidity and financial buffers that protect debt repayment capacity even during a potentially protracted crisis would be inconsistent with an investment-grade rating. A missed debt service payment, even if on a temporary basis, would be treated by Fitch as a default.

Cash management tools are not typically the focus of Fitch's analysis of U.S. local governments, as liquidity is sufficient for operating needs for nearly all issuers through cyclical downturns. However, given the uncertain nature of the coronavirus pandemic and the depth and duration of its impact on the economy, Fitch believes many local governments may explore extraordinary cash flow support measures in the near term, particularly those governments that do not carry large liquidity balances relative to operating needs. These may include financial market solutions such as lines of credit and tax/revenue anticipation notes, either through public sales or private placements. Since local governments are generally labor-intensive, these working capital management measures might also include layoffs and furloughs that necessitate service reductions, or payroll deferrals. In addition, Fitch expects some entities to delay vendor payments, reduce equipment purchases and postpone capital spending.

Liquidity strains are more likely for local governments that exhibited negative financial trends prior to the outbreak, or those with lower IDRs and financial resilience assessments, reflecting more limited flexibility to address the emerging economic and revenue challenges. Local governments with a disproportionately large exposure to economically-sensitive revenues such as sales and income taxes, or economies with significant tourism and retail sector dependence, are also considered more vulnerable.

Property taxes, which typically are due annually or semi-annually, have been a predictable and stabilizing factor for revenues but even those may be subject to uncertainty. Fitch is not aware of any local governments proposing to delay property tax due dates, although at last count 38 of the 44 states that levy a personal income tax have extended their filing or payment deadlines to as late as July 15, in line with the federal filing delay. For many taxpayers who have mortgages, escrowed property tax payments have historically contributed to high current property tax collection rates. However, a relaxation of mortgage payment due dates, already instituted for Fannie Mae and Freddie Mac borrowers, could result in delays in property tax collections. Fitch expects to develop an analytical framework for measuring this risk relative to an issuer's available cash management options. In addition, the coronavirus pandemic could negatively affect home prices, thereby eroding tax base values and property taxes, although the impact on tax revenues would not be felt until future fiscal years (see 'Coronavirus Could Precipitate Decline in U.S. Home Prices', March 2020).

Fitch also views state aid, upon which school districts and counties typically rely heavily, as at higher risk to cutbacks in fiscal 2021, which begins on July 1 for many. The ability to reduce or delay

local government transfers is an important financial tool for states. Fitch believes this flexibility is likely to be invoked given states' near-term revenue and liquidity stress. While the Coronavirus Aid, Relief and Economic Security (CARES) Act will distribute \$150 billion in aid to state and local governments in the near term, it provides expense reimbursement rather than a pure cash flow infusion. The high IDRs in the local government sector indicates most will be able to withstand even this period of unprecedented stress; Fitch is reviewing the adequacy of each issuer's available tools as well as management's willingness to utilize them.

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## **Why State and Local Debt Is Fraught Territory for the Fed.**

**The central bank is weighing what it can do to help local bond markets. Here's why Democrats' big ask — direct purchases — is so tough.**

Rhode Island will miss out on \$300 million in revenue in March and early April as coronavirus delays income tax filings, while shuttered casinos cost state coffers another \$1 million per day. Expenses, meantime, are through the roof — the state spent \$7 million on ventilators on Monday alone.

Seth Magaziner, the state's general treasurer, takes comfort in the fact that the federal government should soon cover some coronavirus-related costs, like medical equipment, thanks to legislation President Trump signed last week. But Mr. Magaziner remains worried about the municipal bond market, which state and local governments tap to fund everything from road construction to schools. It could turn messier as government income streams dry up amid quarantines and furloughs, making debt harder to issue. Like many other state finance officials around the country, he's looking to the Federal Reserve for help.

"Things are very volatile, and we don't know what the future can bring," Mr. Magaziner said. "This is a crisis unlike any other that the country has faced in generations."

[Continue reading.](#)

## **The New York Times**

By Jeanna Smialek

April 1, 2020

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### **Pelosi, Warren Press Fed to Ride to Rescue of Cities Slammed by Pandemic.**

**Congress has given the Federal Reserve a \$454 billion pot of money and broad authority to back up the municipal bond market with direct purchases.**

House Speaker Nancy Pelosi and Sen. Elizabeth Warren are among top Democrats pressing the Federal government to do more to help salvage municipal finances as the coronavirus wallops state and local budgets.

“We need to do more by way of our appropriations, by way of our tax code, and by way of policy,” Pelosi said Tuesday on MSNBC. “And also by way of the Fed doing more to help the state and local governments with the challenges that they face, which are massive.”

Congress has given the Federal Reserve a \$454 billion pot of money and broad authority to back up the municipal bond market with direct purchases. But the fund is also available to corporations and will be administered at the discretion of Treasury Secretary Steven Mnuchin and Fed officials, and the rescue package does not specify how much help local government-backed debt will get.

[Continue reading.](#)

POLITICO

By KELLIE MEJDRICH

03/31/2020 03:27 PM EDT

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### **Cash is King: Short-Term Strategies to Slow the Flow of Money Out the Door and Keep the Budget Balanced**

Local governments need to make sure they have enough cash on hand for essential services. Thus, one of the first things local governments should do is slow the net flow of cash out the door and find ways to rebalance the budget. This could be done by reducing expenditures, delaying expenditures, or even finding new resources. There are many financial retrenchment techniques a government could use to get this done.

This paper presents a number of tried-and-true retrenchment techniques that can improve cash flow during difficult times and provide time and resources for governments to develop strategies to deal with the financial crisis.

[Download](#)



## **Government Finance Officers Association**

Author: Shayne C. Kavanagh Joseph P. Casey, PhD

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

COVID-19 has triggered a state budget crisis. States, tribes, and local governments are incurring huge new costs as they seek to contain and treat the coronavirus and respond to the virus-induced spike in joblessness and related human needs. At the same time, they are projecting sharply lower tax revenues due to the widespread collapse of economic activity brought about by the virus' spread and needed containment activities. The federal stimulus bills to date include fiscal relief — but it's already clear that it will fall far short of what states, tribes, and localities will need.

It's impossible to predict what the precise impact of the pandemic will be on the economy, but the consensus is that the country appears to have already entered a recession that could be much worse than the Great Recession. For example, Goldman Sachs projects that the unemployment rate will hit 15 percent in the third quarter (July-September) and remain at 7 percent through the end of the year.

States have only just begun to forecast the pandemic's likely impacts on their revenues based on the best economic projections available and their experience with past recessions and other shocks to state economies (see Table 1). The early reports are sobering, and as the full scale of the downturn becomes clearer, revenue projections will likely fall further.

[Continue reading.](#)

## **Center On Budget And Policy Priorities**

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### **How Will States and Localities Divide the Fiscal Relief in the Coronavirus Relief Fund?**

The new bipartisan economic stimulus legislation — known as the CARES Act — contains significant new resources to help states address massive, immediate budget problems due to COVID-19, though states will almost certainly need more aid in coming months.

The centerpiece of this aid is the \$150 billion Coronavirus Relief Fund, which state, tribal, and local governments can use this year to meet costs connected to the virus. Each state will receive at least \$1.25 billion, while the most populous states (California and Texas) will receive over \$10 billion each, we estimate. (See Table 1 for total state allocations.)

A portion of each state's allocation will go to local governments. Only local governments with populations over 500,000 are eligible for funding. In states with no city or county over 500,000 people, the state government will receive the entire allocation.

[Continue reading.](#)

## **Center On Budget Policy And Priorities**

## **Democrats Push for Fed to Decide Who Gets Municipal Rescue.**

- **Legislation calls for help to state and local debt markets**
- **Opposition party wants to cut Treasury Department out of loop**

Congressional Democrats are pushing to have the Federal Reserve take over the rescue of state and local debt markets — cutting the Treasury Department out of the decision-making.

The central bank is expected to announce a new emergency facility to support municipal debt, part of the \$2 trillion stimulus approved last week. It had the backing of progressive Democrats and conservative Republicans alike, including Senators Elizabeth Warren and Mike Crapo. They're urging the Fed and Treasury to move quickly.

The coronavirus pandemic has crimped sources of tax revenue for states and localities at a time when resources, including paramedics and hospitals, are being committed to combat the threat to public health.

In the next round of legislation, House Speaker Nancy Pelosi and some congressional Democrats want to push further. They favor taking decisions about where to use the money out of the political realm and giving them solely to the independent Fed.

The notion has been circulating for months among progressives in Congress. If the law is changed, it would give the Fed another congressionally mandated goal — beyond stable prices and maximum employment — by designating the Federal Open Market Committee to be the buyer of last resort of the debt of troubled states and municipalities.

"If you want money to go somewhere quickly, everybody's idea right now is to get the Fed involved," said Ian Katz, an analyst at Capital Alpha Partners in Washington. "That doesn't take into account that the Fed has to build these facilities and structures to do something they've never done before."

### **Permanent Change**

Legislation introduced by Democratic Senator Robert Menendez would create a permanent change to the Federal Reserve Act to allow the central bank to purchase municipal debt "under unusual and exigent circumstances" through direct purchases via open market operations.

Currently, the Fed and Treasury are operating under Section 13.3 of the Federal Reserve Act. It allows the Fed, with Treasury permission, to open a broad-based facility to support troubled areas of the financial markets in an emergency.

Municipal bonds have rallied in anticipation of the intervention. Last week was the best for state and local debt since 1982, according to Bloomberg Barclays indexes. A handful of debt issuers have been able to price deals in the last few days after billions in transactions were scuttled earlier this month, a signal that the market is starting to regain its footing.

The virus threatens the finances of U.S. states, cities and counties, which rely on taxes on income, sales and stock-market gains. With the much of the country on lockdown, that revenue has slowed to a trickle. New York, home of the most U.S. cases of Covid-19, is projected to lose between \$10 billion

and \$15 billion of revenue in the fiscal year that starts April 1. Ohio state agencies are looking to cut spending by 20%, and Cincinnati is furloughing 1,700 city workers.

Eric Kim, head of state-government ratings at Fitch Ratings Inc., said the \$150 billion set aside in the stimulus bill for state and local governments is limited to reimbursement and may not be spent.

## **Pandemic Hotspots**

“Outside of pandemic hotspots like New York, new spending is not the problem for most states, but rather lost revenue brought on by severely reduced economic activity,” he said March 27.

Fed Chairman Jerome Powell recently expanded the central bank’s lending authority to include support for corporations and medium-sized businesses. Democrats have had a long-standing interest, however, in the Fed using its power to operate in open markets to do something directly for troubled localities.

Congresswoman Rashida Tlaib, a Michigan Democrat, had a sharp exchange with Powell in February over his authority to support municipal debt.

## **Fed’s Job**

“Do you not believe that the governments of Detroit and Puerto Rico also play a vital role that should be preserved, even if a financial crisis makes it hard for them to borrow money?” Tlaib asked Powell.

“That’s not a job for the Fed,” Powell said. “Lending to state and local governments and supporting them when they’re in bankruptcy is not — that’s not part of our mandate.”

Tlaib finished by saying: “We are going to strongly disagree.”

Pelosi has also taken an interest in Powell’s ability to directly support states and localities.

“I hope that in this next bill that we will be able to address the concerns of our state and local governments,” Pelosi told MSNBC on Tuesday. “We need to do more by way of our appropriations, by way of our tax code and by way of policy and also by way of the Fed.”

## **Bloomberg Markets**

By Daniel Flatley, Craig Torres, and Amanda Albright

March 31, 2020, 1:09 PM PDT Updated on April 1, 2020, 6:47 AM PDT

— *With assistance by Erik Wasson*

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## **[States, Cities Already Cutting Jobs With Financial Toll Mounting.](#)**

- **Governments resisted job cuts until well into last recession**
- **Swift reversal of economy to deeply depress tax collections**

State and local governments are eliminating jobs as they brace for the financial impacts of the coronavirus, offering a potential early glimpse of the steps they may have to take as the unprecedented shutdown of local economies devastates tax collections.

The swift action stands in contrast to the approach during the last recession, showing the severity of the revenue losses that some governments expect as businesses are shuttered, millions of workers are idled and tourism grinds to a halt. The shift from a record-setting expansion to a deep contraction in a matter of weeks has caused surpluses to turn into deficits and left mayors and governors racing to gauge the impact, even with Congress discussing a fresh round of stimulus spending that may pump at least \$760 billion into local infrastructure projects.

“State and local governments are going to have huge declines in revenue,” said David Cooper, a senior economic analyst at the Economic Policy Institute. “We should definitely anticipate further cuts if there is not additional support provided to state and local governments from Congress.”

The economic slowdown is hitting virtually every major source of government revenue, from sales and income taxes to those drawn from casinos or hotels. Moody’s Analytics has advised states to expect a drop of at least 10% in their general fund budgets. That would amount to almost \$100 billion, based on the National Association of State Budget Officers figures.

This week, Cincinnati, Ohio, decided to furlough as many as 1,700 workers after revised budget estimates projected a \$27.5 million deficit, a stark reversal from the previous estimate of a \$24 million surplus. Mayor John Cranley fought back tears as he announced the decision.

Pennsylvania laid off 2,500 seasonal, temporary and part-time employees, along with interns, due to the “unprecedented impact” of the virus. Wichita, Kansas, has implemented a hiring freeze and a furlough that will affect roughly 300 employees, according to the city.

Akron, Ohio, also furloughed 600 of its 1,800 workers, until further notice. A special park district in Beaverton, Oregon, laid off 792 part-time and seasonal workers as well, or nearly 80% of the staff, with recreational facilities expected to remain closed because of the virus.

The impact is small compared with the business cutbacks that caused 6.65 million Americans to file for unemployment benefits last week alone, and it has excluded public safety workers like police and firefighters. But even the initial moves show a more aggressive approach than during the last recession, when states and cities held their payrolls steady until well after the contraction had gotten underway. Eventually, they cut more than 700,000 jobs, according to U.S. Labor Department figures, exerting a drag on the recovery.

While the more than \$2 trillion federal stimulus package will provide relief for the costs governments face in responding to the virus, it won’t cover budgetary gaps caused by reduced revenue. The bill includes a \$150 billion coronavirus fund for states and municipalities.

But there may be another round of help coming from Washington. House Speaker Nancy Pelosi has said it should provide a boost for state and local governments and spend significantly on local construction projects.

“There’s got to be a phase four as far as we’re concerned,” Lee Saunders, president of the American Federation of State, County and Municipal Employees, a labor union, said on a media conference call.

Local governments didn’t start cutting until deep into last recession

Protecting the jobs of government employees would prevent budget cuts from worsening the economic downturn. There’s currently about 20 million workers on state and local government payrolls, accounting for about 13% of the workforce, according to the Labor Department.

“State and local governments still haven’t recovered fully from the last recession in terms of

employment,” said Tracy Gordon, a senior fellow with the Urban-Brookings Tax Policy Center. “They were a drag on the national economy for a while because of both job losses and declines in investment.”

## **Bloomberg**

By Fola Akinnibi

April 2, 2020, 6:00 AM PDT

— *With assistance by Alexander Ebert, Reade Pickert, and Danielle Moran*

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### **Billion-Dollar Blows to U.S. States Crater Spending Plans.**

- **Economic shutdown slashes revenue as budget deadlines loom**
- **New York to lose \$10 billion to \$15 billion of revenue: Cuomo**

The coronavirus is threatening to blow a massive hole in U.S. state and city budgets as millions of people stay home, workers are idled and the stock market flounders.

New York, the epicenter of the U.S. outbreak, is projected to lose between \$10 billion and \$15 billion of revenue in the fiscal year that starts Wednesday. Ohio state agencies are looking to cut 20% in spending, and Cincinnati is furloughing 1,700 city workers. Georgia may have to renege on a \$1,000 pay raise for teachers that state House lawmakers had budgeted for in the coming year. California is already dipping into reserves and has warned state agencies not to expect full funding next year.

States, cities and counties rely on revenue from taxes on income, sales of goods and even on gains from the stock market — all sources of money that the virus threatens to wipe out as the U.S. is poised for a recession. Despite the unprecedented federal stimulus package that includes \$150 billion for states and municipalities, officials like New York City Mayor Bill de Blasio say more help is needed to make up the funds that local governments are losing, and House Speaker Nancy Pelosi has called for “significantly more” aid for states.

Moody’s Analytics is advising policy makers to expect no less than a 10% hit to their general fund budgets, with the actual losses likely being much larger for most states, said Dan White, the firm’s head of public sector research. That’s calculated off a baseline expectation that second quarter gross domestic product will decline 15% to 20% from a year earlier, “which is almost unprecedented,” he said.

The outbreak of the virus may mark a quick reversal in state finances, which had slowly improved after the recession. States had seen steep budget cuts after 2008 that caused them to cut services and funding for infrastructure and education. Many had started to rebuild with rainy day funds at a record high before the pandemic struck.

“We had big plans for next fiscal year because the economy was clipping on really well — and then all of a sudden we are in a tail-spin headed right back to where we were before we righted the ship,” said Jay Dardenne, commissioner of administration in Louisiana, which relied on sales taxes for about 40% of revenue in its fiscal 2020 budget.

New Orleans’ outbreak of the virus has quieted the usually-bustling streets and led its annual Jazz &

Heritage Festival, which attracts almost half a million people and their spending, to be rescheduled to the fall.

## **Unprecedented Shutdown**

While the federal government's \$2.2 trillion economic stimulus package will reimburse states for some of the costs of responding to the coronavirus outbreak, it doesn't address the revenue problem, according to Fitch Ratings. The funds, which states should receive within 30 days, are intended to be used for virus expense reimbursement, rather than "a pure cash flow injection," according to Fitch.

And the unprecedented shutdowns in economic activity have made it difficult for revenue forecasters to predict what happens next — which is important given this is the time when states put together budgets for the coming year.

The economic shock from the coronavirus is likely to lead to a "very deep decline" in GDP during the second and third quarters followed by an improvement, whereas the slump was spread out over about nine quarters during the Great Recession, Moody's White said. He said some states may call special sessions to update the budget.

"They are scrambling," White said. "Best case scenario, they are going to be very cautious."

The drop in state revenue could easily exceed the 11% drop that states saw in a two-year period after the 2008 recession, said Brian Sigriz, director of state fiscal studies for the National Association of State Budget Officers. While rainy day funds and reserves are at a peak, he said that won't be enough for some states to cover the deficits in revenue.

"All states are going to be feeling the effects of this downturn," he said. Sigriz said he expects the pinch to be felt in usually-smaller revenue sources like gasoline taxes as people drive less and gaming taxes as casinos are shuttered.

## **Budget Deadlines**

New York is expected to see a loss of \$10 billion to \$15 billion in revenue in the fiscal year that starts April 1, according to the state budget office. Cuomo and lawmakers were negotiating the spending plan this week as the state's number of virus-related cases keeps rising, reaching nearly 76,000 on Tuesday — as do associated medical costs. In one week alone, New York spent more than \$600 million on health care supplies, such as face masks, gloves, ventilators, and portable X-ray machines, according to the budget office.

"The numbers are what the numbers are," New York Governor Andrew Cuomo said of the state budget Tuesday at a virus briefing. "The numbers don't lie, the numbers leave you few alternatives."

Cuomo said he's not counting on federal funds to balance the budget, "especially when the political process is the process that's supposed to deliver money."

"It's all basically contingent," Cuomo said. "We do a budget on the projections that we now have. If we get more funding, we increase the allocations. If we don't get more funding, we reduce the allocations."

New York already was facing a projected \$6 billion budget gap when Cuomo released his \$178 billion spending proposal in January. Cuomo planned on finding \$2.5 billion in health-care savings, as Medicaid shortfalls account for a large portion of the deficit.

Michigan expects that it could see \$1 billion to \$3 billion in lost revenue as a result of the virus. And Alaska is facing a one-two punch from lower oil prices and the virus. The Alaska Legislative Finance Division estimates that the drop in oil prices could drive a \$400 million revenue reduction for the current fiscal year, according to analyst Alexei Painter. The lower oil prices, paired with less activity from tourism and fisheries, could help drive an \$800 million revenue reduction in fiscal 2021, Painter said.

Other states, like Alabama, said it was too soon to say what impact the virus would have on revenues in the current and upcoming fiscal year.

“There is a lot of uncertainty,” said Josh Goodman, senior officer for the Pew Charitable Trusts who researches public finances. “States are just starting to get a handle on how bad it might be.”

### **Cuts Already**

At least 38 states and territories have issued some version of a stay-at-home order, shuttering parts of the economy as residents stay inside and restaurants and stores close. The result may be the steepest drop in sales taxes ever, according to the Institute on Taxation and Economic Policy, a left-leaning think tank. States like Florida, Texas and Washington are especially susceptible to the declines because the states derive over half of their revenue from sales and excise taxes, while the average is 35%, according to the group’s estimates included in a 2018 report.

The red ink also puts the municipal workforce at risk. During the last recession, states and local governments shed 110,000 jobs in a two-year period, according to a 2009 report by the Center for Economic and Policy Research, a think tank in Washington, D.C.

Ohio Governor Mike DeWine, a Republican, earlier this month announced a freeze on hiring and pay increases, saying in a statement that revenues will go down “dramatically.” He asked state agencies to find ways to cut 20% in spending for the current and upcoming fiscal year. State lawmaker John Rogers, a Democrat, said manufacturing jobs are at risk, which is especially important for the Midwestern state.

“The Covid-19 situation is affecting everyone financially,” he said. “The revenue streams are going to be depleted because people aren’t working or buying anything.”

### **Bloomberg Markets**

By Amanda Albright, Shruti Singh, and Danielle Moran

April 1, 2020, 5:00 AM PDT

— *With assistance by Keshia Clukey*

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### **[Tax Filing Delays Will Hit Near-Term Liquidity for State Govts.](#)**

Fitch Ratings-New York-30 March 2020: Extension of tax filing deadlines and reduced economic activity brought on by the coronavirus pandemic will pressure states’ short-term liquidity, although Fitch Ratings says most, and potentially all, states will absorb the deterioration without materially affecting credit quality. April personal income tax (PIT) receipts are a disproportionately large share of many states’ total tax collections as final payment dates are typically aligned with the federal



government's April 15 filing deadline. Importantly, tax deadline extensions do not delay receipt of withholding taxes, the bulk of PIT collections. We do not currently anticipate any states will be unable to meet operating cash demands but consider liquidity the most significant risk the pandemic presents for states and are closely monitoring developments.

Federal aid measures enacted in recent weeks, including an enhanced federal match for Medicaid, direct aid for pandemic costs, and assistance for public transit and schools, will benefit states, although the details remain fluid. Under the Coronavirus Aid, Relief and Economic Security (CARES) Act signed by President Trump on Friday, the US Treasury department will distribute \$150 billion to state and local governments within 30 days, essentially on a per-capita basis. While states will receive their funding immediately, the statute intends for it to be used for coronavirus expense reimbursement rather than as a pure cash flow injection.

As of Monday morning, 38 of the 44 states that levy a PIT extended their filing or payment deadlines to as late as July 15, in line with the federal filing delay, and some have granted similar extensions for corporations. To provide additional relief, some states have extended deadlines for monthly sales and related tax payments.

April revenues for PIT states are critical to supporting liquidity and help set expectations for future collections as states prepare next fiscal year's budgets. According to data from the Federation of Tax Administrators, more than 17% of state PIT receipts for the year ended in June 2019 were received in April. Similarly, many states' prior cash flow projections showed April 2020 accounting for 11%-12% of total fiscal year tax receipts. Extensions will primarily affect estimated and final payments tied to non-wage income, such as capital gains. Withholding payments tied to wages will continue, although negatively affected by the sharp economic downturn.

We are monitoring states' liquidity management closely and expect the vast majority of states to absorb the impending liquidity squeeze with limited effect on daily operations. States have an extraordinary range of fiscal powers to manage their short-term liquidity, including tapping budgetary reserves or other internal borrowable resources, reducing (temporarily or permanently) planned spending, shifting pay-go capital spending to bonding or delaying it outright, and issuing cash flow notes.

As the crisis unfolds many states have exceptionally high liquidity buffers following the decade-long economic expansion. The National Association of State Budget Officers highlighted in December 2019 in its latest fiscal survey that the median state rainy day fund stood at 7.6% of general fund expenditures in FY 2019, a record level.

Liquidity strains are more likely in some states, particularly those at the center of the pandemic, or with lower IDRs, reflecting more limited flexibility to address the emerging economic and revenue challenges. New York (AA+/Stable), the current pandemic epicenter, has a solid reserve position. The states with the lowest IDRs, Illinois (BBB/Stable) and New Jersey (A/Stable), entered the crisis with very limited reserves, while Connecticut (A+/Stable) has seen rapid reserve growth.

We anticipate, or have already observed, offsetting cash management measures including reductions to core spending (New Jersey) and pursuit of external liquidity (Rhode Island). Fitch believes all states will continue to prioritize key items including debt service, employee payroll and retirement contributions, Medicaid spending, and coronavirus response.

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## **Coronavirus Fiscal Fallout on U.S. Muni Issuers Worries Investors.**

CHICAGO, April 3 (Reuters) – Investors in the U.S. municipal bond market are growing increasingly worried over the ability of states, cities and other debt issuers to weather the financial fallout of the COVID-19 pandemic caused by the novel coronavirus.

Those concerns are creeping in to the \$3.8 trillion market, where bond yields have whipsawed in recent weeks.

“Most of the activity is still being driven by liquidity factors, but credit quality will rise in importance the longer the social distancing policies remain in place,” said Tom Kozlik, head of municipal strategy and credit at Hilltop Securities Inc.

Large parts of the nation have shut down in an effort to stop the virus’ spread, with some states extending stay-at-home orders until the end of April. Sales, income and other taxes are expected to drop as unemployment skyrockets and consumer spending falls.

BofA said in a Friday research report it was turning “more cautious” on muni credits in the intermediate term due to growing financial pressures on issuers.

S&P Global Ratings’ outlooks on credit trends for 2020, which started out as stable for most public finance sectors, underwent a wholesale change to negative this week.

In New York, the nation’s epicenter for the virus, credit ratings for the city and state were given negative outlooks by Moody’s Investors Service, which cited expected severe revenue declines. Governor Andrew Cuomo on Thursday pegged revenue losses due to the health crisis at \$10 billion in fiscal 2021, which began on April 1.

Some other states have also reduced their revenue projections for the current and next fiscal years. Michigan is eyeing a loss of \$1 billion to \$3 billion for fiscal 2020, which ends on Sept. 30, and \$1 billion to \$4 billion for fiscal 2021, according to the state treasurer’s office.

Total state taxes grew by 7.6% in February compared with the same month in 2019, according to Lucy Dadayan, senior research associate at the Urban Institute, based on reporting from 45 states. March tax collections from a handful of early reporting states show no major revenue drop so far, indicating April revenue reports may provide a fuller picture of the hit to state budgets.

Richard Ciccarone, president of Merritt Research Services, which provides data on muni credits, said investors will undertake a “sorting-out process” to gauge which issuers and areas of the country are financially at risk.

“Today’s regions that are not hurt may be tomorrow’s worst case,” he cautioned.

He added that so-called credit spreads for some issuers will widen significantly.

Spreads for bonds issued by Illinois, the lowest-rated state at a notch or two above junk due to its chronic structural budget deficit and huge unfunded pension liability, have done just that. After starting March at just 82 basis points over Municipal Market Data’s benchmark triple-A yield scale, the spread for the state’s 10-year bonds ended Friday at 298 basis points.

Reserve funds, management, and potentially higher pension costs due to investment losses will help determine how well governments ride out the fiscal storm.

Federal support is also a factor. The \$2.3 trillion stimulus bill enacted last week earmarks \$150 billion for states and local governments but only to cover expenses incurred from fighting the virus and not to replace sinking revenue.

“There may have to be another wave (of federal assistance) to deal with the recovery aspects,” said Howard Cure, managing director of municipal bond research at investment banking advisory firm Evercore.

(Reporting by Karen Pierog in Chicago Editing by Ira Iosebashvili and Matthew Lewis)

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## **S&P: The COVID-19 Outbreak Weakens U.S. State And Local Government Credit Conditions**

### **Key Takeaways**

- Most U.S. states entered 2020 on a comparatively stable footing, benefiting from a decade-long national economic expansion.
- Ratings on issuers with narrower payment streams are more susceptible to immediate pressures than a state or local government’s general credit quality.
- State and local governments with concentrated economic activities are more likely to see revenue declines.

The COVID-19 pandemic and the consequential global economic recession will affect U.S. state and local governments to varying degrees. During this period of pronounced economic volatility, S&P Global Ratings recognizes the public health crisis across the country and the strain on state governments coordinating a response across all levels of government. As economic forecasts change, implementation of federal relief efforts emerge, and other information becomes available, we will continually evaluate our U.S. state portfolio for potential credit implications. On April 1, S&P Global Ratings revised its sector outlook to negative for all U.S. public finance sectors, reflecting in part the precipitous decline in economic conditions to end the quarter, which is anticipated to continue at least through the second quarter. (See “All U.S. Public Finance Sector Outlooks Are Now Negative,” published on April 1, 2020 on Ratings Direct).

As the pace of the COVID-19 outbreak accelerates across the country, governments continue to work to help contain its effects on the public’s health and mitigate the social and economic toll that continues to rise, in some instances, at alarming rates. A distinguishing characteristic of the COVID-19-induced recession is that efforts to contain its spread have resulted in a sharp decline in economic activity. S&P Global Economics economists now forecast that the resulting economic toll will be extensive, but will occur in a shorter time relative to the Great Recession. Their most recent year-on-year U.S. second-quarter GDP estimates suggest a contraction of at least 12.7% (See “Economic Research: It’s Game Over For The Record U.S. Run; The Timing of A Restart Remains Uncertain,” published on March 27, 2020 on RatingsDirect). The current policy responses have an immediate effect on U.S. state and local governments’ operating environment.

[Continue reading.](#)

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# **COVID-19: A Closer Look At How It Affects 10 Major U.S. Cities**

## **Table of Contents**

- Prolonged Revenue Declines Will Lead To Pressure On Liquidity
- With Revenue Down, Management Will Make The Difference
- Ten Cities Facing The COVID-19 Pandemic

## **Key Takeaways**

- COVID-19 will have a significant effect on major U.S. cities, increasing expenditures and reducing revenues.
- The projected hit to U.S. economic growth from the ensuing recession will exacerbate the situation, presenting even more challenges for cities as they struggle to maintain structural balance, especially for those reliant on economically sensitive revenues.
- While we expect the federal relief package to aid state and local governments in the near term, the timing and support remains unknown, placing more pressure on liquidity levels.

The COVID-19 pandemic continues to evolve rapidly and has already plunged the entire world—and the U.S. with it—into recession. Projections for GDP contraction start in the first quarter (negative 1.3%) and worsening substantially in the second (negative 12.7%). Over the course of 2020, S&P Global Ratings forecasts an annualized decline in real GDP of 2.1%. The forecast is predicated on a precipitous drop in tax collections on consumer spending, coupled with a surge in unemployment. See S&P Global Ratings' most recent forecast, "It's Game Over for the Record U.S. Run; The Timing Of A Restart Remains Uncertain," (published March 27, 2020, on RatingsDirect. As a result, all of S&P Global Ratings' sector outlooks in U.S. public finance are now negative (See "All U.S. Public Finance Sector Outlooks Are Now Negative," published April 1, 2020).

## **Prolonged Revenue Declines Will Lead To Pressure On Liquidity**

In our view, American cities that entered the recession with weak liquidity and reserves or with a high amount of economically sensitive revenues will be particularly vulnerable to the looming pressures. When unbudgeted COVID-19 expenditures are added to the mix, the pressure to make ends meet becomes exponentially harder for local governments, straining already tight city budgets. Federal aid from the recently passed relief package, the CARES Act, will likely provide some help but is unlikely to make budgets whole since \$150 billion in federal aid earmarked for state and local governments will likely only cover COVID-19-related expenditures and not revenue declines.

For all U.S. cities, sales and uses taxes; leisure and hospitality revenue; lottery revenue; licenses, fees, and permits; and motor fuel taxes will be the hardest hit. Those that rely less on this revenue will be more insulated in the short term. However, even property taxes are likely to be affected should the recession be prolonged.

## **With Revenue Down, Management Will Make The Difference**

In times of crisis, proactive and nimble management with robust governance policies are critical in maintaining credit quality. This includes carefully monitoring liquidity, particularly where revenue streams start to falter, reaching out to access external liquidity sources when needed.

The cities in this article all enjoy proactive management teams focused on both current and future pressures. As the situation unfolds over the course of 2020, cities who respond quickly and adequately to major budgetary shifts will have a much better ability to allay negative credit action,

particularly if they start in a position of relative financial strength.

[Continue reading.](#)

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## **Coronavirus Is Making the Public Pension Crisis Even Worse.**

**The pandemic has handed the funds big losses after they ramped up their appetite for risk over the past decade.**

For years, the country's public pension plans have faced a yawning gap between what they owe and what they can pay.

From the State of California's public employees' retirement plan, with more than 1.6 million participants, to tiny funds for employees of local mosquito-control programs in Illinois, public pensions are the time bomb of government finance.

Now the coronavirus pandemic has it ticking faster.

Already chronically underfunded, pension programs have taken huge hits to their investment portfolios over the past month as the markets collapsed. The outbreak has also triggered widespread job losses and business closures that threaten to wipe out state and local tax revenues.

[Continue reading.](#)

### **The New York Times**

By Mary Williams Walsh

April 2, 2020

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## **Pension Funds Will Take a Big Coronavirus Hit.**

**Retirees will have to accept sharply reduced benefits that are more in line with what they would get from Social Security and Medicare.**

The coronavirus crisis is still unfolding, but it's not too soon to think about lasting financial impact and how to limit the fallout. One major financial crisis that may hit later this year or early in 2021 is the ever-looming collapse in state and local employee pension funds. Although the problem has been growing for decades, the virus may have been the event that pushed it over the edge.

Declines in the financial markets may have cost the funds as much as \$1 trillion in assets, or about 25% of their total, according to Moody's Investors Service. That would bring the aggregate funding ratio—value of assets divided by actuarial value of liabilities—from 52% based on the last report by the Census Bureau down to perhaps 37%. Markets may recover, of course, but they may not. The latest aggregate numbers we have are from 2017, and for most individual funds data is available only as of mid-2018. Asset returns are usually smoothed so it could be four or five years until the full effect of the virus is reported officially.

But it's not aggregate numbers or official reports that will trigger a crisis. It's the big funds in the worst shape. My back-of-the-envelope calculations suggest Connecticut could be looking at a 28% funded percentage if the numbers were available now, Kentucky 25%, New Jersey 24% and Illinois 20%.

Those figures rely on optimistic assumptions about healthcare cost increases and discount rates; the true numbers are probably worse. The important statistic is more objective: how many years' benefits do the pension assets represent? That could be no more than about four years in Illinois if true numbers were public today, five in New Jersey and Kentucky, six in Connecticut.

All benefits for active employees, plus all benefits for everyone in the near future, will have to come from employee or state contributions. But states will be strapped for cash, and looking to cut contributions, not raise them. Employees will be unwilling to contribute more since there's little likelihood they'll ever see that money again, especially as post-2008 reforms have denied many of them the gold-plated benefits that employees with more seniority enjoy.

Taxpayers? The least willing of the bunch. Creditors? The states need to keep borrowing money, so they have to appease creditors. Some of the money will come via defaults or restructuring of state and local debts, but this is its own crisis, and it won't fill the gap. The federal government? Maybe, but not for full payments. A more likely scenario would be absorbing retirees into Social Security and Medicare at sharply reduced benefit levels—and those programs face similar problems as state and local plans.

It's true that 48 states have constitutional or other legal protections for pension benefits. These will improve union bargaining power, but it won't squeeze anywhere near the full amounts promised. Courts will both unwilling and unable to force governments to hand over money the governments don't have and can't get.

Will deaths tied to the Covid-19 pandemic save the day? After all, deaths will likely be concentrated among retired employees getting benefits rather than active employees paying contributions. Moreover, active employees who succumb to the virus will be replaced. If we exclude Hollywood disaster scenarios, the highest projections are U.S. death rates doubling in 2020 and remaining 2.5% higher thereafter. Using the age distribution of coronavirus deaths for which information is available, that could cause liabilities to fall by about half the amount that assets fell. But in that scenario assets would probably fall much farther. It's hard to come up with a scenario in which additional coronavirus deaths improve pension funded ratios.

Will these events trigger Illinois or some other state to default? It's plausible. Will that cause other states and municipalities to follow? That's likely, mainly because creditors will stop lending to states with big unfunded pension liabilities. Will that provide the cover for every state except maybe Utah and Wisconsin from seizing the opportunity to renege on promises? I'd bet on that as well.

What we do today is start treating pensions as an issue that must be addressed rather than a can to be kicked down the road. Admit that promises to employees will not be kept, and start figuring out how to direct the cuts to where they will do the least harm: younger workers with more time to prepare and richer workers with more ability to pay. Collecting the maximum contributions possible, but in realistic forms employees can count on rather than unreliable promises about future. Releasing timely and complete data on assets and cash flows.

The basic terms of the fix are obvious. Pension payments will be capped, probably at something like the Social Security maximum of \$3,011 per month for someone who retires at age 65. Tax the benefits, again probably like the rules for Social Security (50% of benefits for single filers with total

income between \$25,000 and \$34,000, 85% of benefits for higher income individuals). Make healthcare plans more Medicare-like, with lower provider payments. Employee contributions to be directed either to Social Security/Medicare or individual retirement accounts rather than underwriting payments to retired workers.

This will provoke fierce fights. First to accept the inevitable and second to set the precise terms. How will police officers be treated versus teachers versus Division of Motor Vehicle clerks? Will all state and local plans be put in one bucket, or will employees from more prudent states do better than employees from profligate ones? How will scarce funds be directed to pensions versus health benefits? How much will taxpayers and creditors kick in? These fights will take place in legislatures, courtrooms and union elections. It won't be pretty or fun. But the sooner we admit the problem and start to solve it, the sooner it's behind us.

## **Bloomberg**

By Aaron Brown

April 1, 2020, 3:00 AM PDT

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### **[Underfunded Public Plans Facing a New Round of Woes.](#)**

The coronavirus has increased pressure on underfunded public pension plans that were already facing significant stress before the crisis.

Not only have plans' investment portfolios taken double-digit losses as a result of the pandemic, but government plan sponsors will need to increase their contributions at a time when revenues are down and expenditures are up.

"This has put a lot of strain and stress on pension deficits, and it's going to get worse," said Kevin McLaughlin, head of liability risk management at Insight Investment. "Pressures that were there before are now magnifying. It's quite worrying."

The pandemic has unleashed havoc on markets — and plans' portfolios. Moody's Investors Service estimates that U.S. public plans are generally on pace for an average investment loss of about 21% for the fiscal year ending June 30.

A report issued March 24 by the New York-based credit ratings agency noted that domestic public plans are facing nearly \$1 trillion in investment losses because of the economic fallout from the coronavirus. These losses could exacerbate the pension liability challenges that many state and local governments already are facing. Plus, the economic setback is reducing revenue levels and threatening the ability of state and local governments to afford higher pension costs.

"Without a significant market rebound, that's going to result in some new unfunded liabilities that are going to be material and compounded on top of the already unfunded liabilities," said Tom Aaron, vice president and senior analyst at Moody's in an interview. "This will push up government contribution requirements."

Mr. Aaron added that, "given the already unfunded positions, if governments don't quickly increase their contributions, the longer-term consequences for pensions are severe."



Of the 181 public plans tracked by the Center for Retirement Research at Boston College, National Association of State Retirement Administrators and the Center for State and Local Government Excellence, 31 have funding ratios that are below 60%.

And while American Enterprise Institute resident scholar Andrew G. Biggs agreed that state and local governments should increase their contributions after public plans took “a big hit on their assets,” he said that he wouldn’t be surprised if governments failed to make their full contributions this year, given the massive costs associated with responding to COVID-19.

“The coronavirus wasn’t predicted. But for years outsiders have warned that public-sector pensions have contributed too little, taken too much investment risk and failed to enact sufficiently far-reaching reforms,” Mr. Biggs added in an email. “It was only a matter of time before something went wrong.”

## **Budget effects**

Another question the crisis poses is how the budgets of public plans will be affected.

“From a liquidity perspective, public funds have two sources to pay for benefits: existing assets and existing contributions,” said Greg Mennis, director of public sector retirement systems for Pew Charitable Trusts in Washington. “For underfunded plans, current inflows are very important.”

Mr. Mennis said that states like Connecticut and Illinois, which are already making large contributions to their plans, are better positioned to maintain liquidity and work toward their target asset allocation. But a state like New Jersey, which he said has the lowest rate of cash flow among any state, is more at risk.

Some plans facing funding challenges have been preparing for a disruption in the markets. And although none of them could expect a crisis such as COVID-19, they said they are at least better positioned to handle the resulting market volatility.

Shawn T. Wooden, state treasurer and principal fiduciary of the \$37 billion Connecticut Retirement Plans & Trust Funds, Hartford, said in a phone interview that he came into office “with a clear sense that the market wasn’t going to continue to roar for the next decade.”

To prepare the portfolio for a downturn, Mr. Wooden’s investment team lowered the state’s \$18.7 billion Teachers’ Retirement System’s assumed rate of return to 6.9% from 8%, decreasing its exposure to global equities while increasing its allocation to fixed income and hiring a chief risk officer to monitor risk across the entire portfolio.

The state’s TRS has a funded status of 58%, while Connecticut’s State Employees Retirement System is 38% funded.

Chicago Public School Teachers’ Pension & Retirement Fund also took steps before the crisis to make its portfolio more defensive in anticipation of a market downturn.

“We’ve been in this cycle for 10-plus years, and we knew at some point something would happen, we just didn’t know it would be at this magnitude,” said Angela Miller-May, CIO of the \$10.5 billion pension plan. CTPF’s funded status is 47.9% and the expected rate of return is 7%.

Ms. Miller-May said that the board does not expect the funded status to change as a result of COVID-19.

## **Funding challenge**

Because of its challenged funded status, Rich Robben, CIO of Kentucky Retirement Systems, Frankfort, said that the \$16.8 billion pension fund went into the crisis with an already conservative asset allocation (overweight to core fixed income) and about \$3 billion of dry powder.

"We were very fortunate with our liquidity position going in," Mr. Robben added.

The funded status for Kentucky's pension system is 32.8%. David Eager, executive director for KRS, said he "would expect the funded statuses to fall somewhat but not drastically since the asset structure is quite conservative."

The actions of these underfunded plans are in line with the expectations of Alex Brown, NASRA's research manager, in Washington.

"Pension plans that are poorly funded don't necessarily behave differently than other plans," Mr. Brown said. "They have policies in place that take their funding position into account."

Meanwhile, New Jersey Treasurer Elizabeth Maher Muoio warned bondholders in a voluntary disclosure statement issued on March 23 that the impact of COVID-19 on New Jersey will produce "precipitous declines in revenues" for the current fiscal year ending June 30 as well as the next fiscal year affecting "revenue collections and pension funds contributions."

Still, Assistant Treasurer Dini Ajmani said at the State Investment Council meeting on March 25 that the state remained committed to making its fiscal third- and fourth-quarter contributions to the \$74.2 billion New Jersey Pension Fund, Trenton.

Following Ms. Muoio's warning, the state's top leaders issued a joint statement on April 1 stating they plan to push back the current fiscal year-end to Sept. 30 from June 30.

## **Have enough cash**

Investment consultants with whom Pensions & Investments spoke said the plans they've worked with are not repositioning their portfolios and already have enough cash to pay out obligations.

Jay V. Kloefer, executive vice president and director of capital markets research at San Francisco-based investment consultant Callan LLC, said that plans, even underfunded ones, "shouldn't be making sudden changes."

"You shouldn't be changing the wheels of the car while you're driving down the road," he said, adding that the big question plans should ask themselves is if they have enough liquidity. But based on the conversations he's had with clients, that hasn't been an issue.

"We've addressed liquidity pretty aggressively with most plans we've worked with, especially those in a challenged funding position."

Kristen Doyle, a partner and head of public funds at Aon PLC's investment consulting business, said that many plans, particularly underfunded ones, "have a healthy allocation to investment-grade credit and cash, so parts of their portfolios will remain liquid."

"Allocations are based on funded status. They test these different portfolios against that liability structure and test it across multiple markets, including ones like this one," Ms. Doyle explained.

She added that the plans she's worked with aren't panicking, and those that are rebalancing are doing so "very carefully and prudently."

"The plans we work with are pretty well-positioned," Ms. Doyle said. "They have a strong risk-reducing allocation that's liquid. And all of these plans typically have a robust process in place in where they're managing their cash flow on a monthly or more regular basis."

### **Pension obligation bonds**

While revenues are down at a time when contributions need to be up, the pension obligation bond is another option that government sponsors of underfunded plans can use.

Girard Miller, a retired investment and public finance professional and former CIO of the \$17.3 billion Orange County Employees Retirement System, Santa Ana, Calif., said that the pension obligation bond is a temporary measure that could put the underfunded pension plan "on firm footing."

"They only work well if they're issued in the depths of a recession. Now is the time for that," Mr. Miller said. "The plan sponsor has a liability with this, but they can stretch that out over 30 years if they need to." The cost of doing this is lower than the traditional way, so there is potential for some cost savings for the state.

But not everyone agrees.

"I don't think (pension obligation bonds are) an option in this market right now," Ms. Doyle said. "It's a risky endeavor because you're assuming the pension will outperform the interest rate of the bond, and that's a huge gamble."

Going forward, increased contributions alone will not keep struggling plans afloat.

"It will have to come down to structural reform," Karel Citroen, head of municipal research at Conning said. "I just don't see how you're going to address pension funding issues you see in this country without addressing the entitlement side of it."

Mr. Citroen pointed out that, if it's not possible to make such changes for current plan participants, structural changes should be put in place for new or future plan participants.

Mr. Citroen added that "it will probably come down to an escalation of this issue for one plan, like New Jersey or Illinois, for that mindset to be accepted by other constituents as well."

While Insight's Mr. McLaughlin said that underfunded plans will have to engage in "firefighting" to ensure they have enough cash on hand to pay their obligations in the short term, in the long term, plans will need to craft a "liquidity strategy that's more formal than they've had in the past."

"When the dust settles, you'll see plans making more fundamental changes to their investment strategies going forward," Mr. McLaughlin added.

NASRA's Mr. Brown said it's going to take a while before the long-term impact of all of this is known.

"One should remember that these losses and gains are phased in over several years," Mr. Brown said. "We won't know what the returns will be until the fiscal year ends, and so it's going to take a little while."

by JAMES COMTOIS

April 06, 2020

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## **The Coronavirus Crash Reveals a Big Problem In Bond Fund Pricing.**

The exchange-traded fund industry just threw the mutual fund industry under the bus. BlackRock, Vanguard, and State Street have all made statements over the past—very volatile—month that bond ETF market prices are a “price discovery” tool, arguing that prices of illiquid individual bonds held in mutual funds and ETFs are “stale,” while ETFs have greater liquidity and therefore more accurately reflect the value of their underlying portfolios. That was their explanation for why so many ETFs traded at discounts to their underlying portfolio values—their net asset values, or NAVs, in Wall Street parlance.

But if bond ETF market prices are less than their NAVs—yet more accurate than them—that means similar or identical mutual fund NAVs are wrong and overpriced, since they are calculated in the same way as ETFs. (For illiquid securities like bonds, fund-pricing service accountants employ a fair value system to calculate NAV that extrapolates the price of the entire portfolio for the few individual bonds that trade.)

Vanguard’s case is particularly problematic, as some of its ETFs are really share classes of existing mutual funds and have identical portfolios. Jeff DeMaso, editor of the Independent Adviser for Vanguard Investors newsletter, has tracked the performance and discounts of the (ticker: VBTLX)—the largest bond mutual fund in the world at \$269 billion—including its (BND) ETF share class. He has noticed some striking differences of late, especially since more than half of the fund’s portfolio is in ostensibly liquid Treasury and government agency bonds.

“On March 11, the mutual fund was down 0.6% while the ETF was down 1.9%,” DeMaso observes. “On the 12th, the bond market fund was down 1% and the ETF was down 5.4%. So those two days you had the ETF selling off much harder than your own mutual fund. And then on the 13th, you had the mutual fund down 0.5%. But the ETF rose 4.2%.”

DeMaso says that calling the ETF’s varying market moves a “price discovery tool” is “obfuscatory,” and believes the Total Bond Market Index’s portfolio’s “real price is probably somewhere in between” the mutual fund’s NAV and the ETF’s market price.

Vanguard’s Rich Powers is more diplomatic, stating in an email, “It’s not that one [price] is right and the other wrong. Each product has a different set of inputs that go into pricing, so there can be variations between the two. Those variations are more pronounced during times of market volatility.”

### **How Investors Get Hurt**

The problem with the NAV being wrong for the mutual funds is that on days when the ETF’s market price trades at a discount to NAV, that means investors who bought the mutual fund essentially overpaid for its elevated NAV, while those selling received more for their sale than they should have. There is ultimately a delay, as the stale prices for the mutual fund’s bond portfolio have to adjust. Investors saw the consequences of that delay on March 13, when the Vanguard mutual fund fell

0.5% on a day when the ETF rallied 4.2%.

Such delayed pricing means that mutual fund shareholders who stay in a fund when prices are finally marked down bear the brunt of losses for those who got out early. When funds process redemptions, money managers usually sell the most liquid securities first. The remaining illiquid ones, once sold and repriced, amplify the losses for the remaining shareholders who would fare better if the entire portfolio had been repriced earlier.

“Shareholders who remained loyal have subsidized investors that had a shorter time horizon,” says Todd Rosenbluth, CFRA’s director of ETF and mutual fund research, adding that such selling can have a “snowball effect,” as “selling begets selling.”

### **The Worst-Case Scenario**

One saw this with the infamous case of junk-bond fund Third Avenue Focused Credit, which collapsed in 2015, and in 2007 with Regions Morgan Keegan’s funds, which invested in subprime nonagency mortgage debt. More recently, there has been a similar liquidity crunch at nonagency mortgage debt funds Braddock Multi-Strategy Income (BDKAX), which fell 65% from March 18 through March 23, and AlphaCentric Income Opportunities (IOFIX), which dropped 40% from March 18 through March 25. On March 20, in particular, Braddock dropped 34% and AlphaCentric, 17%.

In an email to Barron’s, AlphaCentric stated, “We believe the NAV of the AlphaCentric Income Opportunities fund was accurately priced each day. The price reflects the fair value of its underlying portfolio of residential mortgaged backed securities, not equities....The AlphaCentric fund’s daily pricing was done by ICE, which is one of the largest and most respected independent pricing services.”

Yet ETF experts say that such fair-valuation services employ limited data. “Only about 20% of the bond universe trades every day,” says Reggie Browne, a principal at market maker GTS with a long history developing the ETF business. “How do you go about calculating fair value for something that doesn’t trade? The ETF is priced minute by minute, not a static NAV.”

While Vanguard’s ETFs suffered discounts, they were minor compared with some niche ETFs that invest in low-quality illiquid debt like high-yield muni bonds. The share price of the SPDR Nuveen Bloomberg Barclays High Yield Municipal Bond ETF (HYMB) fell almost 10% on March 16 to trade at an 18.6% discount to its NAV, which only declined 0.7% that day. Meanwhile, the NAV of the Nuveen High Yield Municipal Bond (NHMRX) mutual fund, which invests in the same asset class and holds some of the same bonds, fell only 0.6% that day and then fell 14% over the next four days ended on March 20. Which outcome was more accurate? That depends on whom you want to believe.

### **Barron’s**

By Lewis Braham

April 3, 2020 6:10 pm ET

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**[GFOA Debt Committee Releases Urgent Member Guidance for COVID-19 Debt Service and Disclosures.](#)**

GOVERNMENT FINANCE OFFICERS ASSOCIATION

## URGENT MEMBER GUIDANCE

### IMPORTANT CONSIDERATIONS to Maintain Your Entity's Debt Management Program and Disclosure Responsibilities During the COVID-19 Crisis

**1. Confirm Debt Service Payments Are Made.** Governments should confirm that debt service payments are made on time. Considering many state and local finance offices are operating in unconventional ways (due to work in place/work from home orders), GFOA encourages governments to pay particular attention to payment processes and staff to fulfill this obligation. In addition, one reaction to the current COVID-19 crisis is to adopt laws and ordinances that delay deadlines and delays payments. Governments should be aware that debt service payments cannot be subject to such laws and ordinances. Questions on relief from debt service payments should be discussed with your bond team.

- <https://www.gfoa.org/debt-management-policy>

**2. Disclosures Related to COVID-19 Crisis Should Be Factual.** Governments may be facing various fiscal challenges due to the crisis. Further, some public sectors may be affected more immediately than others. While urgency is important, governments should take special care to put into context what these challenges are when choosing to disclose the various problems caused by COVID-19. In addition, disclosure should be factual and governments should be hesitant to disclose any estimates or projections of revenues and budgets just for the sake of providing such estimates or projections.

**3. Communicating with Outside Professionals.** Governments should keep in contact with their bond counsel and other outside professionals. As governments address various disclosure matters, and managing their debt portfolio, they should initiate and maintain communications with their bond team.

- <https://www.gfoa.org/selecting-bond-counsel>
- <https://www.gfoa.org/selecting-and-managing-municipal-advisors>

**4. Interim/Voluntary Disclosures.** Voluntary and interim disclosures are a helpful way to keep investors apprised of the government's fiscal conditions. Be sure to make filings and/or place information on your entity's investor relations web page and consider making the filings available in the EMMA system, based on facts and information that are already developed by your entity. It may also be useful to discuss these disclosures with bond counsel and/or other bond team professionals. Issuers should be mindful when they provide specific information as of certain date, which may change soon thereafter, there should be a note in the voluntary filing that they are not obligated to prepare and file updates in relation to that filing.

- <https://www.gfoa.org/understanding-your-continuing-disclosure-responsibilities-0>
- <https://www.gfoa.org/maintaining-investor-relations-program>

**5. Selective Disclosure.** When discussing impacts on the government of COVID-19 with investors, governments should be careful about making "selective disclosures". Material information should be available to everyone on an equal basis. Governments should be careful about providing information that has not yet been disclosed on their website for investors or filed on EMMA. Similar care should be taken with Rating Agencies - governments should let them know when giving them non-public information.

**6. Disclosures Needed for Primary Offerings.** In primary offering documents, Governments may

need to provide COVID-19 related disclosures for debt being issued. Governments may be requested to provide supplemental disclosures to address any material changes between the date of the disclosure document and the closing date.

- <https://www.gfoa.org/primary-market-disclosure>

**7. Know Your Annual Disclosure Filing Dates.** Governments should always be aware of the dates in their continuing disclosure agreements (CDA) when annual disclosures are due to EMMA, and make those filings accordingly. If a government is unable to make a filing, due to current circumstances (e.g., financial statements and/or audits not available), follow the requirements contained in your CDA, which may require a filing with EMMA with explanation as to why the submission is late. If annual disclosure submissions did not occur as noted in your CDA, that information will need to be disclosed in future issuance documents. Again, it is important to note the reasons why the submission(s) was late – due to the inability to complete financials and/or audits or other reasons related to the COVID-19 crisis – underwriters of future issuances will need to understand these reasons.

- <https://www.gfoa.org/primary-market-disclosure>
- <https://www.gfoa.org/understanding-your-continuing-disclosure-responsibilities-0>

**8. Material Event Filings.** Governments are reminded that when a credit is downgraded by a credit rating agency that a material event filing must be made within 10 days in the EMMA system. Other events resulting from the COVID-19 crisis may also require a material event filing. Governments are encouraged to speak with their bond counsel prior to making material event filings about the need to make and information to provide in the filing. Importantly, the SEC Rule 15c2-12 10-day reporting requirement for listed material events is NOT relaxed during this time. Please be mindful of material events and track the time that has lapsed to ensure timely reporting within the 10-day reporting requirement. Governments should be aware of all material events identified in their CDA and SEC Rule 15c2-12, as noted here:

- <https://www.gfoa.org/sites/default/files/GFR0849.pdf>
- <https://www.sec.gov/rules/final/2018/34-83885.pdf>

**9. EMMA Filings.** Governments should make sure that when making annual, continuing, or voluntary disclosure filings within the EMMA system that they are filed correctly. The MSRB makes the following resources available to assist issuers with submitting disclosures to the EMMA system:

- [Continuing Disclosure Submission Manual](#)
- [Continuing Disclosure Submission Video Tutorials](#)
- [Selecting Financial/Operating Disclosure Categories on EMMA Dataport](#)
- [Selecting Event Disclosure Categories on EMMA Dataport](#)

**10. Know Your State Laws, Local Ordinances and Policies and Procedures Related to Debt Products in Current Market Conditions.** As the financial markets are very fluid, it is important for governments, especially those who have planned issuances in 2020, to monitor the debt market, and speak with their municipal advisor or other professionals about the market's impact on your entity. Financial institutions have many options to assist governments with both short and long term borrowing needs. Additionally, new financial products may be considered and implemented by the federal government to help state and local governments through the crisis with conditions such as access to loans for operating and other purposes related to an entity's needs to provide for their citizens during the COVID-19 crisis. Knowing what types of financings are legal and allowable for your entity, along with risks related to these types of financings, is important when considering to



use these financing vehicles.

- <https://www.gfoa.org/issuing-taxable-debt>
- <https://www.gfoa.org/using-variable-rate-debt-instruments>
- <https://www.gfoa.org/bank-loans-and-direct-placement>

**11. Post Issuance Compliance for Federal Tax Purposes/Arbitrage.** The IRS has NOT suspended the responsibilities that entities have to calculate federal arbitrage, yield restrictions, and adhere to private use regulations related to tax-exempt bond issuances.

- <https://www.gfoa.org/post-issuance-policies-and-procedures>
- <https://www.gfoa.org/debt-101-volume-2-responsibilities-after-bond-issuance>

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## **Trouble Ahead for the Municipal Bond Market in a COVID-19 Pandemic Recession?**

Most investors think of bonds as safer and less volatile than stocks. That may be true for Treasury securities, but going down the line of mortgage-backed securities, corporate bonds and even municipal bonds, they can be a very different story. It turns out that municipal bonds have a lot of exposure to a bad economy.

Fitch Ratings has warned that local governments in the United States may struggle to maintain historically sound liquidity levels and that the pressure is likely to come from multiple sources. The report is not full of downgrades in the municipal bond sector, but it sure sounds like a wave of credit ratings reviews is on the way. Fitch now considers liquidity to be the most significant near-term risk for the credit quality of local governments. Most local governments are expected to maintain sufficient liquidity that would offset “significant near-term revenue declines,” but some are expected to see enough strain that will trigger credit rating downgrades.

Fitch does believe that even the financially stressed issuers will do whatever they have to do to keep making full and timely debt service payments. Those efforts could include deficit financing, cash flow conservation and other measures. The report said:

Failure to create adequate liquidity and financial buffers that protect debt repayment capacity even during a potentially protracted crisis would be inconsistent with an investment-grade rating. A missed debt service payment, even if on a temporary basis, would be treated by Fitch as a default.

While liquidity is said to be sufficient for normal operations through cyclical downturns, the uncertainty from the coronavirus pandemic, as well as the depth and duration of the total economic impact, is likely to push many local governments to look for new ways to support cash flows. Those efforts could include financial market and operational solutions: tapping credit lines, issuing tax or revenue anticipation notes, layoffs and furloughs, service reductions, delaying vendor payments, cutting equipment purchases, postponing capital spending or even payroll deferrals.

Fitch further outlined more specifics about where the weakness would be seen:

Liquidity strains are more likely for local governments that exhibited negative financial trends prior to the outbreak, or those with lower IDRs and financial resilience assessments, reflecting more limited flexibility to address the emerging economic and revenue challenges. Local governments with a disproportionately large exposure to economically-sensitive revenues such as sales and income taxes, or economies with significant tourism and retail sector dependence, are also considered more vulnerable.

Perhaps the most stable historic item that contributes to local governments is property taxes, but these may now face uncertainty as the property markets enter disarray. Fitch warned that the coronavirus pandemic could negatively affect home prices in a way that could erode tax base values and could hamper total property taxes ahead if the fallout remains in place. Fitch indicated that local governments have not proposed delaying property tax due dates. While escrowed property tax payments inside a mortgage have helped high property tax collections, the recent and coming mortgage payment relaxations could push out property tax collections.

Fitch counted 38 of the 44 states that have personal income taxes have extended their filing or payment, out to as late as July 15, to be in line with the recent federal tax filing delay.

Another source of risk coming to the local markets is from the state aid that school districts and counties typically rely heavily. Those are at a higher risk of being cut back in fiscal year 2021. Fitch further said:

The ability to reduce or delay local government transfers is an important financial tool for states. Fitch believes this flexibility is likely to be invoked given states' near-term revenue and liquidity stress. While the Coronavirus Aid, Relief and Economic Security (CARES) Act will distribute \$150 billion in aid to state and local governments in the near term, it provides expense reimbursement rather than a pure cash flow infusion. The high IDRs in the local government sector indicates most will be able to withstand even this period of unprecedented stress; Fitch is reviewing the adequacy of each issuer's available tools as well as management's willingness to utilize them.

Investors often look for safe havens in times of turmoil. The lesson here is that not all bonds are created equal, and the risks often become much more clear in times of market turmoil and economic pain.

**247wallst.com**

by Jon C. Ogg

April 3, 2020

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## **[Case for Fed Rescue of Muni Market Builds With Rout Returning.](#)**

- **Yields jump almost 75 basis points this week as prices slide**
- **New deals largely shelved, showing limited access to market**

In the past 48 hours, the \$3.9 trillion municipal-bond market is making the case for the Federal Reserve to use its new powers to wade in, whether buyers want it to or not.

That's because the market where states and local governments raise cash is veering back toward the dysfunction that gripped it last month. Bond prices have dropped sharply, sending yields on 30-year debt surging by nearly 0.75 percentage point since Monday morning. Big bond deals are in limbo, effectively shutting off market access. Frightened investors are pulling out.

The liquidity crisis that initially raced through the market has given way to more measured fears about the massive financial toll that the unprecedented economic shutdown will deliver to states, cities, transit agencies, airports and others that stand behind municipal bonds.

The sell-off in the past few days "makes the case that the Fed should get engaged in some capacity in the muni market," said Michael Nicholas, chief executive officer of the Bond Dealers of America, a lobbying group representing banks and dealers. "No doubt."

Groups like the Government Finance Officers Association and National Association of State Treasurers this week sent a letter urging the Fed to start buying municipal bonds in the secondary market, saying that the central bank should purchase longer-dated debt and include both states and smaller entities like towns.

The organizations said they would like to see the creation of a temporary facility to buy municipal debt, as well as a low-interest loan program to help cash-strapped governments that are affected by tax filing deadlines being pushed back.

The central bank is expected to announce a new emergency facility to support municipal debt, as allowed by the \$2 trillion stimulus approved last week. House Speaker Nancy Pelosi said on Thursday that she wants Fed chairman Jerome Powell to "think big" about how to help.

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Currently, the Fed and the U.S. Treasury Department are operating under Section 13.3 of the Federal Reserve Act. It allows the Fed, with Treasury permission, to open a broad-based facility to support troubled areas of the financial markets in an emergency.

There are questions about what bonds the Fed would buy, given it could open the central bank up to criticism that it's picking winners and losers among states and cities. There's also uncertainty over how it would implement a municipal purchasing program — including whether the central bank would turn to an asset management firm like BlackRock Inc, which it's doing with three of its bond-buying programs.

Even allowing the central bank to help rescue the market from a crisis is a divisive topic in the industry. Citigroup Inc. strategists led by Vikram Rai found in a survey of over 1,146 clients this week that a majority of them would prefer that primary dealers run the Fed's muni buying program instead of an investment-management firm.

Still, the strategists added later that the results of the survey "ripped through the industry and created much controversy."

They noted some respondents had particularly strong views: "We have filtered out the racy comments," the bank strategists said, adding they "tried to synthesize the popular response for most questions."

## **Bloomberg Law**

by Amanda Albright

April 2, 2020

*-With assistance from Danielle Moran and Craig Torres.*

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### **[Skanda Amarnath, Yakov Feygin, And Elizabeth Pancotti On Municipal Bond Market Intervention And The CARES Act As Responses To COVID-19.](#)**

#### **Summary**

- We want state governments to act ambitiously to take the necessary measures.
- Our proposal is for the Fed to use its 14(2)B authority at least in terms of offering to buy short-term municipal debt, specifically state and local government debt.
- All 50 states have seen a pretty big surge in jobless claims actually, including Alaska and Hawaii.

[Continue reading.](#)

#### **Seeking Alpha**

by David Beckworth

Apr. 2, 2020

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### **[What's Going On In the Municipal Bond Market? And What Is the Fed Doing About It?](#)**

When state and local governments need to borrow money, they often do so by selling municipal bonds—promises to pay investors a fixed amount of money at a future date. Before the pandemic began, state and local governments were mostly in very good shape, most of their bonds were considered very safe, and interest rates were low, so they could borrow at low rates without any trouble.

As the coronavirus outbreak worsened, that changed. Investors began withdrawing from municipal mutual funds: For the week ending March 18th, investors withdrew a record-setting \$12 billion—almost 2.5 percent of assets—and another \$13.7 billion the following week. Between March 9th and March 20th, state and local governments managed to sell only about \$6 billion of the \$16 billion in bonds they were seeking to issue. These withdrawals were accompanied by sharp increases in the interest rates borrowers were required to pay. From March 9th to March 24th, the Municipal Market Data yield—a measure of municipal bond yields produced by Thomson Reuters and commonly used as a pricing gauge by state and local bond issuers—went up by roughly 2 percentage points, a huge increase for this market.

At a time when they are already under enormous stress from the coronavirus outbreak, state and local governments suddenly found it hard to borrow.

[Continue reading.](#)

## **The Brookings Institution**

by Finn Schuele and Louise Sheiner

March 31, 2020

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### **Puerto Rico Debt Plan at Risk as Economic Outlook Darkens.**

(Bloomberg) — Puerto Rico and a group of investors in February agreed to a debt-cutting deal that would allow them to recover as much as 77.6 cents on the dollar from their investment in the island's bonds. But that deal may have to be revisited as the coronavirus darkens the outlook for the economy.

While the commonwealth estimates its economy has been growing after more than a decade of contraction, the coronavirus could exert a considerable drag on Puerto Rico's economy over the next two quarters.

The tentative plan for how to slash nearly \$18 billion of Puerto Rico's debt is on hold after the judge overseeing the record bankruptcy canceled hearings set for early June as island officials work to slow the spread of the disease. They'll also be working with Puerto Rico's financial oversight board to assess the economic impact of the virus on the island's ability to repay bondholders, the commonwealth's Fiscal Agency and Financial Advisory Authority said in a court document filed Thursday.

"This is going to make it harder to give the same level of revenue growth and it's going to force them to cut deeper into bondholder principal," said Matt Fabian, a partner at Municipal Markets Analytics.

### **Economy Halts**

States and cities throughout the U.S. are struggling to get a handle on how bad their finances will be hit as businesses, schools and cultural institutions close. In Puerto Rico's case, it must also work through its nearly three-year old bankruptcy as most economic activity halts.

The latest challenge will likely force island officials to place the debt restructuring on the back burner, as it did after being battered by Hurricane Maria in 2017. Depending on how Puerto Rico weathers the economic blow, the amount of money to pay debt service may change.

"It may impact recoveries," said John Ceffalio, municipal credit research analyst at AllianceBernstein, which manages \$47 billion of debt, including Puerto Rico securities. "Our desired outcome from the board's work is sustainability for the island — sustainable economy, sustainable budget, sustainable debt service — and given the uncertainty with the virus there are a lot of questions right now as to what is sustainable."

While addressing Puerto Rico's finances is a central task for the oversight board, the virus has become the main issue in the near term.

"The oversight board's focus right now is on supporting the government to help Puerto Rico through

the COVID-19 crisis,” Matthias Rieker, a spokesman for the board, said in a statement. “The oversight board’s goal continues to be to reduce Puerto Rico’s debt to a sustainable level.”

The debt restructuring plan faced hurdles even before the coronavirus. Bond insurers hadn’t signed on to the tentative deal and Governor Wanda Vazquez criticized the proposal.

The oversight board on Feb. 9 struck the tentative deal with Aurelius Capital Management and other investors. It includes a range of recoveries depending on the security. General obligations sold in 2014 with an 8% coupon would get 65.4 cents on the dollar while Public Buildings Authority debt sold before 2011 would get 77.6 cents.

## **Trading Below**

Some Puerto Rico bonds are trading below those levels following the steep sell-off in the municipal market earlier this month. General obligation bonds with an 8% coupon and maturing in 2035 traded Monday at about 59 cents on the dollar, down from an average 73.8 cents in February, according to data compiled by Bloomberg.

Puerto Rico is set to file by May 1 a status report to the court on the effects of the virus on the economy. Island officials will also be reviewing the debt adjustment plan.

“During this adjournment, the government, in collaboration with the oversight board, will work to assess the economic impact of COVID-19 on Puerto Rico’s debt service capacity under the proposed plan of adjustment (or any future plan),” AAFAF, the fiscal agency, said in a court document filed Thursday.

While the oversight board and Puerto Rico will work to achieve the best settlements in their interest, the debt adjustment plan spans many years and doesn’t rely just on the economy’s immediate performance, said Howard Sitzer, senior municipal analyst at CreditSights Inc.

That longer horizon and the potential federal aid that Puerto Rico will receive along with Governor Vazquez’s \$787 million stimulus plan will help support the island’s economy, Sitzer said.

“The question is what kind of drag will the pandemic have in terms of the intermediate to longer range economic performance of Puerto Rico?” Sitzer said.

## **Bloomberg Markets**

by Michelle Kaske

March 30, 2020

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## **[COVID-19 and Secondary Market Disclosure: Butler Snow](#)**

Our thoughts are with you, your loved ones and organizations as we all navigate this public health crisis together. We are providing this alert to our public finance clients and other professionals regarding COVID-19 and its potential impact on secondary market disclosure.

### **A Continuing Disclosure Review.**

Before discussing some of the secondary market disclosure issues, a brief review is in order. The

Securities and Exchange Commission (the “SEC”) has promulgated Rule 15c2-12 (the “Rule”) that prohibits underwriters from purchasing or selling most municipal securities unless an issuer or conduit borrowers (collectively, an “Obligated Person”) has agreed in writing to provide specific information to the market on an ongoing basis, i.e. continuing disclosure. The written agreement can be a certificate or an agreement and is often referred to as an “Undertaking.” Pursuant to the Rule, the continuing disclosure to be provided to the market consists of: (i) annual financial information and operating data as specified in each Undertaking, (ii) annual audited financial statements; and (iii) timely notice of the occurrence of certain events specified in each Undertaking (known as Event Notices). These filings must be made on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system (“EMMA”). The EMMA website is: [www.emma.msrb.org](http://www.emma.msrb.org).

### **Listed Events.**

Event Notices must be filed in a timely manner not in excess of ten business days after the occurrence of any of the events listed in an Undertaking for a specific series of bonds. A list of all events currently required follows; however, this list has expanded over time and your Undertakings may not include all of them.

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
7. Modifications to rights of security holders, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the securities, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the obligated person;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

### **Some Issues to Consider.**

The following are some of the issues that our public finance clients are now confronting or asking about.

*Is it necessary to file an disclosure about the impacts COVID-19 is having on an Obligated Person?*



An Obligated Person is only required to file notices of events specified in an Undertaking. No filing is required unless one of those events has occurred (see above for the current list of events; but be aware that some Undertakings have fewer events and some may contain additional events requiring disclosure). It is important for Obligated Persons to consult each Undertaking to determine whether there is some required disclosure. Some of the 16 events may occur as a result of this crisis and Obligated Persons need to be prepared to file an Event Notice. For example, rating changes must be disclosed and Obligated Persons are responsible for filing an Event Notice if a rating change occurs.

*What should Obligated Persons consider in making a voluntary filing on EMMA or on its website?*

Some Obligated Persons may want to make a voluntary filing on EMMA or its website regarding the impacts of COVID-19 on their operations and finances. If such a filing is made, it is subject to the antifraud provisions of the federal securities laws; the information that is provided must not be materially inaccurate or misleading in the context in which it is provided.

*What considerations apply if the staff of the Obligated Person prepares revised financial projections for the governing body or if the chief elected official of an Obligated Person makes a speech about the impacts of COVID-19 on the Obligated Person?* In a 1994 interpretive release, the SEC advised as follows: “A municipal issuer . . . when it releases information to the public that is reasonably expected to reach investors and the trading markets, those disclosures are subject to the antifraud provisions. The fact that they are not published for purposes of informing the securities markets does not alter the mandate that they not violate antifraud proscriptions.”

Information on an Obligated Person’s website, press releases regarding the financial health of the Obligated Person, certain public statements by its officials, and responses by its officials to inquiries from the public, all may be considered to be reasonably expected to reach the investing public. The information that is provided must not be materially inaccurate or misleading in the context in which it is provided.

*May the staff of an Obligated Person respond to requests from credit analysts for information about the impacts of COVID-19 on the Obligated Person?* The staff may respond to such requests, but again the information provided must not be materially inaccurate or misleading in the context in which it is provided. Ideally, the staff should provide only publicly available information to requestors. No provisions of the federal securities laws apply to municipal issuers providing information to investors requesting it. However, the Municipal Securities Rulemaking Board (the “MSRB”) and other market participants have expressed concern about Obligated Persons providing new, nonpublic information to select investors or analysts. In a market advisory, the MSRB said:

The MSRB encourages issuers and their financial professionals to implement practices to ensure that all investors and stakeholders have equal access to the same information in a timely manner. For example, an issuer may choose to voluntarily disclose the information to the broader marketplace by a method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public. Although issuers could choose to utilize other means, such a dissemination could be accomplished by posting the relevant information on EMMA. Based on the type of information, there are multiple options for how an issuer may choose to make such a voluntary disclosure.

*What should be done if the audit of the Obligated Person will not be completed in time to meet the filing deadline set forth in the Undertaking?* Pursuant to the Rule, the Obligated Person should file a notice on EMMA that the audited financials are not yet ready and that they will be filed late. Check

the individual Undertakings to determine whether unaudited financials are required to be filed if the audit isn't complete; should you determine that unaudited financials will not be available either, indicate that in the notice.

*If the Obligated Person is late in making filings required by an Undertaking, how will that impact the Obligated Person when it next wants to sell bonds?* An underwriter must have a reasonable basis to conclude that an Obligated Person will comply with future Undertakings. Filing a notice as described above satisfies the Undertaking, so an underwriter should be able to review the circumstances and reach the conclusion that the Obligated Person will be able to comply with its future Undertaking.

March 30, 2020

**Butler Snow LLP**

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## **[Cracks in Municipal Debt Markets Raise Questions about Future Fed Action.](#)**

The coronavirus is taking its toll on state and local governments across the country, as funding strains force municipalities into balancing layoffs against providing essential services to Americans that were laid off themselves.

Investors fleeing from the municipal debt market also means municipalities are having difficulty issuing debt to finance themselves. In Jersey City, Mayor Steven Fulop is trying to plug a \$70 million hole; \$50 million of unanticipated revenue losses and \$20 million in higher expenses to continue offering its community services.

"While layoffs are a last resort, the public should be aware that just because we're government, we're not immune from what's happening." Fulop told Yahoo Finance.

[Continue reading.](#)

**Yahoo Finance**

by Brian Cheung

March 30, 2020

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## **[MSRB Publishes Summary of State and Local Disclosures to Its EMMA System about Impact of COVID-19.](#)**

Washington, DC - Disclosures submitted to the Municipal Securities Rulemaking Board's (MSRB) free Electronic Municipal Market Access (EMMA®) system provide a window into how states and municipalities are grappling with the impact of the novel Coronavirus Disease (COVID-19) on their revenues and ability to finance essential public services. The MSRB today began publishing a weekly summary to assist market participants, policymakers and the general public with identifying disclosures submitted to the EMMA system by issuers of municipal securities that reference COVID-19.

The disclosures in the MSRB's summary are accessible to the public at no cost on the EMMA

website. The MSRB searched the approximately 40,000 disclosures the EMMA system received from January 2020 to March 2020 to identify those that referenced COVID-19 or related keywords.

“This disclosure summary is a great example of the kind of enhanced search capabilities and data analysis the MSRB hopes to offer EMMA users as a self-service tool in the future once we complete our enterprise-wide migration to the cloud,” said MSRB Board member Meredith Hathorn. “We see tremendous potential for the EMMA website to continue to evolve and deliver market insights that are never more valuable than at times of market disruption like we are experiencing now.”

MSRB data show that over the three-month period from January 1, 2020 through March 30, 2020, the EMMA system received 506 COVID-19-related continuing disclosures out of a total of 43,667 continuing disclosures, and 125 COVID-19-related primary market disclosures out of 2,548 total primary market disclosures. Issuers in the state of California submitted the highest number of disclosures across all states with a total of 97 COVID-19-related primary market and continuing disclosures. [View the MSRB’s disclosure analysis here.](#)

The MSRB also recently began publishing daily analysis of municipal market trade activity to assist market participants, policymakers and the general public with understanding the impact of the COVID-19 on the liquidity of the market following days of unprecedented volatility.

Date: April 2, 2020

Contact: Leah Szarek, Director of Communications  
202-838-1500  
lszarek@msrb.org

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## **[GASB Issues Guidance for Transition from Interbank Offered Rates.](#)**

Norwalk, CT, April 2, 2020—The Governmental Accounting Standards Board (GASB) today issued new accounting and financial reporting guidance in [Statement No. 93, \*Replacement of Interbank Offered Rates\*](#), to assist state and local governments in the transition away from existing interbank offered rates (IBORs) to other reference rates.

Some governments have entered into agreements in which variable payments made or received from either derivative counterparties or parties associated with lease agreements depend on an IBOR, most notably the London Interbank Offered Rate (LIBOR). As a result of global reference rate reform, LIBOR is expected to cease to exist in its current form at the end of 2021, prompting governments to amend or replace financial instruments tied to LIBOR.

Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments*, previously required a government to terminate hedge accounting when it changes the reference rate of a hedging derivative instrument’s variable payment. In addition, Statement No. 87, *Leases*, previously required a government that replaced the rate on which variable payments depend in a lease contract to apply the provisions for lease modifications, including remeasurement of the lease liability or lease receivable.

The objective of Statement 93 is to address those and other accounting and financial reporting implications of the replacement of an IBOR by:

- Providing exceptions for certain hedging derivative instruments to the hedge accounting

termination provisions when an IBOR is replaced as the reference rate of the hedging derivative instrument's variable payment

- Clarifying the hedge accounting termination provisions when a hedged item is amended to replace the reference rate
- Clarifying that the uncertainty related to the continued availability of IBORs does not, by itself, affect the assessment of whether the occurrence of a hedged expected transaction is probable
- Removing LIBOR as an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap
- Identifying the Secured Overnight Financing Rate and the Effective Federal Funds Rate as appropriate benchmark interest rates for the qualitative evaluation of the effectiveness of an interest rate swap
- Providing an exception to the lease modifications guidance in Statement 87 for certain lease contracts that are amended solely to replace an IBOR as the rate upon which variable payments depend.

The removal of LIBOR as an appropriate benchmark interest rate is effective for reporting periods ending after December 31, 2021. All other requirements of Statement 93 are effective for reporting periods beginning after June 15, 2020. Earlier application is encouraged.

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## **[How the Muni Market Became the Epicenter of the Liquidity Crisis.](#)**

### **A concentration of power and risk has resulted from a fundamental shift in how municipal bonds are bought and sold**

The coronavirus triggered a liquidity crisis in municipal bonds, but the volatility that resulted has been brewing for a decade.

Desperate sellers across most markets sold assets at deep discounts last month as the spreading new coronavirus left investors fearful and hungry for cash. Perhaps no investment flipped from coveted haven to spurned hot potato as quickly as municipal bonds.

Prices have started to recover as U.S. lawmakers authorized the Federal Reserve to prop up a wide swath of state and local government debt. But the marketwide breakdown exposed a new vulnerability in the nearly \$4 trillion municipal market: a concentration of power and risk resulting from a fundamental shift in how muni bonds are bought and sold on Wall Street and on Main Street.

[Continue reading.](#)

### **The Wall Street Journal**

By Heather Gillers and Gunjan Banerji

April 2, 2020 6:30 am ET

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## **[BDA Urges Fed to Provide Additional Support for Muni Market.](#)**

Today, following extensive work with the Muni Exec Committee, the BDA submitted a letter to the

Federal Reserve and Treasury urging them to take action in the municipal market due to historic price volatility, cancellation or postponements of new issuance, and significant deterioration of liquidity.

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

**This call to action follows a [March 18th letter](#) in which the Fed followed BDA recommendations** to expand the Money Market Mutual Fund Liquidity Facility to include a wider range of securities, including municipal variable rate demand notes and as a response to the passage of the [CARES Act](#).

### **Background of CARES Act (H.R. 748)**

**Section 4003 of the Cares Act provides the Treasury and Fed with broader standby authority to support the bond markets during times of particular distress and dysfunction, to the immediate benefit of issuers, investors, tax payers.**

**H.R. 748 would allocate up to \$454 billion of cash from the Treasury Department to:**

- Provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus;
- Treasury would “make loans, loan guarantees, and other investments in support of eligible businesses, States, and municipalities.”

**This includes:**

- Purchasing obligations or other interests directly from issuers of such obligations or other interests
- Purchasing obligations or other interests in secondary markets or otherwise; and
- Making loans, including loans or other advances secured by collateral.

The bill would also provide up to \$125 billion in direct support to localities that can help bridge the gap with lagging revenues, especially in light of delayed tax filing deadlines.

### **Bond Dealers of America**

April 3, 2020

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### **[Case for Fed Rescue of Muni Market Builds With Rout Returning.](#)**

- **Yields jump almost 75 basis points this week as prices slide**
- **New deals largely shelved, showing limited access to market**

In the past 48 hours, the \$3.9 trillion municipal-bond market is making the case for the Federal Reserve to use its new powers to wade in, whether buyers want it to or not.

That’s because the market where states and local governments raise cash is veering back toward the dysfunction that gripped it last month. Bond prices have dropped sharply, sending yields on 30-year debt surging by nearly 0.75 percentage point since Monday morning. Big bond deals are in limbo, effectively shutting off market access. Frightened investors are pulling out.

The liquidity crisis that initially raced through the market has given way to more measured fears

about the massive financial toll that the unprecedented economic shutdown will deliver to states, cities, transit agencies, airports and others that stand behind municipal bonds.

The sell-off in the past few days “makes the case that the Fed should get engaged in some capacity in the muni market,” said Michael Nicholas, chief executive officer of the Bond Dealers of America, a lobbying group representing banks and dealers. “No doubt.”

Groups like the Government Finance Officers Association and National Association of State Treasurers this week sent a letter urging the Fed to start buying municipal bonds in the secondary market, saying that the central bank should purchase longer-dated debt and include both states and smaller entities like towns.

The organizations said they would like to see the creation of a temporary facility to buy municipal debt, as well as a low-interest loan program to help cash-strapped governments that are affected by tax filing deadlines being pushed back.

The central bank is expected to announce a new emergency facility to support municipal debt, as allowed by the \$2 trillion stimulus approved last week. House Speaker Nancy Pelosi said on Thursday that she wants Fed chairman Jerome Powell to “think big” about how to help.

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Even allowing the central bank to help rescue the market from a crisis is a divisive topic in the industry. Citigroup Inc. strategists led by Vikram Rai found in a survey of over 1,146 clients this week that a majority of them would prefer that primary dealers run the Fed’s muni buying program instead of an investment-management firm.

Still, the strategists added later that the results of the survey “ripped through the industry and created much controversy.”

They noted some respondents had particularly strong views: “We have filtered out the racy comments,” the bank strategists said, adding they “tried to synthesize the popular response for most questions.”

## **Bloomberg Markets**

By Amanda Albright

April 2, 2020, 11:46 AM PDT

## **Muni Market Rout Returns With Record Exodus Fueling Cash Strains.**

- **Market sees massive volatility as pandemic creates uncertainty**
- **‘Trend seems to be turning’ as optimism fades, investor says**

Municipal-bond prices tumbled sharply, retreating from the rally triggered last week by the federal government’s more than \$2 trillion stimulus plan, as the growing economic shutdown to stem the coronavirus deals a deep financial hit to states, cities and other agencies that borrow in the \$3.9 trillion market.

The drop underscores the unprecedented volatility that has whipsawed the state and local government debt market for the past three weeks, when a record exodus from municipal-bond mutual funds triggered rounds of forced selling by managers who needed to raise cash. That sell-off through mid-March was the steepest in at least four decades, only to abruptly shift course last week when prices rallied as the stimulus program extended the Federal Reserve the power to step in if another liquidity crisis breaks out.

On Wednesday, some yields surged as much as they did during the deepest one-day sell-offs that shook the market in March. Those on top-rated 30-year bonds surged 50 basis points to 2.53%, while 10-year yields rose 31 basis points to 1.74%. Those on securities due in six months climbed 11 basis points to 1.16%.

The jump comes after individuals pulled record amounts from municipal-debt funds in the two weeks through March 25 after the market was battered by losses. Such outflows tend to persist for weeks during down markets and the price drop this week may be driven by fund managers who need to raise cash to meet redemptions.

Dave Isaak, head trader at Isaak Bond Investments, said the market is veering right back to where it was two weeks ago. The number of bonds being put out for bids remains elevated, with the amount that investors were looking to sell on Bloomberg’s platform alone rising to \$1.9 billion on Tuesday. He said the “difficult news” surrounding the pandemic is pushing investors back toward only the safest securities.

“It’s a liquidity squeeze of some sort again,” he said.

High-yield bonds were especially hard hit during the sell-off, losing 11% through the end of March despite last week’s rebound, and some slid Wednesday. That niche includes debt backed by airlines, nursing homes, convention centers and projects like the American Dream shopping mall in New Jersey that are being affected by the swift shutdown to much of the nation’s economy.

As the human toll rises and federal and state officials warn of longer shutdowns, investors have a renewed focus on the pandemic’s impact on almost all municipal bonds, said Jason Ware, head of institutional trading at brokerage 280 CapMarkets.

“You have to start looking at the trickle down effect for what all this means for redevelopment projects, conventions centers, hospitals, property taxes, foreclosures — your mind can go in so many different directions,” Ware said. “We need the time-frame of this coronavirus and the effect of the shutdown to be shorter, otherwise you’re going to continue to see more weakness.”



Puerto Rico's sales-tax backed bonds, which are among the most actively traded by high-yield municipal funds, dropped to about 89 cents on the dollar Wednesday from 96 cents Tuesday. Ohio debt backed by the state's tobacco-settlement payments, whose prices swung wildly in last month's rout and recovery, slid to 84 cents from 92 cents, according to data compiled by Bloomberg.

Daniel Solender, head of municipals at Lord Abbett & Co., said some money had started to wade back into the market last week as it rebounded. But he said the sentiment seems to have grown more negative this week, making it difficult for new deals to price.

"The points of view are so volatile — we have to keep reassessing the market because the sentiment keeps changing," he said. "The trend seems to be turning. There has definitely been some outflows this week and because of that it's hard to get investors to commit to the new deals."

## **Bloomberg Markets**

By Danielle Moran, Amanda Albright, and Martin Z Braun

April 1, 2020, 10:28 AM PDT Updated on April 1, 2020, 12:17 PM PDT

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### **Near-Junk Illinois Faces Record Bond Penalties on Financial Risk.**

- **10-year spread over AAA rated debt rises to 340 basis points**
- **Higher debt costs mean 'budget balancing harder': Fabian**

The extra yield that investors are demanding to own Illinois bonds has surged to a record high, surpassing even the levels hit three years ago when it was on the verge of seeing its rating cut to junk, as the coronavirus threatens to deal a devastating blow to its precarious finances.

The yield on the state's 10-year debt has climbed to about 340 basis points above the top-rated benchmark, according to Bloomberg's indexes, which were started in 2013. That's above the previous record in June 2017, during the height of a protracted two-year budget impasse that left the government contending with a swelling backlog of unpaid bills and threatened to turn it into the first state to be stripped of an investment-grade credit rating.

Since then, Illinois had gained some ground as lawmakers crafted plans to stabilize its budget and tumbling interest rates boosted demand for higher-yielding securities. But the market since last month has been rocked by a series of sell-offs and investors are on edge about the deep financial hit the pandemic-induced economic slowdown will deliver to Illinois, which already had \$137 billion in unfunded pension liabilities, more than \$7 billion in unpaid bills and almost nothing in its rainy day fund.

With its bonds rated just one step above junk by Moody's Investors Service and S&P Global Ratings, a downgrade could set off a round of forced selling by mutual funds that can only hold investment-grade debt.

"The situation is more precarious because they are currently rated just above investment grade," said Jason Appleson, a portfolio manager for PT Asset Management, which holds Illinois debt. "The more investors fear there's a chance for Illinois to get downgraded to below investment grade, the greater the chance of spread widening."

Illinois 10-year bond spread hits record ahead of tightening cash

Governor J.B. Pritzker has acknowledged the steep economic toll, though he has yet to provide estimates for how severe it will be.

Making matters more difficult, the state has joined those that pushed their annual tax-collection deadlines until July, creating cash-management challenges even with the \$150 billion in federal emergency stimulus money about to flow to states and local governments. Illinois Comptroller Susana Mendoza said Friday the state will delay some payments in the coming months to pay more immediately needs such as equipment and services to curb the outbreak.

During previous fiscal crises, Illinois continued to cover its bond payments, and no state has defaulted on its debts since the Great Depression. Illinois's general-obligation debt is funded a year in advance, effectively insulating bondholders from a near-term default, said Matt Fabian, a senior analyst for Municipal Market Analytics.

"Because of the wider spread, they will have to pay more," he said. "It will make their budget balancing harder. The spread widening does have real world consequences."

Most states are "really cash poor this quarter" but Illinois is "going to have a much tougher time looking for short-term financing" than a highly rated state, said Dan White, head of public sector research for Moody's Analytics.

"There's going to be some real cash crunch time coming," White said.

## **Bloomberg Markets**

By Shruti Singh

April 3, 2020, 10:32 AM PDT

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## **[Opportunity Zone Deadlines Extended By Covid-19 Disaster Declarations.](#)**

### **INTRODUCTION**

The COVID-19 pandemic has led Governors of many states to request that their states be declared federal disaster areas. As of this writing, President Trump has declared numerous states to be federal disaster areas, including New York, Washington, California, New Jersey, Iowa, Florida, Texas, North Carolina and Louisiana. It is likely that more, and perhaps even all, states will be declared disaster areas.

These declarations will extend two important deadlines in the rules relating to investments in qualified opportunity zones. First, the 31-month deadline for spending cash or other financial assets held by a qualified opportunity zone business under a working capital safe harbor plan can be extended by as much as 24 additional months. Second, where an opportunity fund receives capital or proceeds from the sale of qualified property, it has 12 months to reinvest the funds before they will be counted in the fund's 90% asset test. The fund can get an additional 12 months to reinvest the funds if the fund's ability to reinvest is delayed by a federally declared disaster.

### **EXPLANATION OF THE PROVISION**

Working Capital Safe Harbor. Generally, a qualified opportunity zone business may hold cash and short term debt if it is subject to a plan that calls for the expenditure of the funds within 31 months. Final Treasury Regulation Section 1.1400Z2(d)-1(d)(3)(v)(D) provides that the 31 months can be extended for an additional 24 months if the working capital plan relates to a project within a qualified opportunity zone which is part of a Federally declared disaster area, so long as the business otherwise meets the requirements for the working capital safe harbor.

Reinvestments by an Opportunity Fund. Second, a qualified opportunity fund must hold 90% of its assets in qualified opportunity zone property. Cash, debt instruments and securities are not qualified property. If a qualified opportunity fund receives cash from the sale of qualified opportunity zone property or gets a return of capital from a qualified opportunity zone business, the opportunity fund generally has 12 months to reinvest the funds before those funds will count in a 90% test. However, the Final Opportunity Zone Regulations provide that if an opportunity fund is delayed in reinvesting the funds by a federal disaster, it can receive an additional 12 months to reinvest the funds, provided that it eventually reinvests as originally intended. For example, if an opportunity fund is unable to invest in certain property because the property is located in a federally declared disaster area, the opportunity fund must invest the proceeds in similar property located in that QOZ

#### POLSINELLI PRACTICE TIP

These extended deadlines do not extend to the period investors have to invest qualified capital gains in an opportunity fund, or the time an opportunity fund has to invest its funds. Polsinelli therefore recommends that qualified gains be invested in an opportunity fund to defer the gain, and then to a qualified opportunity zone business within necessary time frames. By doing so, an opportunity zone investor can maximize the time it has to invest the funds in good opportunity zone projects. With respect to the reinvestment of capital received by an opportunity fund, Polsinelli recommends documenting any plans for the reinvestment of the funds so that it can establish that it has complied with the rule if necessary. Polsinelli also notes penalties which may be asserted in connection with opportunity zone investments can generally be avoided upon a showing of "reasonable cause." The COVID-19 clause may well provide a general reasonable cause defense to many penalties. Finally, at some point Treasury (or Congress) may well issue some form of blanket extension on all of the deadlines as the crisis continues.

#### **Polsinelli**

March 30, 2020

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### **[New York City's Economy Is in the Crucible of the Crisis. The Rest of the Country Is Next.](#)**

New York City, as the nation's epicenter of the Covid-19 pandemic, is battling an unprecedented health crisis. It is also grappling with a rapid economic slowdown that is undermining hard-won gains in its fiscal health that have been achieved since the financial crisis of the 1970s.

The country's largest metropolis operates on a massive scale, with an annual budget of \$95 billion that exceeds that of nearly every state. It has a population of 8.4 million, total employment of 4.7 million, public-school enrollment of 1.1 million, a municipal labor force of 327,000, nearly 300,000 retirees drawing from a huge underfunded pension plan, and \$91.6 billion of outstanding debt.

New York's situation is emblematic of the one that many states and cities across the country soon will be facing as unemployment surges and tax revenues drop.

[Continue reading.](#)

## **Barron's**

By Andrew Bary

April 3, 2020 7:01 pm ET

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### **[COVID-19 Relief for Opportunity Zone Businesses, a Zoom Meeting with OZ Pros.](#)**

Congress has passed three phases of coronavirus relief packages, with a fourth potentially on the way soon. How can Opportunity Zone businesses seek relief? And how can Opportunity Zones assist with economic recovery? OZ Pros hosted a Zoom meeting with 80 of the most engaged Opportunity Zones participants in our network. The Zoom meeting included presentations from Ashley Tison (OZ Pros), Howard Matalon (OlenderFeldman), and

[Read More »](#)

## **Opportunity Db**

April 1, 2020

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## **TAX - MISSOURI**

### **[DI Supply I, LLC v. Director of Revenue](#)**

**Supreme Court of Missouri, en banc - March 17, 2020 - S.W.3d - 2020 WL 1270752**

Limited liability company (LLC) taxpayer and its members petitioned for review of decision from administrative hearing commission, which determined that taxpayer's room furnishing sales to hotels were not exempt from sales tax under resale exemption.

The Supreme Court held that:

- Use tax definition of "sale" cannot be used sales tax resale exemption cases, abrogating *Brambles Industries, Inc. v. Director of Revenue*, 981 S.W.2d 568, *Kansas City Power & Light Co. v. Director of Revenue*, 83 S.W.3d 548, and *Ronnoco Coffee Co., Inc. v. Director Of Revenue*, 185 S.W.3d 676, and
- Room furnishing sales to hotels were not exempt from sales tax under resale exemption.

Sales tax and use tax definitions of "sale," though similar, have different requirements, and as such, employment of the use tax definition of "sale" cannot be used in sales tax resale exemption cases; abrogating *Brambles Industries, Inc. v. Director of Revenue*, 981 S.W.2d 568, *Kansas City Power & Light Co. v. Director of Revenue*, 83 S.W.3d 548, and *Ronnoco Coffee Co., Inc. v. Director of Revenue*, 185 S.W.3d 676. Mo. Ann. Stat. § 144.010.1(13).

Room furnishing sales to hotels managed by hospitality company were not exempt from sales tax under resale exemption, since the room furnishings that taxpayer sold to hotels were not resold to hotel guests, and consequently, there was no transfer of title or ownership of the room furnishings.

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## **TAX - VERMONT**

### **[Zlotoff Foundation, Inc. v. Town of South Hero](#)**

**Supreme Court of Vermont - March 20, 2020 - A.3d - 2020 WL 1325417 - 2020 VT 25**

Taxpayer, a nonprofit charitable organization, appealed board of listers' denial of its request for tax exemption for land and property used to store classic automobiles for its museum.

The Board of Civil Authority (BCA) denied the appeal, and taxpayer appealed. The Superior Court entered summary judgment for taxpayer in part, holding that property was exempt from taxation, and entered summary judgment for town in part, holding that taxpayer was not entitled to refund of property taxes already paid or owing. Taxpayer and town both appealed.

The Supreme Court held that:

- Taxpayer's land and garage qualified for public use property tax exemption, and
- Taxpayer was not entitled to refund of property taxes paid or owed before it obtained certificate of authority.

Land and garage owned and used by nonprofit charitable organization for purpose of storing and maintaining collection of classic automobiles displayed at nearby museum qualified for public use property tax exemption, since garage served essential function that was directly connected to the running of the museum and furthered the museum's charitable purposes.

Nonprofit charitable organization, a foreign corporation whose property was determined to be exempt from property taxes under the public use exemption, was not entitled to refund of property taxes paid or owed before it obtained certificate of authority allowing it to transact business in the state; exemption was based on business that organization transacted, and certificate was required for it to conduct that business.

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## **[NJ Reps. Ask Pelosi For SALT Cap Relief In Next Virus Bill.](#)**

Any additional legislation Congress prepares to mitigate the health and economic consequences of the novel coronavirus pandemic should include relief from the \$10,000 cap on state and local tax deductions, House lawmakers representing New Jersey said Friday.

Lifting the \$10,000 cap would help local businesses, families and first responders deal with COVID-19, the illness caused by the coronavirus, according to a letter sent to House Speaker Nancy Pelosi, D-Calif., by New Jersey lawmakers, including senior House Ways and Means Committee member Rep. Bill Pascrell Jr.

The SALT deduction limits, passed in the 2017 federal tax overhaul, have been especially burdensome for high-tax states such as New Jersey, and the negative effects are exacerbated by the coronavirus outbreak, the lawmakers said.

[Continue reading.](#)

**Law360.com**

By Dylan Moroses · April 3, 2020, 2:44 PM EDT

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## **Orrick: Waivers, Deferrals and Changes to Tax-Exempt Bonds During COVID-19**

Given the economic impact of COVID-19 and the ongoing uncertainty of how long it will last, borrowers of tax-exempt bond proceeds may find themselves in the position of requesting their lenders to temporarily waive certain financial covenants contained in tax-exempt financing documents or to defer debt service payments on the related tax-exempt bonds.

Tax-exempt borrowers and banks need to be aware that the deferral or other modifications of debt service payments on tax-exempt bonds could have an adverse impact on the tax-exempt status of such bonds. Certain waivers, deferrals and changes to bonds or bond documents need to be reviewed by bond counsel to determine whether such actions will result in a “tax reissuance” of the related bonds. A tax reissuance is treated as a new debt issuance for tax purposes and a refinancing of the original bond issue. In the event a tax reissuance occurs, the tax exemption on the bonds will be lost absent appropriate legal steps. In addition, the waiver of financial covenants by a lender may not adversely affect the tax-exempt status of the related bonds, however, certain obligations may be triggered, such as notice or other provisions under the bond documents. Certain waivers, deferrals and changes to bonds or bond documents (including continuing disclosure agreements) need to be reviewed by bond counsel to determine whether such actions will result in a “tax reissuance” of the related bonds.

Please note, this does not mean that such waivers, deferrals and/or changes cannot be undertaken. However, such waivers, deferrals and changes should be reviewed by bond counsel prior to taking such actions.

**Public Finance Alert | April.02.2020**

**Orrick Herrington & Sutcliffe LLP**

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## **COVID-19 and Municipal Securities Disclosure.**

COVID-19 is creating more questions than answers in every sector of American life recent days, and the municipal bond market is no exception. Issuers and obligated persons for municipal bonds (collectively, “Obligated Parties”) have asked about their disclosure obligations pursuant to Rule 15c2-12 (the “Rule”) relating to both their outstanding bonds and bonds for which they are in the process of conducting a primary offering. Obligated Parties should consider the following questions as they navigate challenges presented by COVID-19 as they relate to municipal securities disclosure, and consult with legal counsel to assess any needed action.

**What should I do if I cannot meet my deadline for filing my annual financial information required by the Rule due to delays or closures relating to COVID-19? If I am able to make**

## **my filing deadline, should I say anything about COVID-19?**

The Rule requires Obligated Parties to file certain annual financial information and to provide, in a timely manner, a notice of failure of such Obligated Party to file such annual financial information. The deadline for filing annual financial information is governed specifically by the continuing disclosure agreement (the “CDA”) relating to such bonds which are typically six (6) months from the end of the fiscal year. During these hectic times, these deadlines may not be top of mind, but Obligated Parties should take care to provide a notice to the market pursuant to the Rule if they are unable to file. Further, the SEC has publicly stated that because CDAs are private contracts, it has no authority to provide relief from these deadlines.

If an Obligated Party is able to file annual financial information or interim financial information, it may be advisable to include cautionary language in the filing that is similar to that included in primary offering documents to the effect that:

- the filing is being made to comply with the Obligated Party’s commitment under its CDA, not to provide all information material to an investment in the applicable securities, and does not purport to provide all such information;
- the dates as of and periods for which information is provided in the filing occurred before the onset of COVID-19 and it is possible that effects related to COVID-19 may adversely affect the Obligated Party’s future financial performance to an extent that could be material; and
- consequently, the information set forth in the filing should not be relied upon as indicative of future financial performance of the Obligated Party.

## **Should I file a material event notice relating to COVID-19 for my outstanding bonds?**

COVID-19 itself is not a material event provided for under the Rule. However, if the effects of COVID-19 are such that they trigger a material event such as a payment delinquency, an unscheduled draw on reserve funds, or a ratings change, an Obligated Party should file a notice of such material event. Similarly, if an Obligated Party has entered into a CDA after February 28, 2019 and the Obligated Party enters into a material “financial obligation” or experiences COVID-19 related effects that cause financial difficulties or trigger events of default, events of acceleration, termination events, modification of terms, or other similar events under the terms of a “financial obligation” of the Obligated Party, a material event notice should be filed.

## **Should I file voluntary disclosure relating to COVID-19 for my outstanding bonds?**

An Obligated Party need not file voluntary disclosure. If an Obligated Party chooses to provide voluntary disclosure, the Obligated Party should take care to determine whether the information provided is truly “material” to the market. Materiality, in this context means *“if there is a substantial likelihood that a reasonable investor would determine that the disclosed information significantly altered the “total mix” of information already available in the marketplace.”* Put another way, is the information the Obligated Party is disclosing likely to be so critical that it would influence an investor’s decision to invest in the Obligated Person’s bonds, given other currently publicly available information? If so, the Obligated Party might consider posting a voluntary disclosure. The Obligated Party must balance this with an additional calculus of whether the voluntary disclosure would need ongoing updates.

## **What should I disclose regarding COVID-19 if I am in a primary offering?**

Obligated Parties should consider what impacts COVID-19 is having on the Obligated Party in the short-term, as well as any potential long-term impacts on the Obligated Party and the revenue



source supporting the bonds. Given the high level of uncertainty regarding these matters, many Obligated Parties have opted for generalized disclosure. Nevertheless, it will be important for Obligated Parties to work with Bond Counsel, Financial Advisors, the Underwriter and its counsel, and staff of the Obligated Party to determine the content of any risk or other financial disclosure in the offering document.

### **What about public statements by officials of an Obligated Party regarding COVID-19?**

Obligated Parties should bear in mind that the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder apply to all statements providing information that is reasonably expected to reach investors and the trading markets. The Secondary Market Staff of the SEC Office of Municipal Securities previously issued a [bulletin](#) alerting issuers that these antifraud provisions apply to public statements and continuing disclosures under CDA. Obligated Parties should take care with any statements that are made with an eye towards, or can be reasonably expected to reach, the investing public.

### **Winstead PC**

April 3, 2020

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### **[SEC's Office of Municipal Securities Offers Guidance Regarding COVID-19's Impact on Rule 15c2-12 Continuing Disclosure Undertaking Requirements: Miller Canfield](#)**

Every continuing disclosure undertaking entered into under Section (b)(5)(i) of Rule 15c2-12 (the "Rule") of the Securities and Exchange Commission ("SEC") requires the issuer or obligated person (as defined in the Rule) under such undertaking to report notice of certain events electronically to the Municipal Securities Rulemaking Board ("MSRB") no later than 10 business days of their occurrence. The COVID-19 pandemic and the resulting array of federal, state and local measures designed to contain its spread are not among such events.

Nevertheless, the pandemic and resulting government actions have raised a number of questions regarding compliance with ongoing disclosure requirements under the Rule. On a March 19, 2020, MSRB webinar, Ahmed Abonamah, deputy director of the SEC's Office of Municipal Securities, and David Hodapp, assistant general counsel of the MSRB, gave some insight as to some of the scenarios issuers and obligated persons may come across.

During the course of the webinar, Abonamah and Hodapp were asked to respond to the following specific questions:

- Could the SEC provide regulatory relief for issuers filing their annual financial and operating information late because personnel are required to work from home and cannot access the relevant information?
- Does an issuer have to provide an event notice that its offices are closed to the public because personnel are working from home?
- Should an issuer file a general event notice about COVID-19 on the MSRB's Electronic Municipal Market Access web site ("EMMA")?

From the reported discussion of these questions on the webinar, we can glean the following

principles.

### **The SEC Cannot Absolve Issuers for Late Filings**

- The requirements of the Rule come from the SEC's authority to impose pre-sale requirements on broker-dealers (i.e. underwriters).
- The SEC and the MSRB lack similar authority with respect to issuers (due to the Tower Amendment to the Securities Exchange Act of 1934).
- Accordingly, the SEC lacks the authority to provide relief to issuers due to any violation of their continuing disclosure undertaking (e.g. filing their annual financial information late due to COVID-19 related difficulties).
- If an issuer is unable to timely file its annual financial and operating information, it should file a notice of failure to file, along with any other information required to be provided in its undertakings, on EMMA prior to the required filing date.

### **The Terms of the Undertaking Control**

- The continuing disclosure undertaking is a binding agreement between the issuer of (or the obligated person for) the bonds and the bondholders.
- Consequently, issuers and obligated persons should look to the terms of their undertakings as to what financial and operating information to report and when to report it.
- Unless the implications of the COVID-19 pandemic give rise to one of the reportable events under the Rule, an issuer or obligated person is not required to report them. Hence, there is no need for a general event notice regarding COVID-19, or a notice that an issuer's offices are closed due to personnel working from home to curb the spread of COVID-19.
- However, an issuer or obligated person can voluntarily report such circumstances. A guide to reporting required events under the Rule and the categories of voluntary disclosure on the EMMA can be found [here](#).

### **"Ratings Changes" and "Negative Watch"**

Another scenario (not discussed on the webinar) that may arise is actions by rating agencies putting many categories of bonds on "negative watch" for a potential downgrade as a result of the pandemic. The SEC has previously indicated in adopting statements for amendments to the Rule that this does not constitute a "ratings change" for purposes of the Rule, and does not require filing a notice with the MSRB.

April 2, 2020

### **Miller Canfield**

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- **Ed. Note:** Firms across the country have been posting state-specific summaries of Covid-19 rules and regs. As these are too voluminous for individual inclusion here, please visit [this site](#) and search for your jurisdiction.
  - [SEC Provides Additional Temporary Regulatory Relief and Assistance to Market Participants Affected by Covid-19.](#)
  - [Fitch Ratings Updates Public Sector, Revenue-Supported Entities Rating Criteria](#)
  - [NABL Asks IRS to Help with TEFRA, Debt Repurchase Problems: Squire Patton Boggs](#)
  - [NABL Pushing for Municipal Bond Relief Measures in Response to COVID-19: McNeese](#)

- [Muni Market Gets Support from Fed as Part of Wide Effort to Curb Virus Fallout, Self-Regulator Warns to Review Compliance.](#)
- [Federal Reserve Considering Additional Support for State, Local Government Finance.](#)
- [Senate Stimulus Takes Steps to Add Liquidity to Municipal Market.](#)
- [The Fed Enters the Municipal Bond Market to Lend Cities a Hand, but Will It Be Enough?](#)
- [CARES Act: Municipalities - Miller Canfield](#)
- [Webinar: Rating Agencies Speak on COVID-19](#)
- And finally, Swimming With Salmon is brought to us this week by [County of Cedar v. Thelen](#), in which a rancher had the genius idea of expanding his pasture land by “erecting electric fence within ditch right-of-way along county road.” The rancher had “erected the same type of fence in the same location at least seven times” and had already been convicted of three misdemeanors by the time the Supreme Court of Nebraska was called into action. One might think that multiple criminal convictions would serve as a deterrent. One would be wrong, as rancher “has indicated that he will continue to disregard notices in the future because the fine is only \$25.00, indicating cheap pasture rent.” But - having discovered this magic loophole - why stop there? Aquaculture in the county pool! Drop the kids off for daycare at the county jail! The possibilities are delightfully endless.

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## EMINENT DOMAIN - CALIFORNIA

### [Pakdel v. City and County of San Francisco](#)

**United States Court of Appeals, Ninth Circuit - March 17, 2020 - F.3d - 2020 WL 1270732 - 20 Cal. Daily Op. Serv. 2369 - 2020 Daily Journal D.A.R. 2350**

Co-owners of multi-unit building owned through tenancies-in-common brought § 1983 action asserting federal regulatory takings claim against city/county, its board of supervisors, and its department of public works, relating to city/county ordinance’s requirement, for expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property.

The United States District Court granted defendants’ motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Plaintiffs appealed.

The Court of Appeals held that:

- Co-owners’ belated request for exemption did not satisfy finality requirement for ripeness for federal court’s adjudication of federal regulatory takings claim, and
- Discretion to excuse noncompliance with prudential finality requirement would not be exercised.

City/county ordinance imposing requirement, for city/county’s expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property, was not an “exaction,” as would be subject to rough proportionality test for Fifth Amendment taking; lifetime lease requirement was a general requirement imposed through legislation, rather than an individualized requirement to grant property rights to the public imposed as a condition for approving a specific property development.

City/county ordinance imposing requirement, for city/county’s expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted

property, was not a physical taking, for purposes of Fifth Amendment taking claim asserted by plaintiff co-owners of multi-unit building owned as tenancies-in-common, where plaintiffs voluntarily applied for conversion under the program.

Co-owners of multi-unit building owned through tenancies-in-common failed to show final decision by city/county applying the challenged ordinance to co-owners' property, as would be required for ripeness for adjudication, in federal court, of federal regulatory takings claim asserted in § 1983 action against city/county, where a final decision was made before co-owners belatedly sought an exemption, from city's department of public works, from being required under the ordinance to offer any existing tenants post-conversion lifetime leases, which requirement was part of city/county's expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property.

Federal court of appeals would not exercise its discretion to excuse co-owners of multi-unit building owned through tenancies-in-common from nonjurisdictional prudential requirement, for ripeness for federal court's adjudication of federal regulatory takings claim, of showing final decision by city/county applying challenged ordinance to co-owners' property, on co-owners' appeal from dismissal of § 1983 action challenging ordinance's requirement, for expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property, where there were no concerns about different claims proceeding simultaneously in state and federal court, and city/county raised ripeness issue at first opportunity.

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## **OPEN MEETINGS - GEORGIA**

### **[Williams v. DeKalb County](#)**

**Supreme Court of Georgia - March 13, 2020 - S.E.2d - 2020 WL 1227278**

County resident brought action against county, chief executive officer, and members of the board of commissioners, setting forth claims for mandamus, declaratory, and injunctive relief, and criminal and civil penalties, based on allegations that commissioners violated the Open Meetings Act by not giving proper notice of their intent to pass ordinance increasing their pay and that statute giving commissioners authority to increase their own pay violated the state constitution.

The Superior Court dismissed the action. Resident appealed.

The Supreme Court held that:

- Plaintiff lacked standing to seek declaratory relief;
- Plaintiff lacked citizen standing to seek relief under the mandamus statute;
- Plaintiff lacked taxpayer standing;
- Remand was required to determine if plaintiff had standing to pursue claim against chief executive officer;
- As matter of first impression, plaintiff had standing to request civil penalty for violations of the Open Meetings Act;
- Plaintiff stated claim for violation of the agenda requirements of the Open Meetings Act; and
- Commissioners were not entitled to official immunity from Open Meetings Act claims.

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## **LEASES - INDIANA**

### **[City of New Albany v. Board of Commissioners of County of Floyd](#)**

**Supreme Court of Indiana - March 23, 2020 - N.E.3d - 2020 WL 1332950**

County brought action against building authority, which had been formed by county and city and from which county had been leasing a criminal justice center, for a declaratory judgment and specific performance as to county's alleged right under turn-over provision in lease to demand that building authority transfer title to the center.

After intervention in the action by city, which had been subleasing space in the center from county, the Superior Court entered a declaratory judgment in county's favor and ordered that title to the center be vested in the county. City appealed. The Court of Appeals affirmed, and adhered to that determination on rehearing. Parties petitioned for transfer, which the Supreme Court granted.

The Supreme Court held that turn-over provision in lease was valid under statute governing transfer of property between governmental entities.

Turn-over provision in lease for criminal justice center between lessor building authority, which had been created by city and county, and lessee county, providing that, upon expiration of term of lease, the authority would convey title to the center to the county upon the county's request, was valid under statute providing that governmental agencies could "transfer or exchange...property," though authority asserted that turn-over provision was inconsistent with statute granting authority power to "acquire real or personal property by gift, devise, or bequest and hold, use or dispose of that property," as property had not been gifted, devised, or bequeathed; transfer statute applied to governmental agencies, including but not limited to municipal corporations like building authority, and the statutes were not in conflict.

There was no conflict between the statute granting building authorities power to acquire property by "gift, devise, or bequest and hold, use, or dispose of that property," and statute providing that governmental agencies, including a building authority, could "transfer or exchange...property"; there was nothing to suggest that statute regarding powers of building authorities provided the sole manner for disposing of property belonging to an authority, fact that there were multiple statutes that gave authorities ability to transfer property did not mean statutes were inconsistent, absent some language indicating as much, statutes could operate under their separate requirements, and statutes were adopted during same legislative session, such that neither was supplemental to or overwritten by the other.

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## **HIGHWAYS - NEBRASKA**

### **[County of Cedar v. Thelen](#)**

**Supreme Court of Nebraska - March 20, 2020 - N.W.2d - 305 Neb. 351 - 2020 WL 1321467**

County filed civil complaint for a permanent injunction at same time as a criminal complaint charging landowner with obstructing a public road based on his repeated instances of erecting electric fence within ditch right-of-way along county road.

The District Court granted injunction following bench trial. Landowner appealed.

The Supreme Court held that criminal prosecution of landowner did not provide an adequate remedy

at law that would preclude injunctive relief for county.

Criminal prosecution of landowner for obstructing public road based on his repeated instances of erecting electric fence within ditch right-of-way along county road did not provide an adequate remedy at law that would preclude permanent injunctive relief for county, where multiple criminal prosecutions did nothing to curb landowner's behavior, and landowner expressed opinion that fines associated with repeat misdemeanor convictions were "cheap pasture rent."

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## **EMINENT DOMAIN - NEW HAMPSHIRE**

### **[Torromeo Industries v. State](#)**

**Supreme Court of New Hampshire - March 13, 2020 - A.3d - 2020 WL 1237205**

Property owner sought judicial review of determination of Board of Tax and Land Appeals (BTLA) ordering \$35,000 in just compensation for state's taking of owner's land by eminent domain.

The Superior Court awarded property owner \$70,800 in condemnation damages. After state's motion for reconsideration was denied, state appealed.

The Supreme Court held that:

- There was no evidence supporting determination that before taking value of residential lot was the same as its after taking value under sales comparison approach;
- Finding that there had been no change to rental income from residential lot following the taking was not dispositive with regard to whether lot changed value under income capitalization approach; and
- Even if there were evidence supporting determination that value of residential lot remained the same before and after the taking under the income capitalization approach, trial court's determination would not be affirmed on that basis.

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## **LIABILITY - WASHINGTON**

### **[Schulz v. State](#)**

**Court of Appeals of Washington, Division 3 - March 17, 2020 - P.3d - 2020 WL 1268991**

Landowners brought action against the Department of Natural Resources (DNR) to recover for property damage caused by forest fires, alleging the DNR was negligent in its efforts to suppress the fires on DNR managed lands, allowing the fires to spread to neighboring properties.

The Superior Court granted summary judgment for the DNR, and landowners appealed.

The Court of Appeals held that:

- Landowners failed to allege that the DNR failed to use due care to prevent the spread of fire from its land to neighboring properties, as required to state a claim for negligence based on a breach of the DNR's duty as a landowner, and
- The public duty doctrine applied to landowners' claims.

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## **Fitch Ratings Updates Public Sector, Revenue-Supported Entities Rating Criteria**

Link to Fitch Ratings' Report(s): [Public Sector, Revenue-Supported Entities Rating Criteria](#)

Fitch Ratings-New York-27 March 2020: Fitch Ratings has made minor updates to its "Public Sector, Revenue-Supported Entities Rating Criteria" (the Revenue Master) as part of the routine criteria review process.

Primary revisions to the criteria are: introducing the use of Stand-alone Credit Profiles (SCPs) to assess the stand-alone credit quality of U.S. enterprises that are related to a municipal government; clarifying when issue ratings may be capped by the related government's Issuer Default Rating (IDR); specifying the use of cash operating expenses in calculating liquidity cushion; and defining healthcare-related entities for which sector specific attribute assessments may be used in assessing Revenue Defensibility.

There is no impact on existing ratings from this update; however, Fitch did place three utility ratings on Rating Watch Negative and one Under Criteria Observation following the January revision of the "U.S. Public Finance Tax-Supported Rating Criteria" outlining the aforementioned related government rating cap. See 'Fitch Places 17 USPF Ratings on RWN/UCO Following Release of Revised Tax-Supported Rating Criteria' dated Jan. 17, 2020 for additional information.

This report replaces the criteria report of the same name dated Nov. 7, 2019.

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## **Impact of COVID-19 on Municipal Finance: Restructurings Inevitable (Part**



## **1): Sheppard Mullin**

“Only when the tide goes out do you discover who’s been swimming naked” – Warren Buffet

The tide has gone out on the municipal finance market.

While much of the discussion about the financial fall-out of the COVID-19 virus has focused on the massive wealth destruction in stock markets and pressure on corporates around the world, the impact on the largest financial market in the world- the \$3 trillion US municipal finance market- cannot be ignored. Simply put, the market is imploding.

In a market primarily driven by mammoth mutual funds and institutional investors, the “flight to cash” is clearly on. Selling pressure this week has pushed muni prices into free-fall, particularly on the short end of the curve. The primary market (where states, cities and other municipal issuers borrow and refinance) is essentially closed.

This is not a short-term correction. The longer-term implications of COVID-19 on the market and municipalities is daunting. Consider:

- many states and cities are dependent on sales and use taxes to fund their budgets. Florida and Nevada for example, depend on these taxes for 60% of their revenues. Curtailment of travel and leisure activities and consumer activity in general will quickly reduce these revenues.
- budgets in states like North Dakota, New Mexico and Oklahoma will be decimated by plunging oil prices
- financings dependent on project revenues will be at risk in numerous sectors such as sports stadiums, airports, toll roads, senior living facilities and student housing, to name a few.

Municipal reserves, where available, will help, but funding pressures will force many states and cities to turn to the Federal Government to maintain essential services. Recently announced Federal stimulus programs, including the expansion of the Federal Reserve’s Money Market Mutual Fund Liquidity Facility to include purchases of certain types of municipal securities, may help in the short-term.

But the challenges will be daunting and will reveal themselves only gradually. States and cities with strong reserves, a diversified tax base, well-funded pension and employee benefit plans and low debt will undoubtedly weather the storm. Other municipalities without those virtues will be pressured to adopt debt restructuring strategies, including debt adjustments under Chapter 9 of the Bankruptcy Code, on a scale that could eclipse the wave that followed the “Great Recession” of 2008-09.

Monday, March 23, 2020

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## **MSRB Suspends Price Variance Alerts for Dealers.**

### **Board Also Extends Comment Date for Proposed Governance Enhancements**

Today (March 23, 2020) in response to the significant impact that the spread of the Coronavirus Disease (COVID-19) is having on regulated entities, the MSRB is temporarily suspending the transmission of the price variance alerts for trades reported to MSRB’s Real-Time Transaction

Reporting System (RTRS) effective immediately.

As background, as of March 2019, the MSRB sends a price variance alert via email to a dealer when a transaction reported to RTRS by the dealer is at a price that is notably different (i.e., notably lower or higher) than the price reported to RTRS by other dealers in the same security within a specified time period. The price variance alert was designed as a tool to assist dealers in identifying transactions that may warrant review to ensure the information reported to RTRS reflects the trade price as intended. While dealers remain obligated under [MSRB Rule G-14](#) to ensure that the information being disseminated by RTRS is accurate, the price variance alert tool does not, in these current market conditions, serve its intended purpose of assisting firms in their efforts to comply with Rule G-14. Accordingly, the MSRB is temporarily suspending reporting on price variance alerts.

### **A-3 Deadline Extended**

The MSRB has extended the comment deadline on amendments to [MSRB Rule A-3](#) for an additional 30 days to April 29, 2020. [MSRB Notice 2020-02](#) requests comment on draft amendments to MSRB Rule A-3, on membership on the Board, designed to improve Board governance.

The BDA continues to draft comments and will provide to membership for review in the coming weeks.

The notice can be viewed [here](#).

### **Bond Dealers of America**

March 24, 2020

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## **[U.S. Income Tax Delay to Strain States.](#)**

### **Many state budgets run from July 1 to June 30, so new July 15 filing date means officials can't count on that money for current fiscal year**

The Trump administration's decision to move the deadline for filing income taxes to July 15 because of the new coronavirus crisis is creating a cash crunch for state governments that were counting on an infusion of state income-tax revenue next month to pay bills.

Many state budgets run from July 1 through June 30, so the new filing date—instead of April 15—means state officials can't count on that tax money for the current fiscal year. States could have to borrow in volatile financial markets or cut into their budgets between now and the end of June. The agreement reached early Wednesday between lawmakers and the Trump administration could also help if it includes general aid for state governments. Unlike the federal government, states must balance their budgets.

So far this week, states including Delaware, Colorado and Alabama have announced they would extend their filing deadline in line with the federal shift.

"You can have unintended consequences with the best of intentions," said Verenda Smith, deputy director of the Federation of Tax Administrators. "The choices that it left the state officials are all so gruesome," she said.

The Treasury Department's decision caught states by surprise. Although the move was intended to help struggling households and businesses, it left state officials in a bind, she said.

In most cases, taxpayers need to know how much they will pay in federal income tax before filing their state income taxes—and many states tie their deadlines to the federal government calendar. So postponing the federal filing deadline effectively postpones the filing deadline for state income taxes as well.

That means states can no longer count on that tax revenue coming in before the fiscal year ends on June 30. Last year, states collected \$65 billion in income tax revenue in the month of April, almost 18% of the annual total.

Income-tax dollars make up about a third of total state and local tax collections in California, New York and Massachusetts and even more in Oregon and Maryland, according to a Tax Foundation analysis. Overall, about 23.5% of total state and local tax dollars came from income taxes in 2016, the most recent year for which data was available. Roughly the same amount came from sales taxes, which analysts also expect will be hit hard amid the slowdown in consumption. A handful of states—including Florida, Texas and Nevada—don't have a state income tax.

Over the past few days, states have been scrambling to figure out how to relieve that budget pressure. One option is to cut programs or furlough state workers, something officials are loath to do, especially now that so many people are out of work due to the coronavirus-related layoffs. Another option would be to issue short-term debt.

"April 15 is just around the corner, that's when they would have counted on a big infusion of cash from income taxes, that's going to be pushed off for three months so that puts them in a big bind," said Don Boyd, co-director of the State and Local Government Finance Project at Rockefeller College.

The income-tax dollars most states and some big cities collect on a continuing basis from workers' paychecks are likely to begin declining even sooner, Mr. Boyd said, as companies lay off employees and workers' income falls. He expects the sales taxes that states and many cities rely on will also fall beginning in April when vendors generally send in taxes collected on transactions in March.

"They are going to be strapped for cash," he said.

Borrowing against future revenues could also be costly. Prices have jumped in the municipal-bond market as investors have fled to cash and Treasuries, causing a spike in short-term interest rates last week. Rates fell somewhat after the announcement of a Federal Reserve liquidity program Monday but remained well above normal levels.

Compounding the problem is the fact that many state legislatures, whose approval is often required to make major spending decisions, have been sent home as a precautionary measure. So far, statehouses in 22 states have shut down due to coronavirus concerns.

The new filing deadline means Rhode Island could run out of cash in weeks, said Seth Magaziner, the state's treasurer. State officials are exploring short-term borrowing and moving pots of money from one state account to another to make up the shortfall, Mr. Magaziner said.

Since Rhode Island lawmakers aren't meeting because of the virus, a special emergency board will convene this week to authorize the moves.

"Our immediate concern is on solving our cash flow issues in the coming weeks and months and then

we will turn our attention to those longer-term issues,” Mr. Magaziner said.

Last year, about 16.4% of the state’s personal income tax revenue came during the month of April.

Pennsylvania is also anticipating that the tax-filing delay will push “a significant amount” of revenue out of this fiscal year into the next, said Matthew Knittel, director of the state’s Independent Fiscal Office. The office anticipates an immediate, large reduction in motor vehicle sales tax following the closure of car dealerships.

## **The Wall Street Journal**

By David Harrison and Heather Gillers

March 25, 2020 9:42 am ET

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### **S&P: U.S. State Unemployment Insurance Claims Are Not An Immediate Challenge To State Liquidity**

NEW YORK (S&P Global Ratings) March 23, 2020—While the economic fallout from potentially massive unemployment levels will be a credit challenge for U.S. states, S&P Global Ratings does not believe that near-term state liquidity pressure will stem directly from payments on unemployment insurance claims that have recently spiked because of the coronavirus pandemic.

This is because the program structure allows states to receive federal loans, if necessary, to cover state unemployment insurance trust fund deficiencies, if any, under current law. These federal loans must eventually be paid back to the federal government, however, through higher taxes on businesses or through other means.

During the Great Recession, some of these federal loans became quite substantial (see “Unemployment Insurance Fund Bonds Help States Pay Off Federal Unemployment Loans,” published Sept. 6, 2012, on RatingsDirect) and in some cases prompted states to issue bonds carrying lower interest rates to pay off higher-interest federal unemployment insurance loans. In the first quarter of 2012, loans from the federal unemployment account reached \$40.7 billion. In 2011, California’s unemployment loan from the federal government peaked at \$11.0 billion alone. As of Dec. 31, 2019, federal unemployment account loans were only \$63.3 million, attributable entirely to the Virgin Islands, and aggregate state unemployment trust fund balances were \$75.7 billion. While the federal government has indicated that certain states have below-optimal levels of state trust fund balances (such as California at \$3.3 billion as of Jan. 1, 2020), we believe the ability to tap into federal loans relieves short-term unemployment trust fund liquidity pressures for any particular state.

If states meet certain technical requirements and maintain a certain threshold of unemployment insurance tax rates on businesses over time, they can initially receive these federal unemployment trust fund loans interest-free. Qualifying states receive interest-free federal unemployment loans if a state takes a federal advance after Jan. 1, and repays it by Sept. 30, of the same year. After that, interest charges are imposed and if the state continues to fail to repay the loan by Nov. 10, of the year in which a second Jan. 1, has passed, then all taxable employers in a state will be subject to a reduced credit of 0.3% on the Federal Unemployment Tax Act tax, for which the credit reduction grows in subsequent years depending on state tax rates and changes in state law. For 2020, 31 states meet the eligibility criteria for interest-free borrowing.

The Louisiana Workforce Commission announced on March 19 that employers within the state will get a temporary deferral from paying their first-quarter 2020 unemployment taxes to June 30. If similar deferrals spread to other states, it could cause the amount of federal unemployment loans to rise higher than what they might be otherwise, but again would be unlikely to cause near-term state liquidity issues. These funds would still need to be repaid to the federal government from later business taxes, but potentially at a higher tax rate.

S&P Global Ratings will continue to monitor unemployment insurance trust funds and the extent to which higher taxes that are imposed on businesses to replenish these funds could reduce economic competitiveness, or cause a state to issue tax-backed debt to repay federal loans. However, we believe the short-term credit effects are limited.

This report does not constitute a rating action.

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## **S&P: Mass Transit Agencies' Priority Lien Revenue Bond Outlooks Revised To Negative On Anticipated COVID-19 Pressures**

CENTENNIAL (S&P Global Ratings) March 27, 2020–S&P Global Ratings revised its outlook to negative from stable on several long-term and underlying ratings on bonds issued by mass transit agencies and secured by priority lien tax revenue pledges. The negative outlooks provide notification to market participants 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).

This action applies to the ratings of approximately 20 issuers, and 215 unique ratings.

We simultaneously published an outlook revision for all ratings in scope of our Mass Transit criteria (see our article published March 26, 2020). We believe that there is at least a one-in-three chance that the general creditworthiness of the transit obligors could be downgraded in the intermediate term, which could pressure the associated priority lien ratings on bonds issued by mass transit agencies.

As the COVID-19 virus spreads and social distancing efforts intended to slow the infection rate and flatten the curve of the virus slows local economies to a virtual halt, S&P Global Ratings is of the view that the nation and world have entered a recession, with firmer projections under our base case forecasts for a slowdown in global GDP growth, and 1.3% decline in U.S. GDP in 2020 (please see our articles “It’s Game Over For The Record U.S. Run; The Timing Of A Restart Remains Uncertain”, published March 27, 2020 on RatingsDirect, and “Global Macroeconomic Update, March 24: A Massive Hit To World Economic Growth”, published March 24, 2020 on RatingsDirect.) The outlook revisions reflect our view that the emerging recession and social distancing-driven declines in activity levels will likely place material pressure on the credit profiles of priority lien tax revenue bonds issued by mass transit operators.

Per our priority-lien criteria, we assign issue ratings based on both the strength and stability of the pledged revenue, as well as the obligor’s general credit quality. For the credits included in this outlook revision, we assess the obligor’s general credit quality by applying our criteria, Mass Transit Enterprise Ratings: Methodology and Assumptions.

The mass transit operators that we rate under “priority-lien” criteria derive a significant share, and often a substantial majority of total revenue from taxes, typically locally levied sales with a minor

portion from other dedicated taxes. We believe potential rating actions or outlook revisions may occur and will likely be driven by the magnitude of several factors, each of which may pressure pledged revenue streams and obligors' general creditworthiness. These may include:

- Significant declines in pledged tax revenue caused by the abrupt and sharp decline in economic activity driven by COVID-19 and related social distancing efforts;
- Extreme declines in mass transit ridership levels, with an uncertain timeline for a resumption of normal activity;
- Expenditure pressure, as many transit operators incur unexpected additional costs for intensive cleaning of buses and rail cars;
- Budgetary strain as many operators have reduced or eliminated fares, while maintaining normal or near-normal service levels in the first few weeks of declining ridership.

The prospect for state and federal aid, in addition to these issuers' generally strong credit profiles may limit downside pressure for some or all of these credits. In addition, we view favorably the \$2 trillion federal stimulus package, which identifies a total of \$25 billion for transit operators expected to be administered through existing Federal Transit Administration using fiscal 2020 formula funding mechanisms. While there is potential that the stimulus bill could positively affect this portfolio, we will be evaluating the implications for individual transit operators as part of our ongoing reviews.

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## **[S&P Ratings Outlooks On U.S. Transportation Infrastructure Issuers Revised To Negative Due To COVID-19 Pandemic.](#)**

BOSTON (S&P Global Ratings) March 26, 2020—S&P Global Ratings today revised to negative the outlooks on nearly all long-term debt ratings in the U.S. transportation infrastructure sector due to the severe and ongoing impacts associated with the COVID-19 pandemic. We believe the dramatic contraction of the global and U.S. economies and virtual collapse of travel and mobility across the transportation subsectors is a demand shock without precedent, with no definitive indication at this time regarding its duration and severity as well as the follow-on effects of an economic recession. The outlook revisions to negative of each issuer and issuer credit rating follows on our updated overall view of the sector (see "U.S. Transportation Infrastructure Sector Outlook Update: Now Negative For All Sectors" published March 16, 2020, on RatingsDirect).

We are affirming the ratings and outlooks for transportation infrastructure issuers with existing negative outlooks and not modifying the ratings or outlooks of debt secured by federal transportation grants.

The expected passage into U.S. law of an approximately \$2 trillion federal stimulus package that includes direct financial aid to airport operators (\$10 billion) and transit authorities (\$25 billion) is viewed favorably and will alleviate immediate liquidity pressures, as well as assist with near-term operational funding requirements including debt service. Aid to the airline industry, in the form of loans and loan guarantees, should also support payments from airline tenants to airport operators. However, long-term credit implications across all sectors have yet to unfold, and we expect greater visibility on the broader impacts on issuers' financial and business profiles in the coming months.

[Continue reading.](#)

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## **Empty College Dorms Pose Payback Dilemma for Bond Issuers.**

- **Refunding housing fees cuts revenue backing bond debt**
- **S&P Global Ratings cut its private student housing outlook**

Students and professors at universities aren't the only ones wondering when schools will re-open. Bondholders and stockholders also have a vested interest in getting them back on campus.

As colleges across the country send students home and transition to online learning amid the coronavirus pandemic, managers of student housing that rely on dorm-room revenue are rushing to figure out whether or not students can terminate their leases and how to pay back bondholders financing those projects.

"When the schools will reopen again with normal occupancy schedules remains a question for bondholders," Eric Kazatsky, senior municipals strategist at Bloomberg Intelligence, said in a recent report.

S&P Global Ratings cut its outlook for the private student housing sector to negative on Wednesday, citing expected challenges from the sudden and potentially prolonged decline in student housing occupancy and associated loss of rental revenue.

Student housing projects that are lower-rated or have "cash cushions" of less than 90 days are most at risk, Kazatsky said. Of 252 student-housing projects, 144 have cash-on-hand levels of less than a year and 32 have less than 90 days of cash available, he added. About 67% of those student-housing projects are backed by an entity not related to the university while the rest are supported by the colleges.

### **Refunds**

Some of the richest schools have already said they would refund room and board, including Harvard, Amherst and Princeton. Brown University said students will receive a credit if they return when school resumes or they will get a prorated refund if they graduate.

But for some colleges like West Chester University outside Philadelphia, Pennsylvania, issuing refunds threatens the cash flow backing debt.

"Refunding or crediting rents would have an adverse impact on (university student housing) cash flow, and savings from reduced operating expenses would not be sufficient to make up for the revenue reduction," the Chester County Industrial Development Agency said in notice to bondholders March 16.

Companies that build and manage student housing are scrambling to figure out what to do now that students have fled home. American Campus Communities Inc., the largest owner, manager and developer of student housing in the U.S., said it will temporarily waive all late fees and financial-related eviction proceedings and said it will work with residents and families who endure financial hardship on a case-by-case basis.

The company's stock price rebounded Monday after it said it wouldn't offer lease terminations and refunds at its private off-campus apartments as students leave colleges. It rose 5.4% to \$29.84 on Thursday.



Provident Resources Group, with more than 21,000 beds of student housing across country, has been “inundated with inquiries about the impact of COVID-19,” Steve Hicks, chairman and chief executive officer, said in an interview.

Hicks said Provident is not in the position to unilaterally decide that it can issue refunds, adding that it’s the universities that are making the decisions to close the schools, sometimes due to government guidelines.

“They’re making the decision and we would expect the university, which has a lot more resources than one student housing property, to make the refund to the students through the student’s account at that one particular campus,” Hicks said.

Hicks said any decision on refunds needs to be made in concert with its bondholders, investors and the universities.

Around \$14 billion of the stimulus package passed by the Senate would go to colleges and universities as they respond to the pandemic.

It is too early to tell what relief Provident’s higher education projects might be able to obtain as a result of this legislation, Hicks said. As of Thursday afternoon, Provident’s chief legal officer and outside counsel were reviewing the bill to determine which projects might be eligible for financial assistance.

“We are focusing on which of the projects, if any, might qualify for a loan or an SBA loan to assist in some of the challenges we are facing from COVID-19,” Hicks said.

Still, there will probably be some leniency on bond payments, said Steven Agran, managing director at Carl Marks Advisors, where he leads the restructuring firm’s higher education practice.

“This is really extraordinary so I think extraordinary responses will be the norm more than you’d usually expect,” Agran said.

*Bloomberg Markets*

By Mallika Mitra and Janet Lorin

March 27, 2020, 6:30 AM PDT

— *With assistance by Amanda Albright*

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## **[Fitch Ratings Updates U.S. Public Finance College and University Rating Criteria.](#)**

Link to Fitch Ratings’ Report(s): [U.S. Public Finance College and University Rating Criteria](#)

Fitch Ratings-Chicago-26 March 2020: Fitch Ratings has published the following updated report: “U.S. Public Finance College and University Rating Criteria.” This report updates the prior report published on June 3, 2020. The key elements of Fitch’s college and university rating criteria remain consistent with those of its prior criteria report (which has been retired), and include an update to two appendices related to sector scenario analysis. This update will not impact ratings.



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## **Hospitals Putting Bond Issues on Hold Amid COVID-19 Outbreak.**

A number of not-for-profit health systems have postponed sizable new bond issuances given the significant uncertainty COVID-19 has thrown into the municipal bond market.

It's not just healthcare—the trend is happening across the municipal market. Volatility has prompted interest rates to skyrocket and has made pricing bond offerings extremely difficult. Billions in new issuances have been put on hold since last week.

"It happened pretty drastically," said Rick Kes, healthcare senior industry analyst with RSM. "This is unlike anything we've seen before."

Evanston, Ill.-based NorthShore University Health System, for example, is delaying a roughly \$400 million debt issuance. TriHealth in Cincinnati, Ohio is delaying its \$200 million issuance. Stanford Health Care has postponed issuances worth more than \$940 million.

It's a sharp departure from where the municipal bond market had been weeks ago. In November, health systems had been issuing bonds at a feverish pace to lock in historically low interest rates.

The municipal bond market is typically viewed as being one of the more secure options for investors, until now.

"In most previous downturns, municipal bonds are held off as an offset for market declines," said Sudip Mukherjee, a senior municipal credit strategist in UBS' Chief Investment Office. "In this one, pretty much all bets are off."

Mutual funds selling is lowering prices and driving up yields market-wide, which is making it more expensive to sell securities right now, Lisa Washburn, managing director and chief credit officer with Municipal Market Analytics, wrote in an email.

"It's just not a jumping in point right now for those that can wait until the market settles down a bit; there is too much uncertainty at this point," Washburn said.

Stanford's postponed issuances include about \$420 million tax-exempt debt and about \$520 million in taxable debt, said Howard Sitzer, senior municipals analyst with CreditSights. Stanford did not return a request for comment. Sitzer said the health system indicated it tentatively plans to access the market as early as next week on a day-to-day basis.

NorthShore said its delay is due to the national emergency related to COVID-19 and the related "turmoil" in the financial markets.

TriHealth planned to use the proceeds of its bond offering to refinance debt and build a new heart hospital on its Bethesda North campus, spokesman Rob Whitehouse wrote in an email. The health system has not yet determined when it will issue the debt. Administrators weren't available for an interview because they were involved in COVID-19 planning, Whitehouse said.

Sitzer said he's not concerned about hospital finances because most of them have "exceptionally" liquid balance sheets due to the demands of bond analysts and rating agencies, which require they have lots of days cash on hand.

That said, until the number of new COVID-19 diagnoses peaks in the U.S., Sitzer said he doesn't expect to see much new issue activity in the municipal bonds market, including from healthcare providers.

"The market is such that it'll be extremely costly and difficult to price because you've got to have some sense on a daily basis of what the demand is," he said. "I just think the vast majority of municipal bond issuers are going to be on hold for a while now."

Despite the uncertainty facing healthcare more broadly, Mukherjee said he expects children's hospitals and large health systems with a national footprint and strong liquidity will remain financially stable through the downturn.

Not all health systems are holding off, however. Kevin Holloran, a senior director with Fitch Ratings, said Froedtert Health in Wisconsin is moving ahead with issuances. The health system did not return a request for comment.

Holloran said this is quite the switch for the municipal market, which had been a seller's market for the past decade.

"All of a sudden, in a period of weeks, pendulum may swing back to make it more of a buyer's market," he said. "I want more protections, more covenants, because there are more unknowns."

MODERN HEALTHCARE

by TARA BANNOW

March 19, 2020 04:43 PM

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**[S&P Not-For-Profit Acute Care Sector Outlook Revised To Negative Reflecting Possible Prolonged COVID-19 Impact.](#)**

**Key Takeaways**

- We have revised our not-for-profit acute health care sector outlook to negative due to the quickly evolving COVID-19 pandemic and the subsequent investment market deterioration which could pressure credit quality.
- We believe certain credits, especially those with healthy unrestricted reserves and liquidity, may be better able to manage through this crisis.
- Duration, location, and severity will be important considerations in determining the broader impact of this pandemic on the sector.

S&P Global Ratings is revising its sector outlook on the not-for-profit acute health care sector to negative from stable due to the rapidly evolving COVID-19 pandemic that has created additional and significant uncertainty in the industry and may lead to a higher than typical rate of negative outlook revisions or rating changes in 2020 if the crisis is prolonged. For all health care organizations, we believe the pandemic will result in sizeable increases in operating costs, particularly for labor and supplies, reduced volume and revenues related to elective and non-essential health care needs, reliance on working capital lines of credit, and material declines in unrestricted reserves and non-operating revenue as the investment markets weaken. These added constraints are coming at a time when organizations were already under some revenue and expense pressure related to industry dynamics and balance sheet strength had been a stabilizing factor. (See “U.S. Not-for-Profit Health Care 2020 Sector Outlook: A Precarious Balance As Evolution Continues,” published Jan. 9, 2020, on RatingsDirect.)

The duration of this pandemic is certainly one of the key unknowns and if contained to the second quarter of the year, we believe many of our rated organizations will be able to manage through it, although we believe there are certain hospitals and health systems that may not be positioned to hold their ratings and outlooks primarily due to weak pre-COVID-19 credit characteristics. About 30% of our not-for-profit acute health care credits are in the ‘BBB’ category and below, and 45% in the ‘A’ category. These credits could feel a more pronounced impact to credit ratings depending on the trajectory of the outbreak, their unrestricted reserves and liquidity, their reliance on non-operating revenue to attain required debt service coverage, and high contingent liabilities including strict covenants that may be breached. Hospitals located in regions where the virus’ prevalence is high, such as urban and suburban providers in densely populated regions, will also likely experience disproportionate cost and revenue pressure. Conversely, multi-state health care systems may be able to use their diversity to help offset the risks in one market with another and some regional systems could use their facilities and locations to manage some of the capacity and resource challenges.

We expect the COVID-19 outbreak will have an overall negative impact on hospital profitability for many not-for-profit systems and standalones, and the extent of that negative impact will be a function of duration, severity, and location of outbreaks. In addition to higher expenses related to labor and supplies, we believe the deferral of elective outpatient services and procedures by hospitals and patients will result in a sizeable negative impact to hospitals and the duration of deferral of those services, as well as the time to ramp operations back up to normal, remains unknown. While some of this is likely to be offset by inpatient revenue related to COVID-19 patients, it will likely not compensate for that full amount. Higher bad debt expense and uncompensated care could also be a factor as individuals face unemployment or underemployment given the secondary impact of certain businesses needing to shut down. For management teams that were focused on operating improvements and new strategic initiatives, those strategies are likely to take a back seat at this time.

Healthy balance sheets were one of the factors supporting our stable outlook in January, but that strength and flexibility will be challenged due to both potential weaker cash flow as a result of operating losses and limited non-operating income, as well as lower reserves caused by investment

market declines. Many of the not-for-profit systems and hospitals have built up unrestricted reserves over the last several years. However, we believe that investment market volatility and a recession could put a squeeze on that flexibility depending on the specific credit. In addition, the weakening economy and a recession will have secondary impacts, such as reduction in philanthropy.

While some credits are more insulated than others, analytical considerations that we will monitor related to the COVID-19 pandemic and that could determine credit rating impact include:

- Operating flexibility and ability to use other facilities and hospitals to support the significant demand and capacity resources;
- Low levels of unrestricted reserves and liquidity along with asset allocation;
- Liabilities and cash demands including pension and capital projects; and
- Overall access to capital, liquidity and cash management as investment markets remain challenged.

In addition to the recent investment volatility, short-term borrowings and the long-term bond market have been challenged over the last week and to the extent that this continues, that could be added pressure to access capital and manage liquidity. Any credit rating changes or outlook revisions would be credit-specific.

We recognize that there may be more clarity over the next few months for how long this pandemic will remain in an acute stage, what types of therapies may be available, and how the U.S. health care system will respond and adjust over time. State or federal assistance could support hospitals with funding which could help to offset some of the costs and losses and we expect this will be an ongoing area of discussion. As this remains a very fluid situation, we will continue to review and update our view on the sector as more information is made available.

This report does not constitute a rating action.

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## **[Schools, Transit, Hospital Funding Included in Senate Coronavirus Bill.](#)**

**Senate leaders agreed on a package that includes \$340 billion for relief efforts boosting schools, hospitals and state and local governments, as well as a \$150 billion fund specifically to help states and localities fight the pandemic.**

The Senate's historic \$2 trillion relief package to address fallout from the coronavirus outbreak would provide billions to assist local and state governments with both their escalating economic challenges and efforts to respond to the disease.

A [summary](#) detailing new expenditures as authorized by the Appropriations Committee shows the measure includes \$340 billion for relief efforts targeting schools, hospitals and state and local governments. The package includes expansion of all kinds of aid administered at the state and local level, from heating assistance to food stamps, as well as funding to bolster deserted transit systems and airports.

The measure also include \$150 billion to help compensate states and localities for the money they are spending to respond to and attempt to contain the pandemic.

After days of sometimes barbed exchanges between Republicans and Democrats on priorities for the package—the third one Congress has worked on in response to the the coronavirus—the Senate

approved the Coronavirus Aid, Relief, and Economic Security (CARES) Act in a unanimous 96-0 vote. The sprawling legislation agreed to by senators and the White House would send \$1,200 direct payments to many Americans, as well as provide funding for loans for both small and large businesses and aid to people who've been forced out of work by coronavirus shutdowns.

However, disagreements over one provision in the bill emerged Wednesday as a small group of Republican lawmakers said they were concerned that a benefit included in the package giving unemployed people a \$600 weekly supplement for four months could incentivize them to not return to the workforce. The \$600 benefit paid by the federal government would be in addition to the variable weekly benefits paid by states.

Eventually, the lawmakers offered an amendment to change the benefit, which failed. After the Senate's approval, the bill now heads to the House.

Included in the appropriations portion of the bill is a \$30 billion Education Stabilization Fund for states, school districts and colleges and universities. The fund would help schools develop and implement plans to provide online learning for students, which is something many school systems across the country are trying to implement as schools close to prevent the spread of the virus.

About \$13.5 billion of the money for schools would be awarded through formula grants to local school districts. The money could be used for basics like cleaning supplies, as well as educational technology like hardware, software and connectivity devices to aid students. Another \$3 billion would be provided to states and could be used at governors' discretion to fund local education agencies that have been most significantly impacted by the outbreak.

The National Education Association and other groups wrote to lawmakers this week asking them to bolster funding for hotspots, connection devices and mobile wireless service that they said would aid students who lack access to the internet and are unable to connect to virtual classrooms.

"We urge Congress to include in the final bill the robust remote and distance learning provisions found in the House's version of this bill and ensure that all students can continue their education online for the duration of this national emergency," the groups wrote.

The measure also includes \$100 billion in grant funding for hospitals and other public health providers that could be used to cover lost revenues and unreimbursed healthcare related expenses related to the coronavirus outbreak.

The Centers for Disease Control and Prevention would also provide \$4.3 billion in support for federal, state, and local public health agencies that could be used to prepare for and respond to the pandemic. Money could be used to purchase personal protective equipment, virus surveillance, laboratory testing, and to pay for personnel to conduct contact tracing to identify how the virus is being spread.

Transit services, which have seen ridership plummet as businesses have shut down and Americans have been ordered to stay home, would also see a boost. The bill includes \$25 billion that would be distributed via formula grants.

"\$25 billion will help alleviate the worst of the crisis in the short term but we also don't know how long the crisis is going to go on," said Steve Davis, a spokesman for Transportation for America.

A report out this week from TransitCenter estimates transit agencies across the country could see an annual shortfall of \$26 billion to \$38 billion.

The \$340 billion detailed in the appropriations document is in addition to \$150 billion allotted for a Coronavirus Relief Fund specifically designated to provide state, local, and tribal government with additional resources to address the pandemic.

Two governors on Wednesday said the direct aid to states as outlined in the Senate's aid package was not enough and indicated they would continue to lobby lawmakers in the House to increase the amount.

New York Governor Andrew Cuomo was particularly critical of the Senate's aid package, saying the \$3.8 billion it provided directly to his hard-hit state "is a drop in the bucket as to need." A rival proposal drafted by House Democrats would have provided \$17 billion directly to New York, Cuomo said.

"We need the House to make adjustments," Cuomo said.

States are largely shouldering much of the initial cost of the response to the pandemic outbreak, and Cuomo said New York's response could top \$15 billion.

Maryland Governor Larry Hogan, who serves as chairman of the National Governors Association, urged senators to pass the bill. But he also emphasized that governors had made a pitch for their states to receive much more from the aid package.

"Last week, the governors requested that one half of the federal stimulus package go directly to the states," Hogan said. "The good news is the Senate has agreed to some aid to the states. And while it is not enough, I know they are negotiating back and forth with the House and it is encouraging that both parties have come to an agreement."

## **Route Fifty**

By Andrea Noble,  
Staff Correspondent

MARCH 25, 2020

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### **[States Need Coronavirus Relief for Pensions and Health Care.](#)**

(Bloomberg Opinion) — States and localities have been leading the nation's response to the coronavirus — and unless Congress further intervenes, they're going to pay for it.

While the Senate's \$2 trillion stimulus bill includes relief for individuals, families and businesses limping through the current slowdown, it's barely going to dent the impending budget increase for state and local governments. Medicaid and retiree pension costs — already the two most problematic spending areas for governments — will balloon as result of the Covid-19 crisis. Congress can help with both.

Start with Medicaid spending, which has rapidly grown over the past decade thanks to expansion and the rising cost of health care. It now accounts for 17% of state spending, up from 14% in 2008. In New York State, the epicenter of the coronavirus outbreak, Medicaid costs are already a whopping 28% of the budget.

Anticipating the skyrocketing costs to come, the nation's governors have asked Congress to temporarily increase federal matching funds by a minimum of 12 percentage points. The previous relief bill, the Families First Coronavirus Response Act signed last week, does allow for a temporary 6.2 percentage point increase in the regular federal matching rate for the emergency period. But it does not apply to qualified adults under the Affordable Care Act, even though it requires that states provide free coronavirus-related testing and treatment to all enrollees.

The current Senate bill includes \$300 billion in combined aid for hospitals and state and local governments. But it's likely this will go to supplies and personnel, not mounting Medicaid bills. If Congress were serious about helping states, it would give governors the larger federal match they asked for. At a minimum, it would extend the current 6.2-point increase to cover ACA expansion adults.

Pensions are another matter. The stock market has lost about one-third of its value since mid-February and public pensions, which are heavily invested in stocks, are likely to have their worst year since the 2008 financial crisis. Pension assets still haven't recovered from those losses, and making up for these new losses over the next few years will be all but impossible.

Congress doesn't — and shouldn't — have control over state and local pensions. But it can offer a tool for public pensions to help with what Moody's Investors Service estimates will be a \$1 trillion loss in investments. Pension obligation bonds, when governments issue debt and put the proceeds into pension systems, are generally frowned upon as a gamble by public finance experts. Such bonds are taxable, so governments pay a higher interest rate for them, and correctly timing investments made with the bond proceeds requires some luck. But this is a moment when they may be worth it.

Stocks are cheap now, and so are borrowing costs. The federal government can sweeten the deal even more by making these bonds tax-exempt for qualifying governments, which would lower borrowing costs even more. In fact, before the 1986 tax reform, these bonds were tax exempt.

Such a move might not be advisable for every pension plan; after all, pension bonds turn "soft" pension debt into hard bond debt with penalties for nonpayment. But for many, a boost in assets now would likely produce a welcome return on investment over the next few years and ultimately help stabilize government pension bills.

Unlike any economic crisis in the modern era, the driver of this slowdown isn't a familiar industry like tech or finance. It's a virus about which very little is known and which requires people staying away from one another. The usual government policy response — an economic stimulus to get people out and working again — isn't a viable option. It's a daunting prospect for local leaders.

And yet those leaders have been on the front lines of the Covid-19 crisis anyway, making difficult but necessary policy decisions that are blowing holes in their budgets. It took nearly a decade for most state and local governments to recover financially from the last economic crisis. Congress can and should do a lot more for them this time around.

## **Bloomberg Opinion**

by Liz Farmer

March 26, 2020

This column does not necessarily reflect the opinion of Bloomberg LP and its owners.

Liz Farmer, a research fellow for the Rockefeller Institute of Government and a former fiscal policy

reporter for Governing magazine, is a freelance writer who lives in Maryland.

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## **U.S. Public Pension Funds Face Nearly \$1 Trillion in Losses - Moody's**

CHICAGO, March 24 (Reuters) - The market crash and the economic fallout from the coronavirus has led to nearly \$1 trillion in investment losses for U.S. public pension funds, Moody's Investors Service said on Tuesday. The credit rating agency said the funds are generally facing an average investment loss of about 21% in the fiscal year that ends June 30, based on a March 20 snapshot of market indices.

"Without a dramatic bounceback of investment markets, 2020 pension investment losses will mark a significant turning point where the downside exposure of some state and local governments' credit quality to pension risk comes to fruition because of already heightened liabilities and lower capacity to defer costs," said Tom Aaron, a Moody's vice president, in a statement.

(Reporting By Karen Pierog Editing by Sonya Hepinstall)

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## **S&P Pension Brief: Liquidity Is A Rising Concern For U.S. Public Pensions In Down Markets**

### **Table of Contents**

- Weak funded ratios and high discount rates increase liquidity risk
- Related Research

Given the current market downturn, U.S. public pension plans may experience liquidity stress to cover benefit payments. Through periods of continued volatility, assets in plans with weak liquidity are likely to be sold at a loss and may contribute to decreasing funded ratios. In our opinion, poorly funded plans and high discount rates may be indicators of excessive liquidity risk.

In the U.S., plans have an average of 1% of their target portfolios held in cash and short-term investments to pay ongoing expenses, such as benefit payments and administrative costs. A liquidity-to-assets ratio can be useful in determining the liquidity risk, if any, of a pension plan.

[Continue reading.](#)

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## **Commentary: The Time is Ripe for Public Pension Obligation Bonds**

It's finally now time for public pension funds and their sponsoring employers to make lemonade from lemons. The market value of public pension stock portfolios has shrunk dramatically in the shadows of the COVID-19 crisis, coupled with the recessionary impact of the Saudi-Russian oil price war. Stock indexes are down 35% or more from their peaks just earlier this year, in a dramatic sell-off.

As trustees and chief investment officers scramble to quell fears of stakeholders, and public finance officers watch their sales and income tax revenues plummet, liquidity and even solvency fears are



resurfacing in some places. The potential inability of state and local governments to sustain their pension promises is once again making the news.

Before we start ringing the alarm about pension funding and pension deficits, it's now the time to revisit a worthwhile public finance strategy and instrument that may be able to come to the rescue of public employers. It works for both their underfunded pension funds as well as their often unfunded retiree medical benefits, known as other post-employment benefits, or OPEB. The pension obligation bond, and its more appropriate "benefits bond" cousin for OPEB plans, could never be more timely — and more vital to the future health of states and municipalities.

[Continue reading.](#)

## **Pensions & Investments**

by Girard Miller

March 25, 2020

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### **[NABL Pushing for Municipal Bond Relief Measures in Response to COVID-19: McNeese](#)**

The National Association of Bond Lawyers ("NABL") recently sent a [letter](#) to Congress, outlining some measures it recommends Congress adopt to combat the economic downturn related to the Coronavirus COVID-19 Pandemic. The suggestions are a mix of previously-made requests and new suggestions to inject additional liquidity into the market.

NABL's recommendations, addressed to the top Republican and Democrat members in both the House and Senate, consist of the following:

- Reinstatement of ARRA-Era Bond Programs, such as Build America Bonds, at non-sequestration subsidy levels
- Relax the working capital rules in Sections 1.148-1(c) and 1.148-6(d) of the Regulations for coronavirus-related deficit financings
- Authorize the direct purchase of state and local bonds by the federal government (e.g., through passage of the Bond Market Emergency Relief Act)
- Eliminate or limit the prohibition of federal guarantees of tax-exempt bonds under Internal Revenue Code section 149(b)
- Reinstatement of tax-exempt advance refundings
- Remove, or substantially increase, the \$10M cap on qualified tax-exempt obligations under Code section 265
- Temporarily permit institutional investors to count municipal securities towards their liquidity coverage ratio
- Temporarily suspend the private activity bond rules under Code section 141 to encourage additional partnerships with private enterprise
- Authorize additional types of private activity bonds previously eliminated by prior tax reform measures, to help small businesses
- Eliminate volume cap limits on single- and multi-family housing bonds for the next three years.

As Congress is still debating additional stimulus measures in response to the growing crisis, it is possible that some of these suggestions may appear in a final bill. The attorneys of the [McNeese](#)

[Public Finance Group](#) will continue to monitor this fast-moving situation as it develops.

by Timothy Horstmann

March 24, 2020

**McNees Wallace & Nurick LLC**

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## **[Impact of COVID-19 on Local and State Governments.](#)**

**Capital markets around the world have felt the wrath of the COVID-19 threat, and investors are asking whether a global recession is imminent.**

Consider the following facts:

- The S&P fell close to 1,000 points from Feb 24 to March 23 (3,225 to 2,237), recording a 31% loss;
- The small and non-essential businesses will be hardest hit along with their employees;
- The hardest hit areas in the U.S are also seeing rising unemployment numbers; and
- The federal government's financial stimulus package is still being debated, and its impacts – both positive and negative – are yet to be fully determined on how they might affect the economy.
- For municipal debt investors, the most important question to ask right now is whether there will be municipalities facing the financial strains leading up to a potential for bankruptcies.

In this article, we will take a closer look at how the current COVID-19 situation is affecting the municipal debt markets, and municipal finances in general.

[Continue reading.](#)

**municipalbonds.com**

by Jayden Sangha

Mar 25, 2020

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## **[COVID-19 and Understanding Your Force Majeure Clauses.](#)**

The China Council for the Promotion of International Trade has currently issued at least 4,811 force majeure certificates due to the COVID-19 pandemic. These certificates qualify the coronavirus outbreak as a force majeure event and certify that a party's partial performance or failure to perform under an agreement be excused if there is a force majeure clause in the agreement. According to a Xinhua state media report, the total contract value for the agreements associated with the certificates is an alarming 373.7 billion Chinese yuan (equivalent to US\$53.79 billion). Unfortunately, for many U.S. businesses impacted by the economic hardships caused by COVID-19, these force majeure certificates will be of little use if their contracts are governed by U.S. law. Companies should understand the impact and application of their existing force majeure clauses to COVID-19.

A typical force majeure clause releases obligations and liability if an extraordinary event occurs.

These events are usually limited to events like war, fire, natural disasters, civil disorder, strikes or labor disputes, acts of God or other circumstances beyond a party's reasonable control. When these unanticipated circumstances arise, the force majeure clause may be invoked to relieve the parties from their contractual obligations or to terminate the contract with no further liability from either party.

Far too often, force majeure clauses are an afterthought during the contract negotiation process. Although seemingly unimportant when the parties are trying to close a deal, these clauses have substantive impacts to the business when unanticipated events occur. As the spread of COVID-19 disrupts global supply chains and results in the imposition of emergency rules and regulations, it becomes imperative for companies to prepare themselves for impending commercial disputes.

As a historical example, the SARS virus outbreak in 2003 resulted in many companies asserting force majeure clauses. Northwest Airlines famously relied on the force majeure clause in its labor contracts to lay off employees without notice, asserting that the SARS virus caused its air traffic to Asia to significantly decline. Not surprisingly, the Aircraft Mechanics Fraternal Association, an independent aviation union, claimed the layoffs were an immoral exploitation of the provision and challenged Northwest Airlines' legal justification by filing a class-action grievance. The arbitration board held that while a number of the layoffs were justified by force majeure events, a certain subset of mechanics were unjustifiably laid off, and Northwest Airlines was ordered to rehire those mechanics. The takeaway from this is that a force majeure clause may not apply uniformly to different circumstances.

While the SARS virus resulted in many companies revising the force majeure clauses in their contracts to include "global epidemics" as triggering events, the Northwest Airlines example shows that COVID-19 should be carefully analyzed in its specific impact to different industries. In addition, other contract provisions will alter the legal analysis about whether a specific force majeure clause can be invoked. For example, certain jurisdictions may interpret "acts of God" or "epidemic" differently, so the governing law provision will have an effect on whether the force majeure clause may be invoked. Moreover, force majeure clauses are drafted with specific terms that impact their interpretation. For example, a force majeure clause that does not specifically cite "disease" or "epidemics" may nonetheless have an all-inclusive catch-all phrase (such as "any similar event beyond the reasonable control of a party") that would lead to the COVID-19 pandemic qualifying as a force majeure event.

Just as companies must take a proactive approach to their employees' health and safety with respect to COVID-19, companies should also take a proactive approach to the other business effects of COVID-19. If a company's obligations have been affected by COVID-19 in any capacity, the company should consider certain practices in anticipation of any disputes and to prepare for the possible invocation of a force majeure clause, including, but not limited to the following:

- keeping detailed records of COVID-19's impact on its business functions and on any inability to perform the company's contractual duties;
- documenting COVID-19's impact on the company's supply chains, such as its vendor's inability to secure raw materials, parts, components, or disruption to the capabilities of the vendor's suppliers or independent distributors;
- continuously evaluating the current events of COVID-19 and how the incident is affecting governments and the company's industry. The situation is changing day-by-day, and keeping abreast of the current events will allow the company to quickly reassess its obligations and liabilities;
- reviewing both existing customer agreements and vendor agreements, to analyze the legal obligations and liabilities of all parties under the agreements. Force majeure clauses are each

drafted differently and should be interpreted by legal counsel. Companies should also keep in mind notice provisions within its agreements, so that it does not inadvertently run afoul of its obligations to notify the other party; and

- reviewing insurance coverages and whether the company's current insurance covers business interruption related to COVID-19.

**Taft Stettinius & Hollister LLP** – Jeff Kuo

March 23 2020

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## **[Does the Coronavirus Shutdown Trigger a Regulatory Taking? - Nossaman](#)**

With the recent government mandates surrounding COVID-19, many businesses are completely shut down and are legally unable to open their doors to the public. Are those businesses — movie theaters, gyms, retail stores, etc. — entitled to compensation for a regulatory taking? Similarly, landlords are experiencing massive losses as those tenants are unable to make rental payments; are those losses compensable? Should governments worry about liability when issuing orders requiring the closure of businesses?

While compensation arguably should be paid from a decency and “good of the community” standpoint, legally, property owners and businesses are likely not entitled to compensation for a taking due to the shutdown. If you're interested in a fantastic write-up on the legal implications and liability issues under the Takings Clause, I suggest you read Ilya Somin's article, [Does the Takings Clause Require Compensation for Coronavirus Shutdowns?](#) You can also review Robert Thomas' summary on [inversecondemnation.com](#) related to [emergency takings and compensation for commandeered property](#).

In summary, under existing legal precedent, the government's broad exercise of its “police power” — its ability to protect public health and safety — does not qualify as a taking. From a policy standpoint, Ilya Somin points out that

“no judge will want to be seen as impeding an effort to save large numbers of lives in the midst of a grave menace to public health;” and

“the urgency of the crisis combined with the enormous scale of the compensation that would be required make it more likely that an adverse judicial ruling really would impede the government's policy—potentially even shutting down the shutdown, so to speak.”

On the flipside, from a moral policy perspective, the Fifth Amendment Takings Clause has been meant to ensure that the government does not force some people alone to bear the burdens that should be borne by the public as a whole. And yet that is closely what is happening here, as certain businesses and property owners are bearing a disproportionate share of the burden of protecting the population as a whole.

Perhaps some of these businesses will receive relieve through the government's stimulus bill, but many may not. Time will tell whether the government continues to look for other economic measures of compensation to assist these businesses and landlords being forced to shut down.

**Nossaman LLP** – Bradford B. Kuhn

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## **Can State and Local Government Seize Your Private Property During a Global Pandemic?**

Hotels, parking lots, convention centers and sports fields throughout the world are being used as field hospitals and to otherwise house people suffering from the effects of COVID-19. For example, one hotel in Hong Kong has designated entire floors of the hotel for quarantined guests, and at least 11 hotels in South Korea will house quarantined guests. Given the rapid increase in COVID-19 cases in the United States, many state and local governments are weighing similar measures. In San Francisco, city officials have identified more than 8,000 hotel rooms that could possibly be used for individuals who need a place to self-isolate. These state and local governments are considering the use of private property such as hotels, lodges, apartments and other related facilities as makeshift hospitals, quarantine facilities or housing for first responders to cope with the strain on critical infrastructure. This client alert examines the legal issues around such use.

### **Do State and Local Governments Have the Authority to Use Your Property During a Global Pandemic?**

Generally speaking, state and local governments have the authority to regulate matters of local concern to protect the health, safety and welfare of their populations. These powers, known as police powers, are reserved to the states by the 10th Amendment to the United States Constitution. Likewise, state and local governments have the power of eminent domain to take personal property for public use so long as property owners are justly and fairly compensated in accordance with the Takings Clause of the Fifth and 14th Amendments.

Thus, state and local governments' authority to commandeer private property during a global pandemic can be broken down into two interrelated categories: (1) the authority of state and local governments to use their police powers to regulate to prevent the spread of disease, and (2) the authority of state and local governments to use their power of eminent domain to take private property for protection of the public.

In some instances, the authority of states, counties and municipalities to impose regulations to take control of property as part of efforts to contain the spread of epidemic disease is express. For example, in Colorado, the Colorado Department of Public Health and Environment may "exercise . . . physical control over property and the persons of the people within [Colorado] as the department may find necessary for the protection of the public health." C.R.S. § 25-1.5-102(1)(c).

Similarly, in California, the State Department of Health Services may "take measures as are necessary to ascertain the nature of the disease and prevent its spread." Cal. Health & Safety Code § 120140. Even more expressly, under the California Emergency Services Act, the governor is authorized to commandeer or use any private property or personnel deemed necessary in the exercise of emergency powers during a state of war or state of emergency. The state must pay the reasonable value of the private property or personnel commandeered. Cal. Gov. Code § 8572.

Therefore, through the exercise of the police powers and the power of eminent domain, state and local governments do have the authority to use hotels, lodges, apartments, parking lots, convention centers, sports fields and other related facilities as makeshift hospitals, quarantine facilities or housing for first responders during the outbreak of COVID-19.

## **What Rights Do You Have When Your State or Local Government Takes Your Property?**

Even though state and local governments have the authority to use private property as makeshift hospitals, quarantine facilities or housing for first responders, your property rights are protected by the United States Constitution, state constitutions and, in some cases, local governments' municipal codes. The United States Constitution and many state constitutions require state or local governments that take property to pay the property owner just compensation, typically the fair market value of the use of the property. Compensation may be available whether the government takes property permanently or temporarily.

Private property is protected under the Takings Clause of the Fifth Amendment, which applies to the states by the 14th Amendment. The Takings Clause states, "... nor shall private property be taken without just compensation." As a general rule, government need not pay the owner when restricting the public from access to or use of dangerous property, since the property is considered a public nuisance. For example, if a public health agency declared a contaminated meth house a public nuisance, the agency would not have to pay the owner. Similarly, state and local government business shutdowns likely do not trigger the right to compensation under the Takings Clause.

Conversely, government must pay the owner fair market value of the use of the property if the property is seized for public use. Here, in a pandemic scenario, a hotel might be used as a quarantine facility. If the hotel owner can demonstrate lost revenue due to the government's use, the owner may be able to recover the income lost from having no hotel guests during the quarantine.

Consequently, if a state or local government uses your hotel, lodge, apartment, parking lot, convention center, sports field or other related facility as a makeshift hospital, quarantine facility or housing for first responders, the Takings Clause likely serves as a backstop for fair and just compensation for the government's use of your property.

### **What Should You Consider in This Situation?**

Because of the Takings Clause, affected property owners may have leverage in negotiations with state and local governments seeking to use their private property. Given this potential leverage, affected property owners may want to focus on two main areas of consideration: (1) compensation and (2) protection against increased liability.

First, property owners may consider engaging state and local governments in discussions regarding just compensation for the use of the property. Assuming that state or local governments' use of the property will end when the outbreak of COVID-19 ends, compensation should reflect the impact of the state or local governments' use of the property, rather than the value of the entire property. Therefore, any conversations with state or local governments should address the reasonable value of the cost incurred by the landowner in connection with the state or local governments' use of the property. Reimbursement for any out-of-pocket costs associated with the state or local governments' use of the property as a makeshift hospital, quarantine facility or housing for first responders also could be discussed as another form of just compensation.

Second, property owners may consider engaging state and local governments regarding protection against increased liability due to state or local governments' use of the property. This is important because the property owner may remain liable for things that occur on its property during government use, such as a slip-and-fall, because state and local governments have governmental immunity. Thus, if a member of the public were injured on the property in connection with the governmental purpose, the injury could leave the property owner as the sole defendant in a lawsuit. Additionally, in Colorado, government entities may not legally agree to an open-ended indemnity of

private property due to TABOR. Therefore, whether in Colorado or another state, it may be advisable to negotiate with the state or local governments to pay for the cost of additional insurance coverage for the affected properties to ensure that the property owner is not left with the obligation to pay liabilities incurred as a result of the government's use of the property.

In sum, the most important considerations for property owners whose hotels, lodges, apartments or other related facilities are used by state or local governments for makeshift hospitals, quarantine facilities or housing for first responders are: (1) discussing compensation for the reasonable value of the use or reimbursement of out-of-pocket costs, and (2) requiring the state or local governments to cover the cost of additional liability insurance to protect the property owner from increased liability due to the governments' use of the property.

**Brownstein Hyatt Farber Schreck LLP** – Katherine J. Madden, Sarah M. Mercer and Carolynne C. White

March 26 2020

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## **Key COVID-19 Response Strategies for Development Finance Agencies.**

### **— Bonds, Tax Increment Finance, Revolving Loan Funds —**

Development finance has always been at the forefront of recovering from natural disasters and economic challenges. The emergence of the COVID-19 crisis requires a unique and targeted response by the federal government, state and local development finance agencies (DFAs), private banks, and philanthropy.

As the situation surrounding COVID-19 evolves, small businesses and communities across the country are very quickly facing liquidity challenges, job losses, and project stagnation. Credit is tightening and small businesses are struggling to make payroll while communities have been forced to scale back or halt development. Moreover, communities are facing difficulties financing critical infrastructure such as health facilities, broadband networks, and testing centers to address local COVID-19 demands.

DFAs are uniquely positioned to solve these challenges through pragmatic solutions and adjustments to existing initiatives. CDFA understands that DFAs are under considerable stress and pressure to address these immediate challenges while being mindful of the long-term financial health of their organizations and communities. The following set of strategies and recommendations is designed to help DFAs evaluate their portfolios and determine whether modifications are needed for their bonds, tax increment finance, and revolving loan fund programs.

### **Bond Portfolios**

DFAs operate extensive bond portfolios of both recourse and nonrecourse bond issuances. During this crisis, DFAs will face significant pressure to maintain their bond ratings and ensure timely debt service payments for all outstanding bond issuances. DFAs should consider the following:

**Outstanding Recourse Bonds** – For bonds that are the obligation of the issuer, DFAs should take immediate stock of current debt service payment expectations and prepare the necessary actions to ensure that existing payments are made in a timely fashion. As these are generally general obligation bonds, communities must be prepared to assemble the necessary capital needed to make

all existing payments on time to prevent delays and/or defaults. DFAs may want to consult with their financial advisors on options available for refinancing outstanding debt given the low-interest rate environment being afforded by the capital markets and federal relief efforts. Issuers should note that the stimulus package provides that the Federal Reserve may now purchase municipal bonds. The opportunity to refinance debt and issue new bonds remains strong.

**Outstanding Non-Recourse Conduit Bonds** - While these debt obligations are not generally the responsibility of the DFA directly, CDFA encourages agencies to be in direct contact with their current conduit bond borrowers. Assess the immediate ability for borrowers to make debt service payments and begin the process of workouts and adjustments if necessary. DFAs do not have direct responsibility for these payments but should be leery of reputational risk associated with potential defaults on issuances. Reputational risk can carry long-lasting consequences for issuers once returning to the capital markets on future issuances.

**New Deals in Pipeline** - CDFA encourages DFAs to continue to work on new issuances of both recourse and nonrecourse bond deals. The capital markets and federal relief efforts are providing significantly low rates and continuing to encourage investments. As noted earlier, the Federal Reserve may now purchase municipal bonds. This stimulus action does not apply to private activity bonds, but the environment for privately-placed PABs should be favorable. Do not halt new deals. Simply work within the parameters of new capital markets realities and prepare issuances with an eye towards recovery.

**Ratings** - If you are a rated entity, stay in close contact with your rating agency counterparts. Have constructive conversations about your current rating and the impact of COVID-19 on your bond portfolio. Work with the ratings agencies to ensure that they understand your relative financial position and the important steps you are taking to mitigate late payments and/or defaults. Manage reputational risk by determining any conduit deals that need to be addressed in the immediate future. While these bonds are not necessarily your ultimate responsibility, you want to be proactive about working to maintain a strong rating with the services. This includes working with your troubled borrowers and helping to address workouts and late payment situations.

### **Tax Increment Finance Portfolios**

Thousands of existing tax increment finance districts are operating throughout the country. The COVID-19 crisis will put stress on existing debt obligations of these districts and may delay the development of new districts. DFAs should consider the following:

**Existing TIF Obligations** - This crisis underscores the need for proper TIF evaluation and regular monitoring to mitigate risk. DFAs and communities should explore and understand the changing landscape of property tax impacts on existing projects. In doing so, DFAs should understand timelines for expected property tax payments and revenues and the subsequent debt service obligations on outstanding projects. This includes revisiting the security or collateral in place for each TIF deal. In addition, DFAs should look at LOC agreements, special assessment commitments, and the allowance for tax assessment appeals as these may lead to revenue loss if challenged.

In the immediate, DFAs should continue to make regular and on-time payments on all existing notes, loans, and bonds. However, DFAs need to begin to develop projections on real estate impacts due to the COVID-19 crisis. A prolonged slowdown in economic activity will inevitably result in smaller than expected tax revenue. TIF obligations backed by real estate taxes have a slightly longer horizon of 12-18 months but should be preparing as if any decline in economic activity will result in less tax revenue. TIF obligations backed by sales tax, use or other sources of revenue should begin immediate workout strategies to mitigate against far lower than expected revenue collection. It is



important that DFAs and communities act now to ensure that all obligations be met in both the immediate future and in the next 2-3 years of projects in service. For strong and stable TIFs, it may be wise to look into refinancing options based on the availability of low interest rates.

DFAs should check their state statute for use of funds allowances. In the event of lower than projected revenues, some state TIF laws allow for the use of excess revenues to be put into reserve funds now to prepare for an eventual decrease in tax revenues later.

**Businesses within TIF Districts** – An immediate concern is supporting the tenants and businesses within existing TIF districts. These businesses rely on their regular income to pay their subsequent taxes. These taxes are used to fund the TIF debt service. Some businesses will survive the crisis while others will not. Helping to ensure that businesses stay viable during the COVID-19 crisis will help to mitigate tax revenue loss. If a business does close, DFAs should immediately begin working on finding a replacement business for that space. While this may seem counterintuitive during the crisis, TIF districts cannot go without taxpaying businesses for a prolonged period. Work quickly to shore up lost business opportunities and work to remedy nonperforming businesses as quickly as possible. This is of paramount concern in districts with fewer taxpaying businesses or property owners. If a major anchor of a TIF district closes, DFAs should aggressively work to replace that tenant immediately to safeguard the tax revenue stream.

**New Districts and Pipeline Projects** – It is likely that new districts and pipelined projects will be delayed, reduced or canceled as a result of this crisis. Many communities will naturally become more risk averse during and after this crisis. However, DFAs should continue to run projects through the feasibility process and continue to work with developers and end-users on a strategy to help projects continue through this process. Projections and feasibility studies may require an updated review based on potential hits to revenue expectations. DFAs should also look at non-traditional sources of financing. With the plethora of federal and state recovery resources in the pipeline, now is a good time to begin to identify new sources of capital for a project. TIF will be a very important tool for recovery and DFAs that look forward with a lens towards recovery will be in a good position to approve and execute new projects once the economic slowdown ends.

### **Revolving Loan Fund Portfolios**

DFAs operate thousands of loan funds throughout the country. CDFAs expects these funds to be impacted significantly due to the COVID-19 pandemic, both in the immediate term to address current economic challenges as well as in the long term as business recovery continues. DFAs should consider the following:

**Existing Borrowers** – Check in with your current borrowers immediately to fully understand their liquidity and debt service constraints. Many small businesses are facing cash flow and liquidity challenges. They may need immediate adjustments to their loan terms, rates, and repayment schedules.

**Adjusting Rates and Terms** – To the extent possible, consider adjusting current rates, terms, and repayment schedules. Now is not the time for ultra-conservative approaches to loan fund management. Borrowers are facing liquidity challenges and do not have the cash flow to pay debt service. This is through no fault of their own. Consider easing your loan fund repayment schedule to allow borrowers to defer payments for up to one year. While this may result in less cash flow to the fund, it will allow borrowers to focus on immediate challenges with less debt repayment stress.

**New Borrowers & Short-Term Disaster Loans** – Halt all non-essential new borrowing that is not related to responding to the COVID-19 crisis. New borrowing should be focused on small businesses

impacted by the COVID-19 crisis. Require that new borrowers demonstrate the impact that the crisis has had on their business and their need for immediate capital. Provide short term loans of three to six months with zero percent interest to allow these borrowers to continue to make payroll and inventory payments. Defer repayment of these loans for up to one year. Finally, consider requiring new borrowers to refinance their distressed loan after one year if they do not pay it off in advance. DFAs may then be able to charge reasonable, but low-cost interest, on the refinanced loans.

**Recapitalizing Funds** – Federal and state governments, philanthropy, and the banking industry have been responding aggressively to the crisis but still need to hear from loan fund managers on the demand for low-cost capital. Reach out to your partners at federal and state agencies for a request to recapitalize funds immediately. Consider reaching out to foundations and financial institutions for fund capitalization as well. Be aggressive and request flexible funds to immediately put into new loans to address distressed businesses. If recapitalization is not possible, consider asks for loan loss reserves or loan guarantees to help address current borrowing needs.

### **Other Considerations**

DFAs will face a number of challenges in the coming weeks and months. These challenges are understandable and navigable. DFAs were a big contributor to the nation's recovery during the recession of 2008-2009. During the coming months, DFAs should remain vigilant and focused on addressing immediate challenges while keeping a watchful eye on the future. Operational budgets and capacity may get stretched and tested but DFAs should continue to use sound financial management approaches. Now is the time for the development finance community to rise to the occasion and support our nation's bright future and full recovery.

Toby Rittner, DFCP  
President & CEO  
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### **[Muni Market Gets Support from Fed as Part of Wide Effort to Curb Virus Fallout, Self-Regulator Warns to Review Compliance.](#)**

New York (Thomson Reuters Regulatory Intelligence) – The Federal Reserve on Friday provided support for the \$4 trillion municipal bond market as it extended its support of a credit market hit by a flight to safe havens due to the coronavirus health crisis. The move came after muni bond dealers sought help and the industry self-regulator warned firms to bolster controls.

The Fed has stepped in by offering support for firms hit by virus turmoil with direct purchases of short-term securities that make up money market funds and ultra-low interest rates to stem the most severe financial turmoil to hit the U.S. economy since the financial crisis in 2008.

As part of its effort, the Fed and other U.S. banking agencies on Sunday said they were encouraging banks to restructure loans to borrowers hit by the COVID-19 virus that has shut down a widening swath of the U.S. economy as businesses close and consumers stay home to slow its spread.

“The agencies encourage financial institutions to work with borrowers, will not criticize institutions for doing so in a safe and sound manner, and will not direct supervised institutions to automatically

categorize loan modifications as troubled debt restructurings,” a Fed statement said [here](#).

The municipal market has separate funding mechanisms that were not included in the Fed’s money-market and commercial paper programs. An even larger pool of investment money than money-market funds, the muni market fell under intense pressure in March when it was hit by the biggest wave of fund redemptions on record despite the Fed’s actions to shore up short-term credit.

The muni market had seen record inflows in February in the early stages of the market turmoil caused by the spreading health crisis, as investors moved funds from riskier assets to munis, considered safe haven in which defaults have been rare.

The subsequent turnaround in sentiment came in part from a warning in early March in a California municipal bond offering from the state’s general fund. California was among the first states to report incidents of the virus. California said in early March that there could be “no assurances that the spread of a novel strain of coronavirus called COVID-19 will not materially impact the state and national economies and, accordingly, materially adversely impact the general fund.”

The market in the second week of March was overwhelmed by selling amid fear that California might soon be joined by other state and local governments facing resource constraints from the pandemic and would face financial stress.

The industry self-regulator, the Municipal Securities Rulemaking Board, issued an alert to firms in early March saying that they should review compliance and oversight “in light of the coronavirus” in early March said it was “closely monitoring the impact of the coronavirus disease (COVID-19) on municipal market participants.”

With losses mounting and liquidity falling through the end of last week, the Bond Dealers of America on Thursday called on Fed Chairman Jerome Powell to extend its direct purchases of securities to the most-stressed parts of the market and consider easing rules. The trade group sought Fed support to ease liquidity shortages in Variable Rate Demand Notes that play a key role in short-term funding operations for municipals.

“Liquidity has waned significantly as measured by bid-ask spreads and price volatility has been perhaps the most severe ever in the history of the market,” Mike Nicholas, the group’s chief executive officer said in a letter sent to the Fed last Thursday [here](#). The group had added that the market would be crippled without Fed support since firms would “effectively prevented them from taking on more municipal inventory.”

The Fed action looked likely to help the central bank stabilize the short-term rates that provide liquidity, said Matt Fabian, the head of market and credit research at Municipal Market Analytics.

While the Fed action did not directly impact the trillions of dollars long-term municipal bonds held by individuals in hundreds of thousands of issues from state and local government, it would support the top rated short-term securities such as the variable rate notes that are derived from the long-term debt and used in muni-funding operations.

“It will greatly reduce the pressure on the muni money markets to cover investor redemptions while not tanking the value of the underlying municipal bonds they hold, specifically short maturity bonds and notes,” he said in an email.

He added that most of the market’s liquidity pressure “is exactly in this part of the curve, because investors are converting many of their financial assets to cash without regard to what those assets are,” he added.

Self-regulator MSRB [said in its coronavirus alert](#) in early March that “the coronavirus may present operational challenges and business disruption for regulated entities.” But it added that the firms can do required supervisory reviews remotely.

Its supervisory process “does not mandate that supervision be done in-person, recognizing that technology plays a prominent role in how dealers conduct their supervisory reviews and a reasonably designed supervisory system could incorporate remote supervision.”

FINRA’s general guidance for firms notes that municipal dealers must observe a fiduciary standard of care under the Securities Exchange Act of 1934. The standard requires firms to deal fairly, make suitable recommendations, clearly disclose pricing that is reasonable and in line with market prices and have supervision that’s “reasonably designed to achieve compliance with applicable rules and regulations.”

by Richard Satran

MARCH 24, 2020

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## **[In Sweeping Move, Fed Will Lend to Businesses and Local Governments and Extend Bond-Buying Programs.](#)**

The Federal Reserve announced a batch of programs Monday to jump-start strained lending markets across the economy, making more credit available to a wide range of businesses and consumers battered by the coronavirus outbreak, including students, car buyers, large corporations, small businesses and cities.

The Fed said it will pump more cash into a financial system that clogged up amid a bruising recession that has shriveled consumer spending as restaurants, movie theaters, stores, sports arenas and other public places shut down to contain the spread of the outbreak.

“The coronavirus pandemic is causing tremendous hardship across the United States and around the world,” the Fed said in a statement. “Our nation’s first priority is to care for those afflicted and to limit the further spread of the virus. While great uncertainty remains, it has become clear that our economy will face severe disruptions. Aggressive efforts must be taken across the public and private sectors to limit the losses to jobs and incomes and to promote a swift recovery once the disruptions abate.”

Last week, the central bank lowered its benchmark interest rates near zero and said it will buy \$500 billion in Treasury bonds and \$200 billion in mortgage-backed securities. The Fed said Monday it will include commercial mortgage-backed securities in the purchases, making more money available for loans for retail, office and other commercial real estate projects and pushing down their interest rates.

It said it will buy an unlimited amount of Treasury bonds and mortgage-backed securities in an effort to hold down interest rates and ensure those markets function smoothly.

The Fed said it will set up three lending facilities that will provide up to \$300 billion by purchasing corporate bonds, buying a wider range of municipal bonds and purchasing asset-backed securities. The central bank said it will renew a financial-crisis-era program that will make funding available for student, auto and credit card loans.

After the Fed announced the Treasury and mortgage bond purchases last week, it quickly ran through roughly half those amounts by the end of the week. Monday, the New York Federal Reserve said it would purchase \$75 billion of Treasuries and \$50 billion of mortgage-backed securities each day this week.

That is a much larger amount than the Fed deployed in the financial crisis and its aftermath. In 2012, the Fed launched its third round of asset purchases, known as quantitative easing, which consisted of \$45 billion of Treasury purchases a month.

by Paul Davidson

March 23, 2020

**USA TODAY**

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## **[All the Moves the Fed is Making to Bolster the Economy, from Main Street to Muni Bonds.](#)**

The Federal Reserve is taking its status as the “lender of last resort” in the U.S. very seriously.

The central bank announced yet another series of measures on Monday morning designed to keep credit markets liquid and to support businesses that continue to feel the ever-worsening economic impact of the coronavirus outbreak.

In addition to [scaling up its purchases](#) of Treasuries and mortgage-backed securities to a virtually unlimited amount, the Fed is now also intervening in the corporate bond market via a number of credit facilities that will provide up to \$300 billion in new financing to businesses.

Two of those facilities, the Primary Market Corporate Credit Facility and Secondary Market Corporate Credit Facility, are designed to support a corporate credit market that has shown [signs of stress](#) in recent weeks. The Primary Market Facility will provide four-year bridge loans to investment-grade companies, while the Secondary Market Facility will purchase outstanding bonds issued by investment-grade U.S. firms and U.S.-listed exchange-traded funds.

The Fed is also relaunching its financial crisis-era Term Asset-Backed Securities Loan Facility, which will lend to investors who purchase asset-backed securities (ABS) backed by student loans, auto loans, credit cards, and other consumer debt. And the central bank is boosting two previously announced facilities, targeting money-market mutual funds and commercial paper, to also include municipal bonds that finance operations for localities across the country.

Additionally, the Fed said it will soon roll out an initiative meant to aid small- and medium-size businesses that are out of the reach of its ambitious corporate bond-buying regime, via a Main Street Business Lending Program. That will come after it ensures Wall Street’s big banks have the liquidity they need to continue lending to businesses and households—via expanding its discount window to depository institutions, eliminating reserve requirements for banks, and reestablishing its crisis-era Primary Dealer Credit Facility.

In total, the moves amount to a near-unprecedented intervention by the central bank as it seeks to stabilize financial markets and ensure adequate credit across the U.S. economy in a time of crisis. They also answer—for now—concerns from some observers who have questioned just how much

power the Fed has to mitigate the impact of the ongoing economic downturn.

“Every time people say [the Fed is] out of ammunition, they continue to come up with more,” Kathy Jones, chief fixed-income strategist at the Schwab Center for Financial Research, tells Fortune. By intervening in the ABS and municipal bond markets, the central bank’s latest measures are “meant to [address] some of the things that their previous programs hadn’t addressed.”

Municipal bonds, for instance, have been battered amid a lack of market liquidity and concerns about “the creditworthiness of airports, hospitals, and states/city governments at the epicenter of the COVID-19 crisis,” according to a research note released Monday by Morgan Stanley Wealth Management. According to the note, municipal bond prices have fallen to such an extent that yields are at their highest levels compared with U.S. Treasuries “in more than a decade.”

Jones notes that the Fed is taking a particularly aggressive approach in lieu of a promised fiscal stimulus package that continues to be held up in Congress. Until such a bill comes to fruition, the Fed is “the only game in town” as far as government support for the economy is concerned, she adds.

To play that role, the central bank has relied on some creative maneuvers. As in the last financial crisis, the Fed has established a special purpose vehicle (SPV) to operate its current forays into the private credit markets. The SPV—which is partly backed by the \$30 billion equity contribution from the Treasury Department’s Exchange Stabilization Fund—functions as a “way around the [legal] limitations” prohibiting the Federal Reserve from using its own balance sheet to purchase private assets.

But while the Fed has been proactive in looking to calm financial markets, it remains to be seen whether the central bank’s moves—namely, its pending Main Street Business Lending Program—can alleviate the pain being felt by small businesses and local economies that are straining under the coronavirus lockdown’s devastating impact on commerce.

“I think this particular type of crisis is having the biggest impact on small businesses and state and local governments,” Jones says, noting that such entities also employ a huge chunk of the U.S. labor force. “It is important to address the needs that they have.”

FORTUNE

by REY MASHAYEKHI

March 23, 2020 12:30 PM EST

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## **[Federal Reserve Considering Additional Support for State, Local Government Finance.](#)**

### **Central bank hires former Treasury official to assist with potential municipal-lending program**

Federal Reserve officials are reviewing new ways to support financing for state and local governments, many of which are on the front lines of the coronavirus pandemic and will face huge borrowing needs as revenues plunge, according to people familiar with the matter.

The economic-rescue legislation Congress approved this week asks the Fed to charge headlong into areas it has long considered taboo—supporting lending to businesses, cities and states. The Fed traditionally avoided intervening directly in credit and fiscal policy, preferring to leave such matters to Congress and the White House.

That is changing now because of the fast-moving economic crisis—and because Congress has essentially directed the Fed to get more involved by providing \$454 billion to the Treasury to cover any losses in new Fed lending programs.

The Fed has dramatically expanded its balance sheet over the past two weeks, by nearly \$942 billion to \$5.25 trillion as of Wednesday. The central bank has lent freely to help firms avoid a wave of defaults that could turn a recession into something much worse.

Over two weeks, the Fed has unveiled six lending facilities, five of them enjoying a total of \$50 billion in support from the Treasury. Those programs have freed up cash for major Wall Street institutions and will backstop money-market funds and markets for commercial debt.

Democratic lawmakers have made support for city and state borrowing a priority in recent legislative talks, and the latest bill directs the Treasury secretary to seek a Fed lending program for municipal finance.

State and local governments are confronting skyrocketing borrowing costs even as they are straining to pay expenses associated with the spread of the virus. House Speaker Nancy Pelosi told Fed Chairman Jerome Powell last week “to think big and help our states,” she said in an interview on PBS this week. “They are taking a big bite of this wormy apple and they need much more in terms of resources.”

Under its governing law, the Fed can’t directly buy corporate debt, and it is limited to purchasing municipal debt of six months or less. But it can work around these restrictions by creating lending facilities that lend or purchase debt, subject to approval of the Treasury secretary.

The Fed has already dipped a toe into muni-debt markets by expanding a money-market lending backstop to include certain types of municipal debt—and by purchasing some highly rated municipal debt in a facility backing the market for very short-term commercial debt.

As of Wednesday, short-term interest costs on variable-rate municipal bonds have more than tripled compared with two weeks ago and are now higher than the rates governments typically pay on 30-year bonds, according to an index maintained by the Securities Industry and Financial Markets Association.

Monday’s announcement by the Fed to include more municipal debt in existing lending facilities appears to have made only a small dent, bringing the index, which tracks bonds that adjust their rates weekly according to what investors are willing to pay, to 4.7% down from 5.2% the prior Wednesday.

Interest rates on other short-term muni debt that spiked last week have fallen after the Fed said Monday it would purchase some municipal variable rate debt. Rates on water, power and sewer bonds issued by New York City and Los Angeles fell back to their typical rates of between 1% and 2% Thursday after hitting nearly 8% on Friday.

Kent Hiteshow, who established an office of state and local finance at the Treasury Department in the Obama administration, has been hired by the Fed for a six-month appointment to advise on muni markets, according to people familiar with the matter.



Among the questions Fed officials are considering: Whether to expand existing facilities to accommodate other municipal debt or to launch a new facility devoted to state and local finance. Fed officials will have to decide which municipal debt might be eligible for support and on what terms.

There are limits to how far the Fed can lend using its emergency authorities. Its loans must be well secured, which the Fed typically satisfies by restricting borrowing to highly-rated issuers.

“The states and localities that need the most help are the most risky by definition,” said Ernie Tedeschi, an economist at Evercore ISI, an investment research firm, who previously worked in the Treasury Department during the Obama administration.

The Fed and Treasury brainstormed ways to support hard-hit state and local treasuries after the 2008 financial crisis, but opted against doing so.

Governments have been canceling almost all planned long-term muni deals, borrowing they typically rely on for infrastructure needs and budget management, after investors fled muni mutual funds last week and prices plummeted. There was \$761.7 million in total muni issuance last week, according to Refinitiv, compared to around \$8 billion during a typical week earlier in the year.

Government borrowers include states facing high Medicaid costs, delayed income tax collections and huge drop-offs in sales taxes as commerce has slowed to a standstill—and municipalities that run hospital systems, nursing homes, jails and public-health departments.

“As our borrowing costs go up, that’s fewer dollars they have to allocate to the crisis,” said Matthew Chase, executive director of the National Association of Counties.

Fed officials have long had broader philosophical objections to intervening in financial affairs of subnational entities. The central bank is the fiscal agent of the federal government, and they have viewed state and local finance as the domain of Congress and the Treasury Department.

“The Fed’s response has typically been, ‘Look, if the federal government wants to support state and local finance, they can do that directly,’” said Lewis Alexander, who served as an economic adviser at the Treasury Department from 2009-11 and is now chief U.S. economist at Nomura Securities.

“There is a real reluctance to blur the line between the federal government and the state and locals. You start going down that road, it’s hard to know where to stop.”

## **The Wall Street Journal**

By Nick Timiraos and Heather Gillers

March 27, 2020 2:59 pm ET

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### **[Senate Stimulus Takes Steps to Add Liquidity to Municipal Market.](#)**

After extensive effort from the BDA and its membership, the Public Finance Network, and issuers and market participants nationwide, the Senate has included provisions aimed to stabilize the municipal market in a [sweeping \\$2 trillion dollar stimulus package](#) that will likely pass later today.

While at this time it is uncertain if the House will return to vote in person, or if they will use a procedure known as “unanimous consent,” meaning no objections from Members allowing the



measure to pass without the full House present.

In the draft, which can be viewed [here](#) (bond provisions start on p.513)

#### **Sec. 4003 The Senate gives authority to the Federal reserve to:**

Provide up to \$454,000,000 available to make loans, loan guarantees, and other investments in support of programs or facilities established by the Board of Governors of the Federal Reserve System shall be available to make loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities by:

(A) purchasing obligations or other interests directly from issuers of such obligations or other interests; or

(B) purchasing obligations or other interests in secondary markets or otherwise.

(C) making loans, including loans or other advances secured by collateral.

#### **Additional Conditions**

A loan, loan guarantee, or other investment by the Secretary shall be made under this section in such form and on such terms and conditions and contain such covenants, representations warranties, and requirements (including requirements for audits) as the Secretary determines appropriate. Any loans made by the Secretary under this section shall be at a rate determined by the Secretary based on the risk and the current average yield on outstanding marketable obligations of the United States of comparable maturity.

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

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

March 25, 2020

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### **[BDA Applauds Senate's Efforts to Support Municipal Market.](#)**

Last night, (March 26, 2020) the Senate passed the [CARES Act](#), (H.R. 748), a broad, \$2 trillion dollar [stimulus package](#) in response to the ongoing COVID-19 pandemic.

The BDA applauds the Senate's quick and effective action to stem the economic uncertainty associated with the virus crisis.

**We note particularly Section 4003 of the Act providing the Treasury and Fed with broader standby authority to support the bond markets during times of particular distress and dysfunction, to the immediate benefit of issuers, investors, tax payers.**

#### **H.R. 748 would allocate up to \$500 billion of cash from the Treasury Department to:**

- Provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus;

- Treasury would “make loans, loan guarantees, and other investments in support of eligible businesses, States, and municipalities.” and
- Some of those funds are earmarked for specified industries like airlines, leaving \$454 billion to support Federal Reserve programs for targeted beneficiaries.

**Those funds would be used to support “loans and loan guarantees to, and other investments in” Fed programs “for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities by:**

- Purchasing obligations or other interests directly from issuers of such obligations or other interests
- Purchasing obligations or other interests in secondary markets or otherwise; and
- Making loans, including loans or other advances secured by collateral.”

**It is important to note that this bill authorizes but does not require the Fed to intervene in the markets.**

Also please note that Treasury resources pledged to Fed credit programs can be leveraged as much as 10 to 1, meaning that a \$454 billion Treasury commitment could result in up to \$4.5 trillion of Fed liquidity. The bill would also provide up to \$125 billion in direct support to localities that can help bridge the gap with lagging revenues, especially in light of delayed tax filing deadlines.

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

## **Bond Dealers of America**

March 26, 2020

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## **[Move by Fed May Help Shore Up Short-Term Borrowing for States and Localities.](#)**

**The municipal bond market is experiencing a massive crunch as investors react to the coronavirus pandemic.**

The Federal Reserve took action this week that could help bolster state and local governments’ access to short-term borrowing as the coronavirus crisis pressures their finances.

For some states and localities, short-term debt is an important source of cash for covering expenses at times when tax revenues are not rolling in. But the virus outbreak has been driving turmoil in the municipal bond market, threatening the flow of this type of lending.

Demand for municipal debt has collapsed as the disease outbreak disrupts nearly every corner of the U.S. economy. The pandemic-driven downturn is also stoking worries that state and local tax revenues could take a sizable hit, while at the same time governments spend big to combat the disease.

“Basically there are no buyers for municipal bonds at both the long end and the short end of the curve,” said Michael Belsky, executive director of the Center for Municipal Finance at the University of Chicago’s Harris Public Policy school.

Fleeing investors caused the roughly \$3.8 trillion municipal bond market to hemorrhage a record

\$12.2 billion from municipal-bond mutual funds during a week's time ending Wednesday.

Some state and local government advocates are making a case that the federal government should intervene deeper into the municipal bond arena to help states and localities weather the pandemic. There's at least one proposal in the U.S. Senate to head that direction.

Emily S. Brock, director of the federal liaison center for the Government Finance Officers Association, applauded the latest move by the Fed. But she added: "We do need to open up the spigot a little bit wider in order to get that shot of adrenaline in our space."

States, cities and other local government entities around the U.S. commonly issue long-term debt to finance things like school construction and highway and mass transit projects. Bonds like these are usually paid off over many years.

But some also borrow on a short-term basis to maintain adequate financial liquidity. Tax payments can come in bursts at different times of year, while on the other side of the ledger governments must have consistent funding on hand to cover wages and other operating costs.

"There's a mismatch," said Bart Hildreth, a budgeting and finance professor at Georgia State University's Andrew Young School of Policy Studies. "You have cash flow deficits during the year."

To deal with this dynamic, states and localities might borrow short-term with the anticipation of collecting tax revenues in the months that follow and then using that money to repay the debt.

Unlike a 20-year bond that might be issued to build a bridge, this sort of short-term "cash flow borrowing" tends to involve debt that matures within the course of a fiscal year.

"It's a pretty regular feature of the borrowing plans of the moderate- to large-sized governments," Hildreth said. "Same thing with states."

But a concern now is that the upheaval in the municipal bond market is causing the investor cash that would normally be available for short-term state and local borrowing to dry up.

"Nobody's purchasing," said Brock. "All of the supply is being held on the dealers' books. And so we have a bit of a challenge."

This is where a move the Fed announced on Friday could help. Earlier in the week, the central bank announced that it was establishing a new Money Market Mutual Fund Liquidity Facility.

The general idea with this entity is to channel money towards money market mutual funds, supporting the flow of credit, and also keeping the funds functioning smoothly while the economy is in flux and as they meet investor demand for withdrawals. The funds are a common investment for households and businesses.

Under the program, the Federal Reserve plans to offer loans to banks and other financial institutions that purchase certain assets from the funds as collateral. What the Fed did on Friday is expand the list of eligible collateral to include highly-rated, short-term municipal debt, with a maturity of one year or less.

Tim Blake, managing director of public finance at Moody's Investors Service, said a main benefit for state and local governments from the Fed facility is that it could provide investible money that the money market funds could use to purchase short-term state and local debt.

That could be especially important at a time when states and localities are facing huge uncertainties over how the coronavirus will affect their costs and revenues.

"There are probably going to be many government issuers and not-for-profit issuers that are seeing significant revenue declines in the coming months, and the need for some borrowing," he said.

"This would allow the funds to purchase cash flow notes issued by governments," Blake added.

Belsky, at the University of Chicago, said that, "basically the federal government is becoming the investor of last resort."

Hildreth noted the Federal Reserve did not extend similar programs put in place in response to the Great Recession to cover short-term municipal debt. "Many of us thought they should have done it back then," he said. "It shows that they have assessed the situation more severely this time that state and local governments are facing."

But how effective the program will be in aiding state and local governments will depend partly on how banks respond.

"It's really whether they need to use that asset or not," said Natalie Cohen, president and founder of National Municipal Research. "How meaningful it's going to be is questionable."

Brock suggested there are ways the federal government could go further to help state and local governments through the municipal bond market. For instance, if the federal government were to somehow hold municipal debt of all types and maturity durations, or if it purchased what are known as Variable Rate Demand Notes.

This week, U.S. Sen. Bob Menendez, a New Jersey Democrat who serves on the Senate Banking Committee, introduced a bill that would allow the Federal Reserve's board to authorize federal reserve banks to directly buy and sell muni bonds of any maturity under "unusual and exigent circumstances."

The senator said that his legislation would provide state and local governments with federal support in financing the costs tied to the coronavirus outbreak, and other future emergencies.

But Tom Kozlik, head of municipal strategy and credit with Hilltop securities, said in a [brief](#) issued on Friday that there is not enough information available yet to know if the bill would solve the liquidity crunch facing the long- and short-term municipal bond market.

"The devil could be in the details here," he wrote.

Looking ahead, Belsky pointed out that many of the nation's public works projects are financed using municipal bonds. If the nation slips into a full-blown recession due to the coronavirus, he said, infrastructure investment could be key to kickstarting a recovery.

## **Route Fifty**

By Bill Lucia

MARCH 21, 2020

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## **The Fed Enters the Municipal Bond Market to Lend Cities a Hand, but Will It Be Enough?**

On Monday, the Federal Reserve went all-in to support America's shuttered economy. Among its most remarkable moves was its backstop of the \$3.8 trillion municipal bond ("muni") market, a critical source of financing for states, counties, and municipalities. The Fed hopes this will keep credit flowing to states and localities as their revenues—and the market for their debt—reel in the wake of the global coronavirus pandemic. As investor dollars rush out of the muni market, it is revealing troubling debts as well as questions about the role of fiscal federalism in a time of crisis.

State and local debt is facing its largest monthly drop in value since 1987, sending yields soaring nearly a full percentage point to 2.6% this week. Investors withdrew more than \$12 billion from municipal bond funds last week, the highest weekly outflow on record, with some funds posting their largest one-day drop in a decade. Many funds now trade below the value of their assets, including those for New York State, suggesting that investors fear surging defaults.

Munis are normally considered among the safest of assets. Just a few weeks ago, investors were scooping up this debt in a flight to risk from markets roiled by the coronavirus. This is continuing the trend since the Great Recession of strong investor demand for state and local debt, culminating in more than \$100 billion in inflow last year. Muni's tax-exempt status has made them especially popular following the 2017 tax law.

[Continue reading.](#)

**E21**

by Michael Hendrix

MARCH 25, 2020

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## **Cares Act Summary.**

[Read the Summary.](#)

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## **NABL Asks IRS to Help with TEFRA, Debt Repurchase Problems: Squire Patton Boggs**

NABL has asked the IRS to issue a Notice that would allow issuers to hold TEFRA public hearings for private activity bonds by phone and that would allow issuers to purchase and sit on their own debt through the end of the COVID-19 crisis without extinguishing the debt, even if the issuer doesn't use its best efforts to remarket it.

The text of the proposed Notice is available [here](#). It remains to be seen whether the IRS will make significant changes to the Notice before adopting it or some other form of relief, but some highlights of the request are as follows.

[Continue Reading](#)

**By Johnny Hutchinson on March 25, 2020**

**The Public Finance Tax Blog**

**Squire Patton Boggs**

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## **[Fitch Ratings Updates U.S. Public Finance Tax-Supported Rating Criteria](#)**

Link to Fitch Ratings' Report(s): [U.S. Public Finance Tax-Supported Rating Criteria](#)

Fitch Ratings-New York-27 March 2020: Fitch Ratings has published the following report: "U.S. Public Finance Tax-Supported Rating Criteria." This report updates and replaces the prior report published on January 10, 2020. The key criteria elements remain consistent with those of the prior report, and there is no impact on outstanding ratings. Previous versions of the criteria have been retired.

Contact:

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## **[CARES Act: Municipalities - Miller Canfield](#)**

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was enacted, authorizing up to \$2 trillion in economic relief for distressed sectors of the American economy. Title IV, subtitle A of the CARES Act constitutes the Coronavirus Economic Stabilization Act of 2020 (the "Stabilization Act") and authorizes up to \$500 billion for loans, loan guarantees, or other investments to support eligible businesses, States or municipalities "related to losses incurred as a result of coronavirus." Under the Stabilization Act, a "municipality" includes a political subdivision of a State, and an instrumentality of a municipality, a State or a political subdivision of a State.

Specifically, the Stabilization Act allows the Secretary of the United States Treasury to make up to \$454 billion in loans and loan guarantees to, and other investments in programs or facilities established by the Federal Reserve “for the purpose of providing liquidity to the financial system that supports lending to eligible business, States, or municipalities” by:

1. Purchasing obligations or other interests directly from issuers of those obligations or interests;
2. Purchasing obligations or other interests in secondary markets or otherwise; or
3. Making loans, including loans or other advances secured by collateral.

The Treasury Secretary has broad discretion to establish the terms, conditions and forms of these investments in Federal Reserve liquidity programs. However, while the Stabilization Act prohibits the forgiveness of any principal amount of a loan to a State or municipality, it ties the interest rate on such loans to “the risk [related to such debt] and the current average yield on outstanding marketable obligations of the United States of comparable maturity.” This provision could serve to calm the recent volatility in the relationship between U.S. Treasury yields and that of State and municipal debt.

Additionally, the CARES Act establishes the Coronavirus Relief Fund (the “Fund”), which provides for the direct payment of up to \$150 billion from the United States Treasury to States, Tribal governments and units of local government exceeding 500,000 in population “out of money not otherwise appropriated.” A local unit of government receiving a direct payment from the Fund may only use the money to cover costs that:

1. Are necessary expenditures incurred due to the public health emergency with respect to the coronavirus;
2. Were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
3. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Finally—in order to receive a direct payment from the Fund—the unit of local government must provide the Treasury Secretary with a certification signed by the Chief Executive of the local unit stipulating that the “local government’s proposed uses of the funds are consistent” with the Fund’s requirements for a municipality’s use of money received via direct payment thereunder.

This is part of a series of our [COVID-19 alerts](#) providing clients with practical advice on measures they can take to navigate through these challenging times. Please contact the authors or your Miller Canfield attorney with further questions.

**Miller Canfield PLC** – Jeffrey S. Aronoff and Sean C. Rucker

March 27 2020

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## **[Senate Passes \\$2T Package With NOL Changes, Rebate Checks.](#)**

The Senate passed an economic aid package that will provide taxpayers with a rebate, temporarily modify provisions of the Tax Cuts and Jobs Act and expand unemployment insurance.

Lawmakers unanimously approved the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) to send it to the House. The bill is meant as a compromise between Republicans and Democrats and is the product of almost one week of negotiations between the two sides.

Lawmakers announced a deal in the morning of March 25, but negotiations continued throughout the day to nail down language that appeased both sides.

While the tax provisions agreed to by both sides remained largely unchanged, Republican lawmakers were unhappy with language expanding unemployment insurance, arguing that it disincentivized individuals from going to work because they could make more while unemployed.

Sens. Lindsay Graham, R-S.C., Tim Scott, R-S.C., Rick Scott, R-Fla., and Ben Sasse, R-Neb., offered an amendment to change the unemployment provisions to prevent an individual from receiving unemployment compensation that is more than the amount of wages the individual was earning prior to becoming unemployed. The amendment, which required 60 votes for adoption, was defeated 48 to 48.

The bill now heads to the House, where it may run into some problems after some progressive Democrats offered criticism of the bill. But House Speaker Nancy Pelosi, D-Calif., said she intends to approve the bill in the fastest way possible without having to call back all members of the House. The House would be able to approve the bill by unanimous consent if there are no objections on either side or by voice vote, which could see some members travel back but not all.

Senators agreed to roll back a Tax Cuts and Jobs Act provision preventing net operating losses from being carried back to reduce income in a prior year. The provision has been relaxed to allow for losses in tax years 2018 through 2020 to be carried back up to five years.

The bill also provides for individuals making less than \$75,000 or married couples earning less than \$150,000 to receive a \$1,200 direct payment from the IRS, while those with children would get an extra \$500 per child.

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## **President Signs \$2 Trillion Coronavirus Relief Bill: NABL**

On March 27, 2020, the President signed [H.R. 748](#), a \$2.2 trillion stimulus package. Below are a few elements of the bill:

- Allow the Fed to directly purchase munis to stabilize the market
- Provide \$150 billion for a Coronavirus Relief Fund
- Provide \$130 billion for health care systems
- Provide \$25 billion for transit systems
- Provide \$10 billion for airports
- Provide \$5 billion for Community Development Block Grants
- The \$150 billion Coronavirus Relief Fund administered by the Treasury will disperse \$8 billion to tribal governments, \$3 billion to territories and the District of Columbia, and the remaining \$139 billion to states and cities with populations over 500,000.
- Any municipality with a population under 500,000 will have to make its request for money from the new Coronavirus Relief Fund to their state.



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## **Even Municipal Bonds Aren't Safe From Downgrades.**

It seems like no asset is safe in this coronavirus-stricken market—even municipal bonds, which were once seen as some of the safest debt issues in the fixed income space. S&P Global Inc and Moody's Corp, two of the largest credit rating agencies, issued downgrades that included municipal bonds.

"Municipal bonds tied to specific projects or taxes are also being downgraded. S&P recently cut the ratings on revenue bonds backed by a student housing project in Corpus Christi, Texas, by six notches, taking the debt from the lowest notch of investment-grade deep into junk territory," a [Wall Street Journal report](#) noted. "Falling tax collections are also hitting bonds backed by governments' broad taxing powers."

And it's not just downgrading that prospective municipal bond investors need to watch. It's having a boomerang effect on insurers that guarantee these bonds.

[Continue reading.](#)

### **ETF Trends**

by BEN HERNANDEZ on MARCH 25, 2020

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## **Bond Downgrades Begin Amid Coronavirus Slowdown.**

**Credit-ratings firms like S&P and Moody's have stripped away some pristine triple-A marks as the virus disrupts the economy**

Credit-ratings firms have issued a wave of downgrades for corporate and government bonds as they reassess the ability of borrowers to repay their obligations amid the coronavirus slowdown.

Credit-ratings firms like S&P Global Inc. and Moody's Corp. have stripped away some pristine triple-A marks or moved other supposedly safe investment-grade bonds into junk territory.

The moves reflect what Moody's has called a "severe and extensive credit shock across many sectors, regions and markets." S&P has said that "the global recession is here and now." Fitch Ratings is bracing for "abrupt interruptions happening simultaneously across all major economies" as a result of the coronavirus pandemic.

The downgrades themselves can add to the turmoil in bond markets, causing damage well beyond the change in ratings for the bonds being downgraded.

Seeking to stop the negative momentum in markets, the Federal Reserve on Monday broadened its efforts to include plans to purchase corporate bonds with high ratings. It is unclear, however, whether the moves will stem further downgrades.

Among the bonds facing potential downgrades are those tied to shopping malls, hotels, airlines, risky corporate borrowers and local governments. The reviews by ratings firms come after years of easing rating assumptions across various sectors.

Even in the face of such a severe stress, a triple-A grade should stay put since the rating is meant to

indicate the debt is as riskless as a Treasury bond. But some triple-A bonds are already failing that test.

On Friday, S&P took away the triple-A grade from a \$215 million bond backed by two mortgages on a giant mall in upstate New York. Local officials had ordered the mall, Destiny USA, and others in the area to be closed to slow the spread of the coronavirus. Other states are taking similar steps. S&P's move was part of a larger downgrade of 60 securities linked to various malls. The Destiny-linked triple-A bond is now rated single-A by S&P. A spokesman for Destiny didn't immediately respond to a request for comment.

Destiny's downgrade calls into question a popular transaction in which bond investors agreed to buy a deal backed entirely by mortgage payments from one property or borrower instead of a pool of loans. Last week Fitch placed all of its single-asset, single-borrower hotel deals on watch for possible downgrades.

By its own tally, S&P has now made more than 100 downgrades linked to the coronavirus, including on airlines like JetBlue Airways Corp., Southwest Airlines Co. and Spirit Airlines Inc.

Companies that have already been struggling are seeing their woes worsen. On Monday, S&P downgraded office-share company WeWork deeper into junk territory, citing its mounting cash flow and liquidity pressure. The high-profile SoftBank Group -backed company was already under stress after its failed initial public offering last year prompted a previous round of rating downgrades.

On Friday, Fitch said it would stress-test all of its ratings on structured securities known as collateralized loan obligations, or CLOs, and warned it may put some on watch for negative rating actions. The deals often buy up loans from highly leveraged companies and sell bonds to investors backed by payments on those loans. S&P said it is reviewing 25 ratings from 15 CLO deals with large exposures to energy sectors for possible downgrades.

Municipal bonds tied to specific projects or taxes are also being downgraded. S&P recently cut the ratings on revenue bonds backed by a student housing project in Corpus Christi, Texas, by six notches, taking the debt from the lowest notch of investment-grade deep into junk territory.

Falling tax collections are also hitting bonds backed by governments' broad taxing powers. On Friday, S&P lowered its rating on Suffolk County, N.Y., a New York City suburb, to the lowest category of investment grade, saying the county would likely face a cash crunch because of falling sales taxes and casino gaming revenue. A county spokesman said Suffolk expects federal and state aid and is taking steps to offset any lost revenue.

There are signs municipal bond investors may be bracing for losses. Assured Guaranty Ltd., which insures many municipal bonds, has seen its stock price fall by more than half since the start of March, outpacing the broader market decline. "Assured Guaranty is well positioned to manage the impacts of the current situation," the company's head of investor relations said in a statement.

## **The Wall Street Journal**

By Cezary Podkul and Gunjan Banerji

March 24, 2020 6:30 am ET

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## **MSRB Publishes Daily Data Showing Municipal Market Impact of Coronavirus.**

Washington, DC – Historic volatility is straining the predominantly retail investor market that enables state and local governments to finance essential public services, newly published data show. The Municipal Securities Rulemaking Board (MSRB) today began publishing daily analysis of trade activity to assist market participants, policymakers and the general public with understanding the impact of the Coronavirus Disease (COVID-19) on the liquidity of the \$4 trillion municipal securities market.

MSRB data show trading in the secondary market for municipal securities is at all-time highs, as institutional investors sell off large positions. Meanwhile, in the fixed-rate market, customer buying in smaller pieces of \$100,000 or less, indicative of retail investors, jumped to a daily average of approximately 11,700 trades in March 2020, compared to about 8,500 trades per day in January and February. [View the MSRB's analysis, which will be updated daily, here.](#) The MSRB also plans to analyze and publish additional variable rate data.

“The municipal market touches the lives of every single American because it finances over two-thirds of the state and local infrastructure that is bearing the brunt of the Coronavirus crisis,” said MSRB Board Chair Ed Sisk. “Dislocation in this critical capital market damages investor confidence and has an outsize effect on the financial health of communities around the country.”

As the primary regulator for the municipal securities market, the MSRB’s mission is to protect municipal securities investors and issuers. The MSRB is governed by a Board of Directors representing investors, issuers, dealers, municipal advisors and others with first-hand understanding of the municipal securities market. The MSRB’s market transparency systems collect municipal market trade data and disclosure documents and make them available to the public for free on the Electronic Municipal Market Access (EMMA®) website.

“The MSRB actively monitors trade data and will continue to release the results of our analysis to help market participants and policymakers make informed decisions in the best interests of the country,” Sisk said. “We stand ready to provide our data and expertise to help advance effective policy solutions that will provide emergency relief to the municipal securities market.”

[View the MSRB's dedicated webpage for COVID-19-related information and market analyses.](#)

Date: March 25, 2020

Contact: Leah Szarek, Director of Communications  
202-838-1500  
lszarek@msrb.org

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## **MSRB Suspends Price Variance Alerts for Dealers.**

Municipal Securities Rulemaking Board sent this bulletin at 03/23/2020 05:13 PM EDT

The Municipal Securities Rulemaking Board (MSRB) recognizes the significant impact that the spread of the Coronavirus Disease (COVID-19) is having on regulated entities. The MSRB is

committed to providing updates and other information as we address questions raised by market participants during this pandemic.

**Given the current market volatility, the MSRB is temporarily suspending the transmission of the price variance alerts for trades reported to MSRB's Real-Time Transaction Reporting System (RTRS) effective immediately.**

As background, as of March 2019, the MSRB sends a price variance alert via email to a dealer when a transaction reported to RTRS by the dealer is at a price that is notably different (i.e., notably lower or higher) than the price reported to RTRS by other dealers in the same security within a specified time period. The price variance alert was designed as a tool to assist dealers in identifying transactions that may warrant review to ensure the information reported to RTRS reflects the trade price as intended. While dealers remain obligated under [MSRB Rule G-14](#) to ensure that the information being disseminated by RTRS is accurate, the price variance alert tool does not, in these current market conditions, serve its intended purpose of assisting firms in their efforts to comply with Rule G-14. Accordingly, the MSRB is temporarily suspending reporting on price variance alerts.

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### **[GASB to Consider Postponing Effective Dates of Certain Statements and Implementation Guides.](#)**

Norwalk, CT, March 26, 2020—The Governmental Accounting Standards Board (GASB) today announced that it has added a project to its current technical agenda to consider postponing all Statement and Implementation Guide provisions with an effective date that begins on or after reporting periods beginning after June 15, 2018.

As a result of the closure of many state and local government offices due to the Covid-19 pandemic, many government officials do not have access to the information necessary for implementing new GASB pronouncements. The GASB has received numerous requests from state and local government officials and public accounting firms regarding postponing the upcoming effective dates of pronouncements. Most notably, those pronouncements include Statement No. 84, *Fiduciary Activities*, and Statement No. 87, *Leases*, as well as their related Implementation Guides.

The Board plans to consider an Exposure Draft for issuance in April and finalize the guidance in May 2020.

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### **[Muni Bonds Bounce Back, Poised for Best Week Since 1982.](#)**

Municipal bonds extended their rally in early trading, putting the securities on track for the biggest weekly gain since 1982.

Yields fell four basis points on the shortest-dated municipals on Friday to 1.18%, a drop of 1.7 percentage point since the week began. The securities have seen yields decline dramatically this week as Congress inched closer to a vote on its plan to curb the economic toll of the coronavirus, which would let the Federal Reserve buy municipal bonds.

The performance is a sudden reversal from the historic sell-off that hit the market earlier this month. State and local debt gained about 7.3% this week as of Thursday, a massive recovery from the 6.6%

loss the prior week, according to Bloomberg Barclays indexes. If that performance holds today, it would mark the best week of performance since September 1982, the data show.

John Loffredo, co-head of MacKay Municipal Managers, said crossover buyers like insurance companies are starting to wade back into the market, he said.

They're seeing the cheaper valuations of municipals and "picking their head up," he said.

## **Bloomberg Markets**

By Amanda Albright

March 27, 2020, 6:19 AM PDT

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### **Muni Bonds Surge, Reviving From Worst Crash in Over Four Decades.**

- **Yields tumble by more than 60 basis points across the curve**
- **Junk bonds hit hard in sell-off revive as buyers swoop in**

Municipal-bond prices surged, staging the biggest one-day rally in nearly three decades, as Congress and the White House struck a deal on a more than \$2 trillion stimulus package to soften the impact of the economic slowdown triggered by the coronavirus.

The gains sent yields sliding sharply across maturities, but the drop was steepest for the shortest-dated securities that were hardest hit by the steep sell-off this month as fund managers dumped the easiest-to-unload bonds when investors fled en masse. Three-month benchmark yields dropped 75 basis points to 1.8% while those on 10-year bonds fell 61 basis points to 2.06%. Those on the longest-dated securities fell 61 basis points to 2.56%.

The rally gained force after the White House and the Senate reached an agreement on a massive package of spending and tax breaks in a bid to prevent the swift shutdown of much of America's economy from leading to a deep, prolonged recession. It includes about \$500 billion that can be used to back loans and assistance to companies, as well as state and local governments.

The price jump was the biggest since 1993 and sent yields tumbling by the most since Bloomberg's benchmark indexes began in 2011. The drop was roughly three times as big as the decline Tuesday and included high-yield bonds that tumbled steeply during the sell-off.

"The stimulus will be very helpful to the overall market," said James Iselin, a portfolio manager at Neuberger Berman Group. "The stimulus will inspire confidence that a bridge is being built to help get us to the other side as we continue to deal with challenges resulting from this unprecedented moment."

The two-day rally broke what had been an escalating slide in the \$3.9 trillion municipal market as investors pulled cash out of mutual funds at a record-setting pace on concerns about how the economic fallout of the pandemic would affect cities, airports, hospitals and others that have issued tax-exempt bonds. The retreat saddled many borrowers with skyrocketing interest bills on floating-rate debt and effectively shut down the market for new debt issues as Wall Street banks put offerings on hold.

The Federal Reserve softened the liquidity strains by extending its lending programs to include some

of the shortest-dated municipal securities, while the stimulus promises to ease the financial strains on local governments and other borrowers.

The municipal market has been whipsawed by unprecedented volatility this month, so it's not clear yet whether the rally is the start of a turnaround or a false start that could reverse if the pandemic worsens. But there are some signs that investors are swooping in to scoop up securities most affected by the sell-off.

On Wednesday, some of the most actively traded securities were floating-rate bonds issued by New York's water system, whose yields surged to 6.75% during the rout.

Bonds backed by Ohio's tobacco-company legal settlement payments, a type of security that is a mainstay of high-yield funds, surged, with those due in 2055 climbing to as much as 93 cents on the dollar from about 75 cents Tuesday.

Puerto Rico's sales-tax backed debt — which is a bellwether of the high-yield market that was dealt the steepest losses this month — were also among the most heavily traded, with the price of those due in 2058 rising to as much as 94 cents on the dollar from about 80 cents Monday.

"People are finally taking a breather and saying, 'were we too hard on credit?'" said Jason Appleson, a portfolio manager for PT Asset Management LLC. He said investors are using the time ahead of Congress' stimulus vote to take stock of their holdings and whether bonds were penalized too much, though he said he's skeptical about whether the rally could be maintained if mutual funds continue to see cash pulled out.

"It's a different mentality today," he said.

## **Bloomberg Markets**

By Danielle Moran

March 25, 2020, 6:24 AM PDT Updated on March 25, 2020, 4:51 PM PDT

— *With assistance by Amanda Albright*

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### **[MSRB Responds to COVID-19 Rocking the Market.](#)**

The Municipal Securities Rulemaking Board will be publishing daily data summaries, pushing back comment deadlines and suspending a price alert in response to market volatility and COVID-19 concerns.

The MSRB published its first data summary Wednesday morning and plans to publish them every morning. Since the spread of the virus, the municipal market has tumbled through high "unprecedented" trade volume and large outflows.

"The municipal market touches the lives of every single American because it finances over two-thirds of the state and local infrastructure that is bearing the brunt of the coronavirus crisis," said MSRB Board Chair Ed Sisk. "Dislocation in this critical capital market damages investor confidence and has an outsize effect on the financial health of communities around the country."

At the beginning of March, the MSRB began seeing a significant change in volatility, said John

Bagley, MSRB chief market structure officer.

“We saw significantly different trading patterns and we were closely watching this data and it was really helpful for us to see what was happening,” Bagley said.

In the MSRB’s first report showing data from March 24, trades topped 87,215, which is likely a record, said Marcelo Vieira, MSRB director of research.

“It’s pretty much unprecedented volume for any time period that we’ve looked at,” Vieira said.

The MSRB is also continuing to see retail buying and more institutional selling, which has been a pattern over the last month as mutual funds look for liquidity amidst an increase in redemptions.

Earlier this week the MSRB also decided to temporarily suspend price variance alerts for dealers because of the current market volatility.

The MSRB sends the alert via email to a dealer when a transaction is reported to its Real-Time Transaction Reporting System by the dealer and is at a price that is notably different than the price reported by other dealers for the same security within a specified time period.

It’s a welcome change given the volatility dealers are facing right now, said Michael Decker, Bond Dealer of America’s senior vice president of policy and research.

“In a market where trade volume has risen significantly and there’s a lot more price volatility, it’s my understanding that dealers are getting these price variance alerts more frequently even in cases where all the reports are correct,” Decker said.

Dealers still have to abide by MSRB Rule G-14, on reports of sales or purchases, to ensure that information being disseminated by RTRS is accurate. The MSRB said the price variance tool does not, under current market conditions, serve its intended purpose.

Earlier this week, the MSRB also extended the request for comment deadline for muni market participants to respond to changes to its Rule A-3 on membership of the board. Among those proposed changes was reducing the size of its 21-member board, how it selects those board members and imposing limits on how many years a board member may serve.

Comments were originally due on March 30 and have been extended to April 29.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 03/25/20 02:18 PM EDT

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## **[SEC Provides Additional Temporary Regulatory Relief and Assistance to Market Participants Affected by Covid-19.](#)**

On March 26, the SEC issued a [press release](#) announcing an [order](#) and a [temporary final rule](#) providing temporary relief and assistance to market participants affected by Covid-19. The statement notes that the SEC is providing (i) temporary relief from notarization requirements from March 26 through July 1 to filers in the EDGAR system, subject to certain conditions; (ii) for Regulation A and Regulation Crowdfunding issuers, a temporary extension of 45 additional days to



file certain disclosure reports that would otherwise have been due between March 26 and May 31, subject to certain conditions; and (iii) a temporary conditional exemptive order that provides affected municipal advisors with an additional 45 days to file annual updates to Form MA that would have otherwise been due between March 26 and June 30, subject to certain conditions.

## **Buckley LLP**

March 27 2020

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### **NABL Sends Letter to Treasury on COVID-19 Issues.**

In response to the COVID-19 pandemic, NABL sent a letter to the U.S. Treasury asking it to addresses certain tax issues that may affect the functioning of the tax-exempt bond markets during the current outbreak of the novel coronavirus disease.

In the letter, NABL asks Treasury to (1) clarify that, at least for a temporary period, TEFRA hearings are not required to be held in person and (2) to provide relief as it relates to refunding and remarketing issues.

You can find the full letter [here](#).

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### **Coronavirus Sorts Bond Market Into Winners and Losers.**

(Bloomberg Opinion) — For the past month, bond traders confronted nothing short of chaos at every turn. U.S. Treasuries, mortgage-backed securities, investment-grade and high-yield corporate bonds, leveraged loans and collateralized loan obligations, it didn't matter. Everything was for sale, and no one was willing — or, in many cases, able — to buy.

That relentless tide is starting to turn as March draws to a close. Thanks to a series of bold steps by the Federal Reserve, namely its promise to buy as many Treasuries and agency mortgage-backed securities as necessary, its unprecedented venture into the investment-grade credit market and its deeper expansion into municipal bonds, traditionally safe debt is showing signs of returning to more normal yields and spreads. Blue-chip companies feel comfortable borrowing again.

Don't necessarily take the latest dire fund flow numbers at face value. Yes, investment-grade bond funds experienced a record \$38 billion outflow in the week through March 25, as did munis with \$13.7 billion of withdrawals. But individual investors are drawn to winning asset classes. And these securities have staged comebacks that are unprecedented in recent memory.

The same optimism hasn't reached the riskier parts of the debt markets. The amount of bonds and loans trading at distressed levels in the U.S. quadrupled in less than a week to almost \$1 trillion, nearing the 2008 peak, Bloomberg News's Katherine Doherty reported. Credit-rating companies are downgrading companies at the fastest pace in more than a decade, ushering in several large fallen angels like Ford Motor Co. and Occidental Petroleum Corp. Mortgage real estate investment trusts have been pummeled by margin calls from banks anxious that tenants won't cover rent. As it stands, the Fed's programs won't backstop these parts of the market — probably for good reason.



Simply put, the bond market has bifurcated into winners and losers after this month's mayhem. Here's what the divide looks like:

### **Winner: U.S. Treasuries**

It took a record amount of buying from the Fed, and a pledge to purchase much more, but the world's biggest bond market showed clear signs of tranquility this week. On March 19, the spread between liquid on-the-run 10-year debt and older off-the-run securities was four basis points, or eight times as high as a month earlier. On Monday, after the Fed's scrapped its limits on quantitative easing, the spread dropped to 1.6 basis points. By Thursday, it fell to 0.4 basis points.

The MOVE index of implied volatility for the U.S. government bond market also indicates more orderly Treasuries trading. It hit the lowest level since Feb. 26 on Wednesday, after the sharpest two-day percentage decline since data began in 1988. Benchmark yields across the curve are settling into sensible ranges — a major win for the Fed.

### **Winner: Investment-grade corporate bonds**

Yes, the yield spread on the Bloomberg Barclays index of high-grade corporate bonds reached 373 basis points on Monday, the widest since 2009. But it's looking increasingly like that'll be the worst of it. That gap narrowed 20 basis points on Tuesday and then 29 basis points on Wednesday. A tightening of that magnitude has never happened since daily data began in 2000.

In what's arguably an even more encouraging sign of market health, more investment-grade companies are choosing to issue new debt. McDonald's Corp., Nike Inc., 3M Co. and Deere & Co. were among those that priced deals amid Wednesday's rally, while Nvidia Corp., Home Depot Inc. and Target Corp. were marketing bond offerings on Thursday. Because Treasury yields are near record lows, these companies are still borrowing at rates similar to those a year ago.

### **Loser: High-yield corporate bonds**

At first glance, junk bonds appear to be on a similar trajectory as their high-grade counterparts. Spreads on the Bloomberg Barclays high-yield index peaked at 1,100 basis points on Monday before tightening by 75 basis points over the next two days. On a relative basis, that's still not nearly the same rebound.

Unlike the investment-grade market, high-yield issuance is nonexistent while so much uncertainty remains about the coronavirus outbreak and length and impact of the U.S. economic halt. No deals are scheduled. At best, there's speculation about potential offerings in the coming months.

To make matters worse, the longstanding fear of a wave of fallen angels overwhelming the junk-bond market is finally starting to materialize. In the biggest example, Ford's \$35.8 billion of debt will be removed from the Bloomberg Barclays investment-grade index at the end of the month and move into high yield. Meanwhile, those companies already rated junk are looking more at risk of folding: S&P Global Ratings said this month that the default rate on U.S. nonfinancial corporate debt may rise above 10%.

### **Loser: Leveraged loans, riskier CLOs**

It's mostly the same story, if not worse, in leveraged loans. The distressed trading level is defined as corporate bonds that yield at least 10 percentage points above Treasuries and loans that trade for less than 80 cents on the dollar. The S&P/LSTA Leveraged Loan Price Index was hovering just above 76 cents at the beginning of the week. It increased on Wednesday for the first time since March 10

but remains firmly below that distressed threshold.

No loans launched or priced this week. There aren't even any bank meetings scheduled. This market is almost entirely frozen, though some buyers have been looking to buy scarce double-B credits and the largest, most liquid obligations.

Leveraged loans' credit ratings are an important flashpoint for certain parts of collateralized loan obligations. Generally, CLOs have a 7.5% limit for triple-C rated loans. The way they're structured, though, it would take an enormous amount of downgrades to even begin to concern top-rated tranches. Indeed, on Wednesday, Citigroup Inc. published a report titled "CLO AAA Screams Cheap." In the same breath, though, the strategists noted "the spread pickup of CLO BB to BBB breached post-crisis highs last week, suggesting serious credit risk concerns." In other words, the lower-rated tranches are definitely dicey, but the safest portions are being unduly punished along with them.

### **Winner: Agency mortgage-backed securities**

This one is a bit of a no-brainer. The Fed's open-ended QE includes mortgage securities guaranteed by Ginnie Mae, Fannie Mae and Freddie Mac. These have bounced back in a big way, recouping all their losses from the last two weeks.

The central bank bought \$39 billion on Wednesday, \$36 billion on Tuesday and \$30 billion on Monday. For some context, before this month, the highest total for an entire week was \$33 billion in March 2009.

### **Loser: Private commercial MBS, mortgage REITs**

As my Bloomberg Opinion colleague Matt Levine put it yesterday, "nobody wants a margin call right now."

Of course, that's exactly what's happening to mortgage real-estate investment trusts. As I wrote earlier this week, the REITs have plunged in price because banks are worried that closed tenants will miss rent, which will cause landlords to miss mortgage payments, which will wipe out the cash flow to commercial mortgage-backed securities. A Bloomberg Barclays index of "U.S. CMBS 2.0," which is the market of conduit and fusion CMBS deals issued since January 2010, is down almost 11% this month, easily the biggest loss ever.

The Fed isn't heavy-handed in this nonagency part of the mortgage market, though some investors are pleading for the central bank to do more. Until then, each day the U.S. economy remains halted creates further pain for these securities.

### **Winner: Municipal bonds**

To end on a positive note: Look at munis go!

In what I'd describe as nothing short of breathtaking, the yield on 10-year, triple-A munis tumbled by 138 basis points in three days, with Wednesday representing the biggest one-day advance since 1993. If any investor was looking for evidence of a "V-shaped" recovery, look no further than the iShares National Muni Bond ETF (ticker: MUB). In a matter of days, it went from its lowest price since 2013 to rocketing back to roughly the same level it started at in 2020.

This doesn't usually happen to the \$3.9 trillion municipal market. Traditionally, steep losses and huge outflows begin a vicious cycle of more withdrawals and further forced selling. All those pieces

were in place as of last week. The Fed did signal a bit of support to the market since then, and the \$2 trillion fiscal relief bill in Washington does pledge monetary support to local governments, but that doesn't feel like the entire story. More likely, opportunistic investors saw muni ETFs trade at wider discounts to their net asset values than any other fund, and individual bond pickers noticed 10-year tax-exempt yields three times as high as taxable Treasuries, and determined it was too cheap to pass up.

In that sense, munis were a microcosm of the \$100 trillion global bond market: Things got weird in a hurry. Central banks swiftly provided liquidity and gave investors a chance to breathe again. Now it's time to sort through the wreckage.

This column does not necessarily reflect the opinion of Bloomberg LP and its owners.

## **Bloomberg Opinion**

by Brian Chappatta

March 27, 2020

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

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### **[Muni Funds Under Pressure From TOB Deleveraging.](#)**

#### **Summary**

- This week has brought echoes of the financial crisis in the municipal bond market with a number of fund deleveragings.
- Patchy liquidity and a worsening macro picture makes us cautious in the near term. However, there are also positive signals for the medium term.
- For investors wishing to adopt a more cautious stance without leaving the market, we like open-end funds, term CEFs, and taxable muni CEFs.

Here we go again. In a stark repeat of the financial crisis era events, a number of municipal funds have begun to deleverage. At focus is the unwinding of tender option bonds - a financial structure that allows municipal funds to raise leverage and increase fund payouts. According to Bloomberg, about 75 TOBs with \$1.2bn of bonds liquidated last week.

[Continue reading.](#)

#### **Seeking Alpha**

Mar. 24, 2020

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### **[Variable-Rate Muni Yields Fall in Wake of Latest Fed Action.](#)**

CHICAGO, March 23 (Reuters) - Yields on variable-rate municipal debt tumbled on Monday after the Federal Reserve took another step to help ease a liquidity crunch as part of an unprecedented credit

support package to backstop an economy reeling from coronavirus shutdowns.

The U.S. municipal bond market was steady through midday, according to a preliminary read of Municipal Market Data's benchmark triple-A yield scale, while the daily variable rate demand note (VRDN) yield reset fell to around 5.56% from a whopping 7.23% on Friday.

"That's probably a direct effect of the Fed's announcement," said Greg Saulnier, an MMD managing analyst, not it was "probably a stretch" to attribute tentatively unchanged yields across the curve to the central bank's move.

Yields in the \$3.8 trillion market where states, cities, schools and other issuers sell debt, have surged amid a selling frenzy by funds and others scrambling for cash as coronavirus fears wreak havoc on global markets.

The Fed on Monday expanded eligible collateral for loans in money market and commercial paper facility programs to include municipal VRDNs and "high-quality" tax-exempt commercial paper. On Friday, the Fed allowed highly rated short-term muni debt to be used in the money market program.

The iShares National Muni Bond ETF, which tracks the overall municipal bond sector, was last up 1.6%, extending Friday's bounce a day after it hit the lowest level since April 2011.

In a statement, the central bank cited "tremendous hardship" due to the spreading coronavirus and the need for aggressive efforts in the public and private sectors "to limit the losses to jobs and incomes and to promote a swift recovery once the disruptions abate."

Muni analysts at Barclays noted in a report on Monday: "This is likely to help to start unfreezing tax-exempt money markets; however, outright purchases of munis might still be needed."

Michael Decker, vice president for federal policy at Bond Dealers of America, said the muni market "is generally not performing as it's supposed to, but it's being felt most acutely at the short end of the yield curve."

While the spot yield on one-year, short-term munis has soared this month, VRDNs have fared even worse. Daily VRDN yields reset on Friday at 7.23%, up from 1.59% on March 13, according to MMD.

Decker described VRDNs, which fell out of favor in the wake of the previous market meltdown, as "sort of the commercial paper of the municipal world," although the debt is designed with longer maturities.

Issuance of VRDNs, which peaked over the last two decades at \$121 billion in 2008, fell to just \$8.7 billion in 2015 and totaled \$25 billion in 2019, according to Refinitiv data. Muni issuers, meanwhile, sold \$44.7 billion of short-term debt last year. Tax-exempt commercial paper issuance is relatively small, analysts said.

(Reporting By Karen Pierog; Editing by Alden Bentley)

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## **California Municipal Bond Investors Must Do This While They 'Stay At Home'**

Year in and year out, California consistently tops the nation in bond issuance.

The Office of the Treasurer for the State of California notes general obligation and lease revenue

bonds outstanding and supported by the General Fund currently total \$80.8 billion so far this year. At the close of 2019, there was another \$35.7 billion in State Revenue Bond Financing Programs as well as \$31.7 billion in through Conduit Financings with outstanding bonded debt.

In addition to these state supported or issued bonds, add outstanding debt of local government, district, agency, and authority, including all general obligation and revenue bonds. In total, it's estimated some \$482 billion in bonds are outstanding—just over 12% of the total municipal bond market.

That's a lot of investors holding a whole lot of bonds. Morningstar reports that as of March 2020, \$82.9 billion were held in California intermediate and long muni mutual funds. Individual bondholders, separately managed accounts, trust accounts, and other institutional investors hold the balance.

Regardless of where the bonds end up, all that debt is held in a portfolio somewhere. California Governor Newsom's "Stay at Home" order is going to affect every last dollar of it in one way or another.

The order sharpens the focus on the vulnerability geographically concentrated portfolios incur when faced with systemic risk.

### **Diversity Vs. Correlation**

Diversification in a California-only municipal bond portfolio generally means maintaining some geographic dispersion within the state as well as sector heterogeneity.

However, with the public policy response to the coronavirus pandemic affecting the entire state, portfolio diversification becomes far less defensive both on individual holdings as well as, and perhaps even more importantly, the portfolio as a whole.

Credits that initially may have seemed unrelated and uncorrelated are now inextricably connected. Prior to this event, the portfolio may have looked like a well-ordered Venn Diagram. The coronavirus now has those circles converging in ways previously not considered.

### **Defaults Or Downgrades**

Default risk among large public service providers of basic infrastructure, such as mass transit, bridges and highways, municipal services and ports, remain low at this time, in my view. The risk of downgrade, however, is significantly higher.

With downgrades comes not only a decline in pricing but also an increase in volatility. Expand that across an entire portfolio's holdings, even a portfolio with shorter (under 10 year) maturities, and the effect can be substantial.

### **Actions To Take**

There are some specific actions investors should consider taking in assessing the risks this order has heightened, both on individual credits and the portfolio overall.

While perhaps prompted to start these due to the coronavirus, note these are good investment and portfolio management practices that any investor should be doing as part of ongoing surveillance. Appropriate for this time, I draw from the scientist who discovered and promoted vaccination, Louis Pasteur: "Luck Favors the Prepared Mind."

Here is an initial list of several key factors to chart:

1. Revenue Security Source (i.e., ad valorem taxes, sales taxes, fees)
2. Underlying economics of the Security Revenue Source (i.e., home values, sales volume, project or service usage)
3. Backstop Security Provisions (i.e., regulation or legislation permitting or limiting fee increases, release of state support funds, imposition of state oversight)
4. Debt Service Reserve Fund
5. Security Liens (i.e., unlimited taxes, first lien on tax revenues)
6. Number of people served by the service, both directly and indirectly.

While there may be no investment buy or sell to take at this time of market dislocation and illiquidity, I am reminded of another quote. As the proverb goes, "Forewarned is forearmed."

In this market, either quote will suffice.

**Forbes**

by Barnet Sherman

Mar 23, 2020

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## **[Coronavirus Chaos Torpedoes Municipal Bond Market.](#)**

**After initially staying strong as markets declined, munis tumble 11% in 11 days.**

The COVID-19 pandemic has shown no mercy for the municipal bond market, which has plummeted in the past two weeks despite being considered a relatively safe investment when the markets are down. And this could be particularly damaging to institutional investors, who own the majority of outstanding municipal bonds.

According to Bernardi Securities, a broker/dealer specializing exclusively in municipal bonds, 40% of outstanding municipal bonds are owned by institutional investors. Pension funds, insurance firms, community banks, and trust departments own approximately 35% of outstanding municipal bonds, while 25% of them are owned by hedge funds, bond funds, arbitrage firms, and other general institutional investors.

Municipal bonds initially responded well when the markets began to fall in February. As the Dow 30 and the S&P 500 tumbled 18.6% and 17.5% respectively between Feb 5 and March 9, the Bloomberg Barclays Municipal Bond Index, which tracks the US dollar-denominated long-term tax exempt bond market, rose over 2%. But during the next 11 days the index fell nearly 11% to its lowest point since the end of November 2018, and it was down 7.5% year to date as of March 20.

A sharp drop of this degree is "extremely rare" said Cooper Howard, director, fixed income and income planning at Charles Schwab.

"Munis are feeling the impact of COVID-19 on two fronts," Howard wrote in a recent market commentary. "First, this is a unique trading environment in which liquidity is strained. Second, there are longer-term concerns about the impact that a sudden and severe slowdown in economic activity could have on municipalities' finances."

Howard said that contributing to the limited liquidity was the fact that municipal mutual funds experienced their first week of fund outflows after more than 50 consecutive weeks of inflows. In some cases, this means that fund managers may have to sell them to meet clients' redemption requests, driving down prices. Additionally, he said long-term concerns about how the coronavirus will affect interest rates have led to a limited number of buy offers or have resulted in bids that are much further away from the market than expected.

"While we don't expect widespread municipal bond issuer defaults due to COVID-19, we do expect the decline in consumer activity to have an impact on some municipalities' finances," Howard said. "This impact will be felt especially hard by issuers in certain sectors with already lower liquidity."

In particular, the sectors of the municipal bond market most affected include state and local governments, hospitals, airports, and universities.

Goldman Sachs has revised its unemployment forecast sharply higher due to the impact of COVID-19 and estimates a 5.5 percentage point increase in the unemployment rate to a 9% peak in impending quarters. This translates to lower personal income tax revenue for states, which is among their biggest sources of revenue. And as non-essential businesses are being shut down in many states, local sales taxes will also take a big hit.

Howard says these factors will pose a risk for states with already lower liquidity levels, and local governments that are reliant on sales taxes will suffer more the longer it takes for the crisis to subside.

"Depending on how the equity markets perform for the rest of the year, some local governments may be faced with higher pension costs," Howard said. "This too could pressure their finances."

Meanwhile, increased hospitalizations and the strain the virus is having on hospital resources could pressure high-occupancy hospitals and potentially crowd out other services. And drug and medical device supply chains could also be negatively affected, Howard said. "The health care sector already tends to be lower-rated, on average, compared with the rest of the muni market," he said, "so we would suggest further caution here."

And because COVID-19 has devastated the air travel industry, airlines have been forced to significantly reduce capacity, which has led Moody's to recently downgrade its outlook on the sector to "stable" from "positive."

"However, most US airports tend to benefit from fixed revenues, and should be able to manage through declines in demand," said Howard, noting that other outbreaks, such as the SARS coronavirus outbreak in 2002, haven't resulted in ratings downgrades. But, he added, "if concerns about the coronavirus linger and severely curb travel demand, this could result in downgrades."

As for colleges and universities, they are likely to be less affected by the virus as many of them have already moved to an online format for the remainder of the 2019-2020 school year.

"This is unlikely to affect near-term revenues, but enrollment could be hurt if concerns about the virus linger," Howard said. "Schools that are reliant on foreign students will be affected to a greater degree than those with a more diverse student mix."

March 23, 2020

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## **In Wreckage of Muni Market Crash, Brave Investors Eye Bonds at 90% Yields.**

- **Forced selling wreaked havoc with traditional gauges of value**
- **Even bonds backed by Treasuries slid in worst rout in decades**

By some measures, the municipal-bond market is full of screaming buys for anyone brave enough to wade in.

Take a note issued by New York's Metropolitan Transportation Authority that's due in about two months. It traded among securities dealers at yields as high as 11.2% on Friday and hit 90% the day before that — an unheard of payout for securities that not long ago yielded 0.6%.

Bonds repaid with Ohio's share of the 1998 tobacco-company settlement that changed hands for as much as 116 cents on the dollar last month are now going for around 74 cents. Even so-called pre-refunded debt — which is virtually risk free because it's paid off with federal government bonds that are held in an escrow account — are yielding about 2.8%, more than triple 10-year Treasuries.

"At these levels there's value in the market," said Lyle Fitterer, co-head of municipal investments at Baird Advisors, who was referring to broader market conditions. "You can find some very good muni credits trading at levels you haven't seen in a decade."

The record-setting sell-off that raced through the market until this week has left broad wreckage in its wake, in part because of unprecedented uncertainty about how badly local governments, hospitals and public transit systems will be hurt by an economy that has virtually ground to a halt in a matter of weeks. States and cities have pleaded with the federal government for hundreds of billions of dollars in aid, showing how severe they expect the hit to be as tumbling stock prices, shuttered stores and mass layoffs cut deeply into their tax collections.

But as mutual-fund managers unloaded whatever they could to raise cash, some bonds that may have very little risk to the coronavirus shutdown tumbled as well. Even top-rated, two-year municipal debt is yielding 934% what similarly-dated Treasuries do, up from as little as 56% just in January.

Kyle Gerberding, director of trading for Asset Preservation Advisors, is focusing on the pre-refunded bonds since the Treasuries that backstop them essentially guarantee they won't default. "That's the biggest no-brainer trade," he said.

Wilmington Trust this week said it was moving taxable and tax-exempt accounts to an overweight position in investment-grade municipal securities after the spate of "indiscriminate selling."

Dan Scholl, head of municipal fixed income at the firm, said the company is looking at the pre-refunded bonds as well as variable-rate securities, which saw one gauge of yields soar to the highest since 2008 as investors sold them aggressively to get cash. Because those securities are backstopped by banks, they can always be resold at 100 cents on the dollar.

Scholl said he is also focusing on large states and cities whose bonds have cheapened amid the sell-



off. They're trading at "very attractive levels," he said.

No state government has defaulted since the Great Depression, and local government bankruptcies remained extremely rare during the last recession. Yet some states have seen their yields jump sharply this month. Illinois's 10-year general-obligation bond yields have more than tripled to nearly 6%, three full percentage points more than the benchmark, according to Bloomberg's BVAL indexes.

Of course, the key question facing such buyers is whether the rout is over or there's more pain ahead, and the market is highly dependent on individual investors who have a tendency to keep pulling out when losses pile up. Furthermore, some governments, including Illinois, were already contending with deep pension shortfalls before stock prices tumbled this year.

On Tuesday, though, the municipal market gained for the first time in over two weeks after the Federal Reserve included some of the securities in its emergency lending program and Congress made progress toward enacting economic stimulus legislation. Yields on some of the shortest-dated securities slid 18 basis points, showing that some of the liquidity strains that drove the sell-off have eased.

Samuel A. Ramirez & Co. said on Monday that it's tough to accurately value municipals or any asset class currently given the volatility.

"What is now considered 'cheap' may not be when the dust settles," the company wrote in a report to clients.

## **Bloomberg Markets**

By Amanda Albright

March 24, 2020, 8:29 AM PDT Updated on March 24, 2020, 10:03 AM PDT

— *With assistance by Martin Z Braun*

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### **State Treasurers: Fed Must Step Up as Municipal Bond Market Craters.**

OAKLAND — As the Covid-19 crisis batters state economies, more than a dozen state treasurers are urging Congress to authorize the Federal Reserve to buy municipal bonds — a key tool to finance necessary infrastructure and public projects.

"We are hoping the federal government is going to step in a little bit more," said California State Treasurer Fiona Ma, one of 14 state treasurers who signed a letter to congressional leaders, Treasury Secretary Steven Mnuchin and Jerome Powell, the head of the Federal Reserve.

Ma says that while federal officials are assessing how to help the private sector, "they shouldn't forget about the state and local municipal bond market."

"That would really help stabilize the market and help local governments during these difficult times," Ma said in an interview with POLITICO on Sunday.

Municipal bonds issued by states and local governments have traditionally been a major tool to finance public projects such as bridges, highways, schools and airports. Nationally, the municipal bond market is valued at approximately \$4 trillion — with California representing about 15 percent

of that market, experts say.

Big investors such as mutual funds have traditionally been large buyers of municipal bonds, which have been widely considered safe investments in volatile times. But the Covid-19 crisis has had a devastating effect on the municipal bond market as mutual funds sold off bonds, cratering the demand. California experts say in the past week, the activity in municipal bond deals for state and local municipal bonds has collapsed as much as 90 percent.

Ma said she's been in contact with Rep. Maxine Waters, who heads the House Financial Services Committee, as well as Sens. Dianne Feinstein and Kamala Harris to plead for federal help for the states.

In their letter, the treasurers argued that for "state governments to do their part in mitigating the associated economic and social costs" in the current crisis, "they need to have confidence that they will continue to have access to financing."

The letter asks Congress specifically to revise Section 14(2)(b) of the Federal Reserve Act "to authorize the Federal Reserve to purchase securities in the municipal debt market of a sufficiently broad set of maturities" to help states sell their bonds. Currently, the statute only permits purchases of state and local debt "with a maturity from date of purchase of not exceeding six months."

"The Federal Reserve is best-suited to achieve that end," they argued.

POLITICO

By CARLA MARINUCCI 03/22/2020 02:24 PM EDT

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## **[CA Legislative Analyst's Office to Issue Briefings on Impact of Federal Actions in California.](#)**

As the COVID-19 crisis unfolds, the interplay between federal, state and local law has become increasingly complex. In response, earlier today, the California Legislative Analyst's Office (LAO) announced plans to publish a series explaining how federal actions are affecting California, including "write-ups on the federal emergency declaration, unemployment insurance, health care and public health, food assistance, and others." The LAO also announced that it will update this series as the federal government takes additional action. For businesses impacted by the federal and California COVID-19 responses, this new LAO series should be a useful resource and offer a unique perspective into current and future government actions. Please go [here](#) for additional details.

**Manatt Phelps & Phillips LLP** - Brandon D. Young and Thomas R. McMorrow

March 23 2020

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**TAX - TEXAS**

**[Hegar v. J.D. Fields & Company, Inc.](#)**

**Court of Appeals of Texas, Austin - March 19, 2020 - S.W.3d - 2020 WL 1294917**

After Comptroller of Public Accounts denied corporate taxpayer's request for relief from assessment with respect to delinquent sales taxes, taxpayer filed action seeking recovery of taxes and interest paid under protest.

Comptroller made plea to the jurisdiction through summary judgment motion. The District Court denied the motion. Comptroller appealed.

The Court of Appeals held that sovereign immunity did not bar taxpayer's suit.

Corporate taxpayer's lawsuit against Comptroller of Public Accounts, seeking recovery of delinquent sales taxes paid under protest, fell within language of tax protest statute providing waiver of sovereign immunity for claims alleging that public official charged with duty of collecting the tax or fee could not legally demand or collect the tax or fee, where taxpayer alleged Comptroller failed to follow its own rules requiring it to take equitable considerations into account when deciding claims for relief when it refused to grant taxpayer's request for relief from assessment on grounds that it failed to collect the taxes in reliance on representations made by Comptroller's employee during an audit.

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### **[Lumesis Makes Available a Free Service for COVID-19 Related Filings.](#)**

Lumesis, home of the DIVER platform, is launching a free service making available a consolidated list of all continuing disclosure filings made to the MSRB that relate to the COVID-19 pandemic, along with a link to each filing. The free service is available on the Lumesis website and will be updated three times daily during each business day (9am, 2pm and 7pm EST).

We are offering this service to assist all market participants to efficiently identify and access COVID-19 related filings made to EMMA. We know that identifying these important filings can be time-consuming. By leveraging our obligor-based database, technological know-how and outstanding team, we are able to provide the market a service that efficiently aggregates and presents important information shared by issuers for use in client communication, research or other needs.

To access the service, simply visit [www.lumesis.com](http://www.lumesis.com) and click on the link below the heading "COVID-19 Disclosure Filings."

If you have any questions, [support@lumesis.com](mailto:support@lumesis.com)

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Gregg Bienstock  
CEO  
Lumesis, Inc.  
Stamford CT  
(203) 276-6501

Mar 25, 2020

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### **[Webinar: Rating Agencies Speak on COVID-19](#)**

**April 07, 2020 | 12pm - 2pm (Eastern Daylight Time)**

COVID-19 is having and will continue for an indefinite period to have myriad effects, many unprecedented, on the operations, revenues and debt service coverage of municipal market issuers and borrowers. Disclosures about these effects now appear in most official statements and in an increasing number of stickers and voluntary filings with EMMA.

Not surprisingly, the rating agencies have a significant and growing interest in the subject, which can be expected to influence their rating and surveillance processes, ratings analyses, in some cases ratings themselves, and possibly result in some changes in rating criteria. Even though this is a rapidly evolving situation, the rating agencies already have some concerns and perceptions to convey, that may help issuers, bankers and advisors as they evaluate financing plans and develop strategies for how to manage the effects of COVID-19. To that end, Orrick, Herrington & Sutcliffe, LLP has assembled a panel of all four rating agencies for a special Orrick and Bond Buyer hosted webinar.

### **Speakers**

Karen Daly  
Senior Managing Director, Public Finance & Financial Guarantors  
Kroll

Eric Kim  
Senior Director, Public Finance  
Fitch

Robin Prunty  
Managing Director, Head of Analytics and Research  
S&P

Michael Rowen  
Managing Director  
Moody's

[Click here](#) to register.

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### **[COVID-19: Impact on Financial Markets and Opportunity Zones, with Craig Bernstein](#)**

How will the ongoing coronavirus pandemic affect financial markets and Opportunity Zones? Craig Bernstein is principal of OPZ Capital, which launched the OPZ Capital Opportunity Zone Fund in 2018. Craig has over 20 years of real estate experience, and is a prominent thought leader in the Opportunity Zones industry. Click the play button below to listen to my conversation with Craig. Episode Highlights How the ...

[Read More »](#)

### **Opportunity Db**

March 23, 2020

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## [Creating Catalytic Impact in Rural Opportunity Zones, with Chris Montgomery.](#)

What is an OZ fund on Colorado's western slope doing to spark catalytic impact and serve the long-term needs of rural communities? Chris Montgomery is partner at Four Points Funding, whose Opportunity Zone fund was recently awarded the Grand Prize as the Forbes OZ 20's Top Rural Opportunity Zone Fund Catalyst by Forbes and the Sorenson Impact Foundation. Click the play button below to listen ...

[Read More »](#)

### **Opportunity Db**

March 25, 2020

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## [Preston Hollow Capital Completes Ohio Hospital Non-rated Bond Financing Under Volatile Tax-exempt Market Conditions.](#)

Preston Hollow Capital (PHC), an independent specialty municipal finance company based in Dallas, announced today the successful completion of a transaction for up to \$61.29 million of tax-exempt non-rated draw-down bonds facilitating improvements to Van Wert Health, a non-profit acute care hospital in Van Wert, Ohio.

Among many uses, the bonds will finance the construction and equipping of approximately 80,000 sq. ft. of additional space for medical, surgical, and labor and delivery services, as well as site work, improved street access, and renovation of current space to accommodate the new configuration.

"It's been a pleasure to work with PHC on this deal," said Karen Shadowens, Chief Financial Officer of Van Wert Health. "Their expertise and proficiency has been remarkable during every step of the process. This expansion project will allow us to move into the next era of health care in our region."

"PHC closed and funded this financing despite the recent disruptions that have roiled the municipal capital markets," said Charlie Visconsi, Co-Head of Transaction Originations at Preston Hollow Capital "Once again, our permanent capital facilitated the execution certainty that Preston Hollow Capital's borrowers need in difficult market conditions."

"Charlie and his team took the time to hear the Van Wert Health story and then dig into the credit," remarked Scott Winter, Managing Director at Ziegler, underwriter of the bond issue. "The PHC team was extremely thorough and professional throughout the due diligence process and to be able to deliver capital on time and without additional conditions in severe market conditions is extraordinary."

**Business Wire | March 23, 2020**

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• **Ed. Note:** We're all gonna die! Eventually. In the course of assembling this week's newsletter, we

came across a few Covid-related items that may not necessarily be pertinent to your practice, but that might be of value to clients or other members of the firm. These include: [federal banking updates](#), [force majeure](#), [employment](#), and [higher ed](#).

- [The SEC's Fixed Income Market Structure Advisory Committee Approves Two New Recommendations.](#)
- [Talking about The Thing: Squire Patton Boggs](#)
- [Fitch Webinar: Coronavirus Effects for U.S. States and Local Governments](#)
- [Muni Market Support for Federal Reserve Intervention Grows.](#)
- [BDA Urges Fed to Take Action to Assist Municipal Market.](#)
- And finally, Location, Location, Location? is brought to us this week by [Hochstein v. Cedar County Board of Adjustment](#), in which the Supreme Court of Nebraska weighed in on a neighborhood dispute. Neighbor A owns a "4,500 animal unit feedlot." Neighbor B owns the 900 acre adjoining farm, on which it applied to build a home. Now one might expect this dispute to concern the mitigation of what must be the unthinkable stench emanating from the feedlot. Nope. Neighbor B was petitioning to build his home CLOSER to the stench. And at no point did the opinion bother to explain, a) WHY Neighbor B wanted to cozy up to the feedlot, or 2) WHY Neighbor A would begin to care. Goddamn you Nebraska Supreme Court! We'll be circulating a petition.

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## IMMUNITY - ALABAMA

### [Ex parte City of Millbrook](#)

**Supreme Court of Alabama - March 6, 2020 - So.3d - 2020 WL 1071325**

Civic center patron who fell on a sidewalk at the end of a ramped walkway leading from the front of the civic center to the parking lot brought negligence action against city based on allegation that city failed to maintain, repair, or design the sidewalk to ensure its safety for pedestrian traffic.

The Circuit Court denied city's motion for summary judgment. City petitioned for a writ of mandamus.

The Supreme Court held that city failed to establish that the civic center facilitated the recreational use of land.

City failed to establish that civic center facilitated the recreational use of land, as required for civic center to fall within the definition of "outdoor recreational land" given in recreational-use statutes limiting liability for non-commercial public recreational use of land, and thus city was not entitled to mandamus relief from the denial of its motion for summary judgment in negligence action by civic center patron who fell on a sidewalk at the end of a ramped walkway leading from the front of the civic center to the parking lot; city's mandamus petition included no discussion of the relationship of the civic center to the surrounding land or how the civic center facilitated the recreational use of that land.

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## ENVIRONMENTAL - CALIFORNIA

### [King and Gardiner Farms, LLC v. County of Kern](#)

**Court of Appeal, Fifth District, California - February 25, 2020 - Cal.Rptr.3d - 2020 WL 913788 - 20 Cal. Daily Op. Serv. 1691 - 2020 Daily Journal D.A.R. 1786**

Farm company and environmental organizations filed separate petitions for writ of mandate and

complaint for declaratory and injunctive relief against county, naming oil associations as real parties in interest and alleging that ordinance facilitating oil and gas exploration, drilling, and production violated California Environmental Quality Act (CEQA) and State Planning and Zoning Law.

Actions were consolidated. Following trial, the Superior Court found environmental impact report (EIR) was deficient in analyzing environmental impacts of ordinance on rangeland and of road paving mitigation measure, but denied all other CEQA claims, and issued judgments. Petitioners appealed.

The Court of Appeal held that:

- EIR improperly deferred formulation of mitigation measures for water supply impacts;
- EIR improperly delayed implementation of mitigation measures for water supply impacts;
- Insufficient evidence supported county's implied finding that all feasible measures to mitigate water supply impacts had been adopted;
- County's failure to disclose specific information about mitigation measures and extent of water supply impacts prejudicially violated CEQA;
- Purported mitigation measures for conversion of agricultural land would not render impacts of ordinance insignificant;
- EIR insufficiently responded to comments proposing clustering of oil and gas infrastructure; and
- Standard of whether ambient noise would increase beyond maximum in general plan due to ordinance was inadequate threshold of significance.

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## **CITY CHARTER AMENDMENT - FLORIDA**

### **[City of Naples v. Ethics Naples, Inc.](#)**

**District Court of Appeal of Florida, Second District - February 21, 2020 - So.3d - 2020 WL 854895**

City filed a declaratory judgment action against sponsor of citizens' initiative to amend city charter to create an independent ethics commission responsible for amending the city's ethics code, challenging the proposed amendment as unconstitutional.

Sponsor counterclaimed for writ of mandamus, and both moved for judgment on the pleadings. The Circuit Court entered judgment in favor of sponsor. City appealed.

The District Court of Appeal held that:

- City's failure to challenge proposal in its entirety was fatal to city's pre-election challenge against the constitutionality of the proposal to amend city charter, and
- Ballot title and summary for proposed amendment fairly and accurately informed voters of the chief purposes of the amendment and were not misleading to the public.

City's failure to challenge, in its entirety, citizen initiative's proposal to amend city charter to create an independent ethics commission responsible for amending city's ethics code was fatal to city's pre-election challenge to the constitutionality of the proposal to amend the city charter, and thus measure would be placed on ballot, although city had challenged the mechanism for appointing members to the ethics commission; city had not challenged the first subsection which would create the independent ethics commission, the provisions setting forth the ethics commission's authority and responsibilities and the minimum requirements of the ethics code, or the provision establishing an office of ethics and governmental integrity that would report to the ethics commission.



Ballot title and summary for citizen initiative's proposed amendment to city charter to create an independent ethics commission, set minimum requirements for the ethics code, and establish an ethics office, fairly and accurately informed voters of the chief purposes of the amendment, as required by statute, and were not misleading to the public, although mandatory language in one section did appear incongruous with advisory function of the commission in the rest of the proposal; ethics commission was specifically described as independent, commission's authority over ethics code was described as setting minimum requirements rather than creating an entirely new ethics code, and language used in summary and title aligned with full text of the proposed amendment.

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## **COMPOST - IDAHO**

### **[Department of Environmental Quality v. Gibson](#)**

**Supreme Court of Idaho, Boise, December 2019 Term - March 11, 2020 - P.3d - 2020 WL 1164516**

Department of Environmental Quality (DEQ) brought civil enforcement action against operator of composting facility under Environmental Protection and Health Act.

After bench trial, the District Court assessed civil penalty and issued injunction. Operator appealed.

The Supreme Court held that:

- Rule governing motions to amend or alter judgment was proper procedural mechanism for operator's request that trial court "reconsider" its findings;
  - Operator's argument of federal preemption was an affirmative defense, and thus failure to timely assert argument resulted in its waiver;
  - Facility was a "non-municipal solid waste facility" rather than a "municipal solid waste landfill," and therefore facility was subject to regulation under Department of Environmental Quality's solid waste management rules rather than under state Solid Waste Facilities Act;
  - Statute setting out time limit for civil or administrative proceedings to recover for violation of Environmental Protection and Health Act is not a statute of repose;
  - Investigation of facility by employee of Department did not constitute a search that could be subject to Fourth Amendment;
  - Grass clippings and leaves left at facility were "solid waste" subject to regulation under Environmental Protection and Health Act; and
  - As a matter of first impression, statute providing for award of attorney fees to prevailing party in proceedings involving state agencies or political subdivisions allows court to award fees on a claim-by-claim basis.
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## **SCHOOL DISTRICTS - MISSISSIPPI**

### **[Butts v. Aultman](#)**

**United States Court of Appeals, Fifth Circuit - March 19, 2020 - F.3d - 2020 WL 1301048**

County residents who lived outside of city filed § 1983 action against county, school board, and state officials alleging that state legislature's decision to administratively consolidate two school districts and restructure school board responsible for governing newly-formed district violated their equal protection right to participate equally in district's decision-making process.



After transfer, the United States District Court denied plaintiffs' motion for temporary restraining order and preliminary injunction, and granted defendants' motion to dismiss. Plaintiffs appealed.

The Court of Appeals held that:

- Fact that new district's interim board would consist entirely of members of one former district's board did not violate equal protection rights of residents in other former district;
- Plaintiffs lacked standing to assert claim that statute administratively consolidating district violated their equal protection rights; and
- New school board did not discriminate against former county school district employees on basis of geographic affiliation.

State law providing that, once two school districts were administratively consolidated, new district's interim board would consist entirely of members of one former district's board, who had been appointed by city board of aldermen, did not violate equal protection rights of residents in other former district, absent allegation that state acted with intent to impinge on fundamental right or to invidiously discriminate against suspect class; it was rational for legislature to conclude that board transition period would best promote efficient and smooth consolidation, and that statute gave state officials additional time to prepare for upcoming elections for permanent board.

County residents who lived outside of city lacked standing to assert claim that state statute administratively consolidating city school district and county school district violated their equal protection right to participate equally in district's decision-making process, even though only two of new school board's five members were to be elected by residents outside of city, despite fact that they accounted for 57% of county's population, where remaining three members were to be appointed by city board of aldermen.

After city school district and county school district were administratively consolidated, new school board did not discriminate against former county school district employees on basis of geographic affiliation, in violation of Equal Protection Clause, when it fired them and retained former city school district employees, where city was higher performing school district than county, and superintendent may have felt that most seamless and efficient way to implement consolidation would be to absorb county district into better-performing city district.

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## **ZONING & PLANNING - NEBRASKA**

### **[Hochstein v. Cedar County Board of Adjustment](#)**

**Supreme Court of Nebraska - March 20, 2020 - N.W.2d - 305 Neb. 321 - 2020 WL 1313824**

Landowner, an operator of a livestock feeding operation (LFO), sought review of county board of adjustment's grant of zoning permit to neighbors to construct residence on their adjoining farm in agricultural intensive district.

The District Court affirmed. Landowner appealed.

The Supreme Court held that proposed residence was not a "non-farm residence" that would be subject to setback requirements from LFO.

Landowners' proposed residence on their farm adjoining neighbor's livestock feeding operation (LFO) in agricultural intensive district was necessary or incidental to the normal conduct of a farm, and thus was not a "non-farm residence" that would be subject to setback requirements from LFO

under county zoning regulations, even if landowners cash leased the 240-acre tract on which residence was to be constructed to a corporate entity and residence was over three miles away from location on which landowners raised pheasants and livestock, where the permitted principal uses in district included an owner residence.

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## **ZONING & PLANNING - OHIO**

### **Columbus Bituminous Concrete Corporation v. Harrison Township Board of Zoning Appeals**

**Supreme Court of Ohio - March 11, 2020 - N.E.3d - 2020 WL 1160915 - 2020 -Ohio- 845**

Landowner sought review of decision of township board of zoning appeals denying its application for a conditional use zoning certificate to conduct quarrying and mining of sand and gravel.

The Court of Common Pleas affirmed. Landowner appealed. The Court of Appeals affirmed. Landowner sought review, which was granted.

The Supreme Court held that board could not deny application based on zoning resolution's general standards that did not relate to public health or safety.

Township board of zoning appeals lacked authority to deny landowner's application for conditional use permit to engage in quarrying and mining of sand and gravel based on general standards contained in zoning resolution applicable to all conditional uses, irrespective of whether compliance with those general standards was in the interest of public health and safety, under statute providing that townships could adopt resolutions pertaining to mining activities "only in the interest of public health and safety," but rather board was required to apply general standards to conditional use application only to extent that doing so was in interest of public health and safety and, if health and safety concerns were raised, it could address those concerns only through conditions on approved application.

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## **PUBLIC CONTRACTS - TEXAS**

### **Edminster, Hinshaw, Russ and Associates, Incorporated v. Downe Township**

**United States Court of Appeals, Fifth Circuit - March 19, 2020 - F.3d - 2020 WL 1291637**

Engineering firm brought action against township to recover fees it claimed it was owed under professional services agreement.

The United States District Court entered summary judgment in firm's favor, and township appealed.

The Court of Appeals held that choice-of-law provision in parties' agreement had no effect in determining township's liability.

Texas choice-of-law provision in professional services agreement between Texas engineering firm and New Jersey township's mayor had no effect in determining township's liability for fees under agreement, where mayor had no authority under New Jersey law to bind township unless township's governing body passed resolution awarding contract, and township's governing body never approved agreement.

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## **ZONING & PLANNING - VERMONT**

### **In re Snyder Group, Inc.**

**Supreme Court of Vermont - February 21, 2020 - A.3d - 2020 WL 857431 - 2020 VT 15**

Objectors sought review of city's approval of subdivision application submitted by developer to construct a planned unit development (PUD) with units of transfer of development rights (TDR) from a separate parcel.

The Superior Court, Environmental Division, entered summary judgment determining that city's zoning bylaw concerning TDR with respect to PUD applications was invalid. Developer appealed and objectors cross-appealed.

The Supreme Court held that:

- TDR bylaw satisfied statutory requirement of specifying sending and receiving areas for acquiring development rights;
- TDR bylaw satisfied statutory requirement of defining development rights and specifying minimum development rights that were required to be secured;
- TDR bylaw satisfied statutory requirement of defining amount of density increase allowable in receiving areas and quantity of development rights necessary to obtain those increases;
- TDR bylaw satisfied statutory requirement of defining density increase in terms of an allowable percentage decrease in lot size, increase in building bulk, or other specified means; and
- TDR bylaw was not unconstitutionally vague on its face.

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### **Some States Much Better Prepared Than Others for Recession.**

As the widely expected recession sparked by the COVID-19 pandemic takes hold, the impact in some states will be unnecessarily harsh — especially if the recession is relatively deep — due to the state's failure to adopt policies that support families and communities during a downturn, our review of state policies in four key areas finds. More specifically, people in states with inadequate budget reserves, weak unemployment insurance systems, relatively inaccessible Medicaid programs, and/or expensive higher education systems are particularly likely to struggle during the recession if they lose their jobs or enter the recession looking for work with few family resources to support them. Mississippi is the most poorly prepared. It's the only state that ranks in the bottom ten across all four categories, while Florida, Louisiana, New Hampshire, and South Dakota rank among the worst in three categories. That said, every state likely will face significant budget gaps in the coming months, even those best prepared for the downturn, and will need aggressive help from the federal government.

The pressures on state finances from the COVID-19 pandemic and resulting likely recession are mounting and will quickly become severe. Sales taxes, which make up a third of state revenues, are rapidly collapsing as restaurants and stores across the country close their doors and lay off their workers. Data are not yet available on the full scope of this collapse, but there is little doubt it is drastic, perhaps unprecedented. Income taxes, which make up another third of state revenues, also will decline sharply as mass layoffs rapidly push down people's income and therefore their income taxes. Plus, the steep drop in the stock market means that wealthy people will soon begin reporting massive capital losses on their quarterly tax returns, further reducing state revenue.

[Continue reading.](#)

## **CBPP**

BY MICHAEL LEACHMAN & JENNIFER SULLIVAN

MARCH 20, 2020

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### **Force Majeure Events - Will Your Project Contract Require a Response to the Coronavirus Pandemic?**

As the number of those impacted by the coronavirus ("COVID-19") pandemic continues to grow, affected parties across all industries look for guidance on how to deal with this novel situation. Governments and private parties are analyzing project contracts as they take precautionary actions to prevent the spread of COVID-19. In this midst of all of this confusion, two questions arise: What does the COVID-19 pandemic and the steps being taken in response mean for your project contracts? And, will an excusable delay/force majeure clause provide any protection for the impacts of COVID-19?

Force majeure or other excusable delay clauses ("force majeure clauses") grant parties contractual relief from some or all performance when specified events beyond the control of the parties occur and impair the ability of one or both of the parties to perform (a "Force Majeure Event"). The question of whether a force majeure clause in a project contract will address schedule or cost impacts attributable to the effects of the COVID-19 pandemic involves a three step analysis.

First, determine whether the force majeure clause provides relief to either the owner or the contractor (or both) in the event of a situation like the COVID-19 pandemic. The force majeure clause will typically define in detail what constitutes a Force Majeure Event. Force Majeure Events are often defined to include events like natural disasters, terrorist attacks, labor action, government-declared emergencies, epidemics and pandemics.

Second, determine any limitations that apply to the protections under the force majeure clause. Many such clauses only allow relief if the Force Majeure Event materially impacts the work to be performed and the work schedule under the contract. The clause may similarly dictate that the event affected the project site or geographical area in which the project is located. Most project contracts require the contractor to take commercially reasonable measures to mitigate the impact of a force majeure event. This duty to mitigate is critical to consider as some work, for example design work, can still proceed remotely and is less likely to be materially impacted by a pandemic such as COVID-19. Construction, utility and other field work as well as work related to operation and maintenance of projects in the operating phase, on the other hand, may be more likely to be impacted by precautionary measures put in place to combat the spread of COVID-19.

Lastly, determine what relief can be sought. This step in the analysis allows the parties to the contract to plan and manage the likely project impacts. Project contracts may vary in the nature of relief provided and relief may even vary depending on the type of Force Majeure Event in question. Force majeure clauses in design-bid-build contracts normally allow time extension only, without the right to additional compensation. Clauses in alternative delivery contracts may be similarly limited, or may allow additional compensation for costs incurred as a direct result of the event, or may provide for the parties to share certain costs. Additionally, some contracts may exclude cost relief

for matters where the contractor's insurance provides coverage.

With the uncertainty surrounding the COVID-19 pandemic, more and more infrastructure projects are likely to be directly impacted. Now is the time to conduct a full analysis of your project contracts and plan for the potential impact of COVID-19.

## **Nossaman Infra Insight Blog**

By David Aguilar, Elizabeth Cousins on 03.18.2020

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### **State-Specific Coronavirus Employer Q&A.**

Based on questions we have received over the last several days, here are some general principles that employers should keep in mind when navigating issues related to COVID-19:

1. Communicate with employees, but be mindful of privacy rights and considerations.
2. Have a centralized, internal communication and planning team. This team should be made up of individuals from operations, human resources, security, legal, and information technology.
3. Make a safe workplace a top priority.
4. Do not discriminate, and apply workplace policies in a fair and neutral manner.
5. Evaluate options for leave of absences, whether paid or unpaid.
6. Have a plan for layoffs or a temporary shut-down.
7. Stay up to date on the latest developments for the locations in which operations are conducted.

Below are general answers to specific questions that may arise in considering the above-mentioned principles. COVID-19 is a very complex topic and is constantly evolving, and therefore, it is important to stay abreast of new information, as well as federal, state, and local advisories in an employer's areas of operation. **Note that the answers below focus mainly on federal law and state laws of Indiana, Ohio, Illinois, Kentucky, and Minnesota.**

#### **NOTE:**

**\*\*This is not meant to be construed as legal advice or guidance on a particular circumstance as each issue that arises for a particular employer will require a fact-intensive evaluation of many factors, including without limitation the employer's policies, the severity of COVID-19 as indicated by public health officials, and local or nationwide emergency regulations and directives.**

**If you have questions regarding your particular situation or circumstances, please feel free to contact any member of Taft's Employment & Labor Relations Group directly.**

#### **When should an employer require employees to stay at home?**

Employers can legally request and require an employee to stay home for the COVID-19's 14-day incubation period if the employee presents a real threat to other employees. Such employees include those who are ill or are experiencing any of the COVID-19 symptoms, those who have been exposed through another individual, or those who have traveled to countries where there is a high exposure risk.

Employers may also decide to suspend operations for a period of time if directed to do so by a local,

state, or federal governmental authority or if it becomes more prudent to prevent employees from coming into work (for example, if there are confirmed cases of COVID-19 in the area). In this case, employers could consider teleworking arrangements with employees.

To avoid any sort of discrimination issues (especially on the basis of national origin and/or perceived disability), employers should put the duty on the employee to come forward and self-report such symptoms or exposure risks. In addition, employers should be sure to treat all employees in a specific job category in the same and consistent manner.

### **What if an employee tests positive for COVID-19?**

Employers should immediately send home all employees who have worked with that particular employee within the last 14 days, and should also notify any clients, customers, or other third parties with whom the employee had contact. Employers also should not identify by name the individual who tested positive (see below for privacy concerns).

### **Can an employer prevent employees from personal travel?**

Not necessarily. While an employer cannot typically prohibit legal travel, the employer may choose to deny time off if the denial is based on the destination, business cost of a resulting quarantine, or other legitimate business-driven reasons. The reason cannot be the national origin of the employee. Employers can require employees to self-quarantine for the 14-day incubation period once they return home from travel.

Employers should educate their employees before they engage in such travel and that such travel may result in quarantine or self-monitoring for a prolonged period of time. In addition, employers should monitor those employees returning from such travel for signs of illness.

### **What if an employee shows symptoms of COVID-19?**

An employer may ask an employee if he or she is experiencing symptoms of COVID-19, but make sure the inquiry is limited to relevant symptoms. If the employee feels ill or is experiencing symptoms, the employer may send him or her home and encourage him or her to see a doctor.

**On March 18, 2020**, the EEOC issued [guidance](#) clarifying that employers may ask an employee who calls in sick if he or she is experiencing COVID-19 symptoms – which the EEOC identifies as fever, chills, cough, shortness of breath, or sore throat. Relatedly, the EEOC advises that employers may delay the start date for an applicant or withdraw a job offer made to an applicant (if the employer would need the employee to start immediately) if the applicant has been diagnosed with COVID-19 or exhibited symptoms of it.

### **Can an employer take the temperatures of its employees?**

According to the EEOC's March 18, 2020 guidance, yes. (Prior to the issuance of this new guidance, the answer had not been entirely clear.) While measuring an employee's temperature is a medical examination under the ADA, the EEOC's new guidance states: "Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature."

The EEOC also clarified that an employer may also screen applicants for COVID-19 and take an applicant's temperature, so long as it is performed after a conditional job offer and the employer does so on a consistent basis.

Still, as a practical matter, an employee or applicant may be infected with the COVID-19 coronavirus without exhibiting recognized symptoms such as a fever, so temperature checks may not be the most effective method for protecting the workforce.

Can an employer ask employees to disclose whether they have a medical condition that could make them especially vulnerable to COVID-19 complications if they are not experiencing any symptoms?

No. Making disability-related inquiries of employees without symptoms is prohibited by the ADA.

### **Should leave taken as a result of COVID-19 be designated as FMLA?**

Yes. For an employee to invoke their 12 weeks of unpaid FMLA leave, he or she must have a “serious health condition” and otherwise satisfy the FMLA eligibility criteria. Based on recent reports, COVID-19 would qualify as a serious health condition depending upon the specific situation. Accordingly, an otherwise eligible employee with COVID-19 or an employee who is taking care of a qualifying family member with COVID-19 would be permitted to take protected FMLA leave.

However, employees who refuse to come to work out of fear of contracting COVID-19 would not qualify for FMLA leave.

Also, it is important to keep in mind that many states have paid sick leave and family medical leave laws that may be implicated in the event an employee (or dependent family member) contracts COVID-19. Be sure to check the state and local laws of each jurisdiction in which the employer operates or has employees.

**\*\*Update:** The U.S. House of Representatives passed the Families First Coronavirus Response Act on March 14, 2020, and the bill has been sent to the Senate. It includes many provisions that apply to employers, such as emergency-based FMLA and paid sick leave. The bill is expected to undergo revisions prior to being passed by the Senate, and therefore, a more detailed update regarding the passed version of the bill will follow.

### **Is telework an option?**

As a general rule, there is no requirement that an employer allow employees to telecommute. In determining whether to allow particular employees to telecommute, an employer should ensure that its flexible workplace policies are administered in a way that does not discriminate against an employee because of a protected characteristic (such as race, sex, national origin, age, disability, etc.). An employer should be prepared to offer a legitimate, nondiscriminatory explanation for why it may choose to allow some employees to work from home and not others.

In addition, employers should have a system in place to track hours worked by non-exempt employees to ensure that proper wages (including overtime if applicable) are paid.

Employers should also consider possible implications under the ADA (and related accommodation laws) when deciding whether, and in what circumstances, it will allow employees to work from home. Under the ADA, employers have an obligation to provide reasonable accommodations to employees with a disability unless doing so will present an undue hardship. Intermittent or temporary telecommuting arrangements may be a reasonable accommodation for such employees if they can successfully perform the essential functions of a job without coming to work. By allowing temporary telecommuting arrangements in response to COVID-19, an employer may impact its ability to decline temporary telecommuting arrangements as a reasonable accommodation to persons with disabilities in the future. Therefore, employers should carefully consider the precedent set by allowing employees to telework in response to COVID-19 when the essential functions of their



position cannot be adequately performed at home. If the employer allows employees to telecommute where it would not otherwise do so because of the unique challenges posed by the COVID-19 outbreak, it should make clear in its communications that the telecommuting accommodation is being granted due to the extraordinary circumstances posed by the virus.

### **What if an employee has children affected by a school closure?**

At this time, there is no federal law that requires employers to provide leave (whether paid or unpaid) for employees caring for healthy children who are unable to attend school. However, the Families First Coronavirus Response Act (in its current form) includes paid leave for employees caring for children as a result of a school closure. We will have more information on this once the bill is reviewed and passed by the Senate.

In addition, state laws may impose different requirements. For example, California requires most employers to provide unpaid leave to parents, guardians, grandparents, stepparents, foster parents or persons standing in loco parentis to a child for child care during unexpected school closures. Similarly, New York City mandates that employers provide employees with leave necessitated by the “employee’s need to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency.” Chicago’s paid sick leave ordinance provides that employees may take paid sick leave when their child needs care because their school is closed due to a public health emergency.

Even if there is no requirement in a particular state to pay employees while staying home to care for children during a school closure, employers should consider different options to support employees during this period. Some options include allowing affected employees to telework, attempting to coordinate reduced work schedules or coordinated childcare among affected employees or allowing affected employees to run a deficit in paid time off programs that can be repaid over time.

### **What if an employee refuses to come into work in order to avoid contracting COVID-19?**

The employer should address this issue on a case-by-case basis and determine the basis of the particular employee’s refusal before requiring the employee to come to work.

The Occupational Safety & Health Act permits employees to refuse to work if they believe on reasonable grounds that there is a dangerous condition at the work site or that the work constitutes a danger to their health and safety. If the office at which the employee works has confirmed cases of the virus, then it may be best to allow those employees to telework or to take leave time.

In addition, the National Labor Relations Act allows employees to engage in concerted action regarding the conditions of employment. Accordingly, an employee may be protected from discipline for refusing to come to work if the refusal is part of a concerted protest against unsafe working conditions.

### **Does contraction of COVID-19 generally implicate the ADA?**

Generally no. In most cases, COVID-19 is a transitory condition and is, therefore, not a qualified “disability” under the ADA.

Keep in mind, however, that this answer could change in the event an employee develops lasting exacerbation of existing conditions or experiences symptoms that substantially limit a major life activity for a more extended period of time. In these circumstances, the employer should gather information regarding the medical impairment and engage in the interactive process with the employee to determine whether the employee can perform the essential functions of the job and, if



so, what reasonable accommodations can be afforded to the employee to enable him or her to perform those essential functions.

**How should employers prevent harassment or discrimination of those suspected of being infected?**

Employers must take steps to prevent discrimination and harassment against individuals who are disabled or perceived as disabled because they are exhibiting symptoms suggestive of having contracted COVID-19. In order to accomplish this, employers should ensure the confidentiality of all employees' medical information and leave details to prevent harassment. Employers should consider reminding employees of anti-harassment and discrimination company policies, and should make sure that leave policies and other applicable workplace policies are being applied in a uniform, equitable, and neutral manner. And as always, employers must be vigilant about promptly responding to and investigating any complaints of harassment or bullying in the workplace.

**If an employee contracts COVID-19, what information should be shared with other employees?**

If an employee contracts a confirmed case of COVID-19, the employer should inform its other employees of possible exposure to COVID-19 in the workplace. This should be done by simply stating that an unidentified employee with whom they may have had recent contact has been exposed to or has tested positive for COVID-19.

Employers should not, however, disclose to co-workers the identity of the infected employee. Communications with employees about medical conditions should be kept confidential and medically-related documents kept in a location separate from the employee's personnel file.

**Do employers need to pay exempt employees during periods of leave or a temporary shutdown?**

No, unless the employee is still performing work. Employers must pay exempt employees their full salary for any week in which they perform any work, even if the employee is telecommuting. If an employer furloughs an exempt employee for an entire workweek, then no salary is owed for that full week and the employee's exempt status will not be impacted.

**Do employers need to pay non-exempt employees during periods of leave or a temporary shutdown?**

No. Employers must pay non-exempt employees only for hours actually worked.

Note that an exception does exist for non-exempt employees who receive fixed salaries for a fluctuating workweek. Such employees must receive their full salary of any week in which they performed any work.

**Should an employer shut down facilities to avoid liability?**

It depends. As mentioned above, the Occupational Safety and Health Act states that employers have a legal obligation to provide a safe workplace and requires employers to protect employees against "recognized hazards" to safety or health that may cause serious injury or death. Here, OSHA will likely rely upon recommendations issued by the Centers for Disease Control, the World Health Organization, or similar resources to determine the extent of a "recognized hazard."

Employers need to be mindful of when it becomes reasonably likely that employees at a worksite will

be exposed to COVID-19, whether by the nature of the profession (i.e., first responders, health care workers, transportation workers) or by the presence of employees in the workplace who have tested positive for the virus. Employers will need to develop a plan with procedures in place to protect their workforce—and, the time is now to start developing such a plan. Such a plan can include: conducting employee awareness training, developing procedures for issuing and the use of personal protective equipment, developing a means of reporting illness or exposure, and preserving documentation and records.

The prudent approach is to give employees the option to telecommute (if possible) or to take leave during this time. At the point in time when the employer determines that employees are at a higher risk of exposure by coming into work, then employers should re-evaluate and decide whether to cease operations at a particular facility (especially for those employees who cannot telecommute due to job duties).

### **Does the WARN Act apply to an employee furlough or temporary closing?**

The Worker Adjustment Retraining Notification Act generally requires employers with 100 or more employees to provide at least 60 calendar days of notice to its employees prior to any plant closing or mass layoff. A plant closing is defined as 50 or more countable employment losses at a single site of employment in a 90-day period that results from ceasing operations in one or more operating units. A mass layoff is defined as 50 or more countable employment losses at a single site of employment in a 90-day period that also involves 33% of the active workforce at the site.

Notably, if employees are laid off for less than six months, then the employees do not suffer an employment loss and WARN Act notice requirements are not triggered. Keep in mind that it may be difficult to know how long the layoff will stay in place, so providing notice may be the most prudent approach.

In addition, the WARN Act provides an exemption when layoffs occur due to unforeseeable business circumstances. The employer, however, must still provide “as much notice as is practicable, and at that time shall give a brief statement of the basis for reducing the notification period.” Accordingly, if the employer is in a position to evaluate the impact on its workforce, the employer must provide notice to employees who will be affected by a temporary shutdown. In addition, the employer must provide a statement to employees that explains why more extensive notice could not be provided—in this circumstance, it would be the unforeseeable nature of COVID-19 and its impacts on the workplace.

The WARN Act also has an exception for a “natural disaster.” However, the Act does not specifically address whether a pandemic qualifies as a natural disaster, and therefore, it is not advisable to rely on this exception to avoid notice requirements.

### **What about state-specific WARN Acts?**

Several states have “mini-WARN” laws, which may provide further notice requirements and apply to layoffs of a short duration. Indiana and Kentucky do not have a mini-WARN law and, therefore, Indiana and Kentucky employers must comply only with the federal WARN Act.

In addition to compliance with the federal WARN Act, an Ohio employer who lays off or separates fifty or more employees in a seven-day period because of a lack of work is required to furnish notice to the director of Ohio Department of Job and Family Services (ODJFS) the dates of layoff or separation and the approximate number of individuals being laid off or separated. Such notice must be made at least three days before the first layoff.

Similarly, Illinois employers who lay off, at a single site of employment, either 33% of their employees (excluding part-time employees) including at least 25 total employees (excluding part-time employees), or, who lay off at least 250 employees (excluding part-time employees), must give 60 days prior notice of the layoff. Notice is to be given to the employees and the Department of Commerce and Economic Opportunity and the chief elected official of each municipal and county government where the layoff occurs. Notably, Illinois law provides for an exception to the notice requirement if the Illinois Department of Labor determines that the need for a notice was not reasonably foreseeable at the time the notice would have been required, and specifies what notice should be provided to the Department of Labor in order for that finding to be made.

Minnesota's "mini-WARN" law requires any employer providing notice under the federal WARN act to also report to the Minnesota Commissioner of Employment and Economic Development the names, addresses, and occupations of the employees who will be or have been terminated. The mini-WARN law encourages Minnesota businesses "considering a decision to effect a plant closing, substantial layoff, or relocation of operations ... to give notice of that decision as early as possible" to the Commissioner, employees of the affected establishment, any employee organization representing the employees, and the local government where the establishment is located.

### **Do employer-instituted shutdowns entitle workers to unemployment benefits?**

Yes, employees are generally entitled to unemployment benefits if they are furloughed when a facility temporarily shuts down and all other unemployment requirements are met.

In Indiana, the requirements include (1) being able, available and actively searching for work, (2) losing a job through no fault of the employee, and (3) the employee earned enough wages to qualify for payments. Indiana allows an employee to file a claim as soon as he or she becomes unemployed. There is also a one week waiting period after an employee files a claim, during which the employee will not receive benefits.

In Ohio, unemployment benefits are available to individuals who are totally or partially unemployed due to no fault of their own. The employee must be able to work, available for work, and actively seeking suitable work. Like Indiana, Ohio allows an employee to file a claim as soon as he or she becomes unemployed. There is generally a one-week waiting period after an employee files a claim, during which the employee will not receive benefits. However, by Executive Order on March 16, 2020, Ohio Governor Mike DeWine announced that individuals who are totally or partially unemployed, or who are participating in the SharedWork Ohio Program will not be required to serve a waiting period before receiving unemployment insurance or SharedWork benefits. Ohio employers can refer to the [ODJFS website](#) for specific information about Coronavirus and Unemployment Insurance Benefits.

In Illinois, employees temporarily laid off because of COVID-19 can qualify for UI benefits as long as they are able and available for and actively seeking work. Under emergency rules recently adopted, the individual need not register with the employment service. Further, if the individual is confined to their home due to (1) a medical professional's diagnosis of COVID-19, (2) necessary care for a family member diagnosed as having COVID-19, or (3) due to government recommended/imposed quarantine, is eligible for UI benefits if all other requirements are met. Illinois employers can refer to the [Illinois Department of Employment Security website](#) for further information about COVID-19 and UI benefits.

On March 16, Minnesota Governor Tim Walz signed an executive order making workers affected by COVID-19 eligible for unemployment benefits. Under the executive order, applicants are eligible for unemployment benefits if (1) a healthcare professional or health authority recommended or ordered

that they avoid contact with others, (2) they have been ordered not to come to their workplace due to the outbreak, and (3) their children's school district, daycare, or other childcare provider is unavailable, and no reasonable accommodation from their employer or other childcare arrangement was available.

In Kentucky, unemployment benefits are available to individuals who are unemployed through no fault of their own, are able and available to work and are making a reasonable effort to obtain new work, and register for work when they file their claim. Kentucky allows an employee to file a claim as soon as he or she becomes unemployed. There is generally a one-week waiting period after an employee files a claim, during which the employee will not receive benefits. However, on March 16, 2020, Kentucky Governor Andy Beshear, by Executive Order, said Kentucky will waive the waiting period for unemployment compensation for those who are losing their jobs because of COVID-19 and will waive any work search requirements while the state of emergency is in effect.

Keep in mind that unemployment benefits will vary by state, and there may also be waiting time periods in place before benefits are provided.

### **What if the employee's hours are just reduced, then is the employee eligible for unemployment?**

It depends. In Indiana, employees may also qualify for partial benefits if the employer reduces the work hours to less than the employee's regular full-time work week. Any severance pay or other employer-provided compensation will be deducted from the employee's unemployment benefit.

In Ohio and Illinois, employees may also qualify for partial benefits if the employer reduces the work hours to less than the employee's regular full-time work week. In both states, an individual is "partially unemployed" in any week if, due to involuntary loss of work, the total remuneration payable to the individual for such week is less than the individual's weekly benefit amount.

In Minnesota, employees are eligible for unemployment benefits if their hours are "substantially reduced," meaning reduced to below 32 hours per week.

In Kentucky, employees also may be eligible for partial benefits if they are still employed by their regular employer but are working less than their normal full-time hours due to lack of available work.

Some states also have "work share" programs. These programs are meant to soften the blow of full layoffs by allowing employers to reduce hours for full-time employees, who then may collect prorated unemployment benefits for the lost hours. To take advantage of a work share program, the employer must submit a plan to state officials for approval, and the requirements for a particular plan vary drastically by state. Some employers that implement work share programs continue to fund employee benefits while the program is in place. SharedWork Ohio is Ohio's voluntary layoff aversion program. Illinois and Minnesota similarly have work share programs in place. Indiana and Kentucky have not implemented an official work share program.

### **If an employee is ill and unable to work, will he or she be eligible for unemployment benefits?**

Not likely. In Indiana, Ohio, Illinois, and Kentucky, claimants for unemployment benefits must be "able" to work. An ill employee likely would not meet that requirement. Similarly, in Minnesota, claimants must be "available for suitable employment."

### **If employees are no longer working, are they still entitled to group health plan coverage?**

Not necessarily. Employers should check their group health plan document to determine how long employees who are not actively working may remain covered. Once this period expires, active employee coverage must be terminated (unless the carrier or self-funded plan sponsor otherwise agrees to temporarily waive those eligibility provisions) and a COBRA notice must be sent. Keep in mind that employees do not have to be terminated or permanently laid off to be eligible for COBRA.

If the applicable plan is self-funded and the employer would like to waive plan eligibility provisions, the employer must first make sure that any stop-loss coverage insurance carriers agree to cover claims relating to participants who would otherwise be ineligible for coverage.

### **If an employee contracts COVID-19, does workers' compensation apply?**

It depends on the circumstances. Taft has prepared a client alert on this point available [here](#). Generally speaking, any illness or injury arising out of or in the course of employment would trigger workers' compensation—this includes a contagious illness that is contracted at work or while traveling for work. The problem is that, in most circumstances, it is difficult to know for sure how and where a particular employee contracts an illness.

If the employee travels for work from a place with little or no risk of contraction to a place with a high risk and is diagnosed within the 14-day incubation period after such travel, then it is likely that the illness will be deemed covered by workers' compensation. However, if an employee incidentally contracts COVID-19 from an infected co-worker, there likely will not be workers' compensation liability.

In addition, the State of Washington recently directed its Department of Labor and Industries to ensure workers' compensation protections for health care workers and first responders. The directive instructs the Department to change its policies regarding coverage for these two groups and to "provide benefits to these workers during the time they're quarantined after being exposed to COVID-19 on the job." While Indiana, Ohio, Illinois, and Kentucky have not issued a similar directive to date, they and other states may follow suit in the upcoming days or weeks. In Minnesota, if an emergency responder contracts an infectious or communicable disease that they are exposed to in the course of employment outside of a hospital, the disease is presumed to be an occupational disease due to the nature of their employment.

**Taft Stettinius & Hollister LLP** – Sukrat Baber, Brian G. Dershaw, Justin D. Flamm, Heather A. Jackson, Connie M. Kremer, Samuel N. Louwagie, Melissa A. Macchia, Evan Priestle and Gregory J. Stenmoe

March 19 2020

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### **[US Federal Banking Agencies Introduce Measures to Protect US Financial System Against COVID-19-Related Risks and Assist Consumers Affected by COVID-19.](#)**

***The three US federal banking agencies have taken steps to enable the financial system to continue functioning during the pandemic.***

During the course of this week, the three US federal banking agencies — the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC),

and the Office of the Comptroller of the Currency (OCC) — have taken a series of actions intended to enable the US financial system to continue functioning in the midst of COVID-19 and to encourage banks to meet the financial services needs of their customers who are affected by the pandemic.

**These actions include the following measures:**

- **Decreasing Interest Rates:** In recognition of the near-term disruption to economic activity and the risks to the economic outlook posed by COVID-19, the Federal Open Market Committee of the Federal Reserve lowered the target range for the federal funds rate to 0.0% – 0.25% on March 15, 2020.
- **Reduction in Reserve Requirements:** The reserve requirements for thousands of depository institutions will be eliminated when the Federal Reserve's reduction in the reserve requirement ratio to 0% becomes effective on March 26, 2020. This liquidity-promoting measure is intended to help support the flow of credit to households and businesses by enabling depository institutions to more readily engage in lending.
- **Availability of Intraday Credit:** To support the liquidity needs of households and businesses as well as the continued functioning of the payment systems, the Federal Reserve has encouraged the use by depository institutions of intraday credit extended by Reserve Banks on both a collateralized and uncollateralized basis.
- **Use of Federal Reserve Discount Window:** The discount window enables the Federal Reserve to provide depository institutions with ready access to funding to allow such institutions to manage their liquidity risks and protect their customers, particularly during times of market stress. To assist with meeting the demands for credit from households and businesses that are struggling during the current economic climate, the Federal Reserve has encouraged more active use of the discount window by depository institutions by lowering the primary credit rate to 0.25% as of March 16, 2020, and permitting borrowing from the discount window for up to 90 days, prepayable and renewable by the borrower on a daily basis. The Federal Reserve also announced that it would continue to accept the same broad range of collateral for discount window loans, including securities and loans that meet certain eligibility criteria. The FDIC and the OCC have also encouraged banks subject to their respective supervision to use the discount window.
- **Reliance on Capital and Liquidity Buffers:** The federal banking agencies have encouraged banks to provide assistance to households and businesses whose credit needs are being adversely impacted by COVID-19 by using their capital and liquidity buffers to lend and take other supportive actions in a manner that promotes the safety and soundness of the financial system. Any automatic limitations on capital distributions that may be triggered as a result of a bank falling below certain capital levels will be phased in gradually in order to promote continued lending by banks.
- **Establishment of Commercial Paper Funding Facility (CPFF):** The Federal Reserve is establishing the [CPFF](#) to alleviate the strain caused by the pandemic on the commercial paper market, which directly finances a variety of economic activities. The CPFF will be structured as a credit facility to a special purpose vehicle (SPV), and the SPV will support the flow of credit to households and businesses by serving as a liquidity backstop to facilitate the issuance of term commercial paper by eligible US issuers. As of March 17, 2020, the SPV will purchase unsecured and asset-backed commercial paper rated A1/P1 directly from eligible companies. The Federal Reserve Bank of New York (FRBNY) has committed to lend to the SPV on a recourse basis, and the Treasury Department's Exchange Stabilization Fund (ESF) will provide US\$10 billion of credit protection to the FRBNY. The SPV will cease purchasing commercial paper on March 17, 2021, unless the Federal Reserve extends the CPFF.
- **Establishment of Primary Dealer Credit Facility (PDCF):** Beginning March 20, 2020, the [PDCF](#) will offer overnight and term funding with maturities up to 90 days for at least six months, subject to further extension if necessary. The PDCF will support the Federal Reserve's goal of supporting households and businesses affected by the pandemic by allowing primary dealers to

promote smooth market functioning and facilitate the availability of credit. Credit extended to primary dealers under the PDCF may be collateralized by a broad range of investment grade debt securities, including commercial paper and municipal bonds, and a broad range of equity securities. The interest rate charged will be the primary credit rate, or discount rate, at the FRBNY.

- **Establishment of Money Market Mutual Fund Liquidity Facility (MMLF):** In recognition of the crucial role that money market funds serve as a common investment tool for families, businesses, and a variety of companies, the Federal Reserve has established the [MMLF](#) program to enhance the liquidity and functioning of the money markets. Through the establishment of a MMLF, the Federal Reserve Bank of Boston will make loans available to eligible financial institutions secured by high-quality assets purchased by such financial institution from money market mutual funds. The Treasury Department, through the ESF, will provide US\$10 billion of credit protection to the Federal Reserve in connection with the MMLF. On March 19, 2020, the federal banking agencies released an [interim final rule](#) and request for comment to ensure the effective use of the MMLF by financial institutions. Among other things, the interim final rule accounts for the fact that financial institutions will not be taking any credit or market risk in association with MMFL activities by modifying the federal banking agencies' capital rules to enable such institutions to receive credit for the low risk of their MMLF activities. The interim final rule is currently effective, and the period to receive comments will close within 45 days following publication in the Federal Register.
- **US Dollar Liquidity Arrangements With Other Central Banks:** The Federal Reserve is establishing temporary US dollar liquidity arrangements (swap lines) with the central banks of Australia, Brazil, Denmark, Korea, Mexico, Norway, New Zealand, Singapore, and Sweden. As with swap lines already established between the Federal Reserve and other central banks, these new facilities are intended to ease the strains in global US dollar funding markets in order to mitigate the impact of such strains on credit supply to households and businesses, both within the US and abroad. Such arrangements will be in place for at least six months, and the new facilities will support the provision of US dollar liquidity in amounts that will vary depending on the particular central bank.
- **Community Reinvestment Act (CRA) Consideration:** The federal banking agencies released a [joint statement](#) on March 19, 2020, regarding CRA consideration for activities engaged in by financial institutions in response to COVID-19. Among other things, the joint statement clarifies that financial institutions will receive CRA consideration for community development activities in response to the COVID-19 national emergency, including those that (i) help to revitalize or stabilize low- or moderate-income geographies as well as distressed or underserved non-metropolitan middle-income geographies, and (ii) support community services targeted to low- or moderate-income individuals. The statement will be effective through the six-month period after the national emergency declaration is lifted, unless extended by the federal banking agencies.

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## **Global Privacy and Security Compliance Law Blog**

**Latham & Watkins LLP** – Alan W. Avery and Pia Naib

March 19 2020



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## **Talking about The Thing: Squire Patton Boggs**

Yes, The Thing touches everything.

COVID-19 affects the muni bond world in some fairly obvious ways. The general mandate is “everybody do less.” Decreasing activity in general translates to decreased business revenues and decreased tax revenues, which means less money available to repay bonds. This has set the disclosure world ablaze, as securities lawyers ponder what to say to the market about the pandemic. That very practical question is far beyond the bounds of this blog and will be dealt with ad nauseum elsewhere, such as [this piece](#) in *The Bond Buyer*.

There are a few less obvious ways that the disease will affect the tax requirements for tax-advantaged bonds. We’ll look at them in a series of posts. Click through for a teaser. (I guess that makes the previous sentence a meta-teaser?)

[Continue reading.](#)

### **The Public Finance Tax Blog**

**By Johnny Hutchinson on March 16, 2020**

**Squire Patton Boggs**

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## **COVID-19 Guidance for Institutions of Higher Education: Holland & Knight**

### **Highlights**

- The fast-changing developments of COVID-19 have left institutions of higher education scrambling to address a wide range of unexpected legal issues.
- This Holland & Knight alert addresses some of the questions more frequently asked by colleges and universities, which should exercise caution and continue to monitor official guidance from federal and state agencies.

The fluid and fast-changing impact of the new coronavirus (COVID-19) has left institutions of higher education (IHEs) scrambling to address unexpected legal issues. This guidance addresses some of their more frequently asked questions.

### **1. What Happens When IHEs or Their Vendors Cannot Perform Contracts Due to the Virus?**

The coronavirus is certain to test jurisprudence pertaining to force majeure clauses, impossibility of performance, and, relatedly, so-called “acts of God.” State law will govern these issues. Force majeure clauses are typical in commercial contracts. The ultimate resolution of their applicability will depend closely on the terms of the contract and the specific circumstances concerning performance. Such clauses usually identify “causes beyond the control” of the contracting party. Disputes about whether the clause applies in a given case will commonly focus on what is causing one party to fail to perform a contractual obligation. Those clauses that specifically reference epidemics or pandemics will have the greatest force.

Impossibility of performance or commercial impracticability can be defenses to contract



performance. Under the impossibility of performance doctrine, a party is discharged from performing a contractual obligation when the obligation is impossible to perform due to unforeseeable circumstances. Mere inconvenience or increased cost does not ordinarily meet the standard. An “act of God” may be the reason for the impossibility of performance. “Acts of God” are also commonly listed in force majeure clauses. Each state addresses this issue slightly differently, but Acts of God have been described as acts or occurrences “so extraordinary and unprecedented that human foresight could not foresee or guard against” them and for which negligence or want of diligence, judgment or skill played no part. See *Fla. Power Corp. v. City of Tallahassee*, 154 Fla. 638, 646, 18 So. 2d 671 (1944); *Cain v. Atlantic Coast Line R. Co.*, 74 S.Ct. 89, 54 S.E. 244, 247 (1906).

## **2. May IHEs Inquire of Employees About COVID-19 Exposure? When May They Have a Duty to Inquire?**

The General Duty Clause of the Occupational Safety and Health Act, 29 U.S.C. § 654(a)(1), and many corollary state statutes, require employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.” Accordingly, the [Occupational and Safety Administration \(OSHA\)](#) advises that employers implement policies that will result in the “prompt identification and isolation of potentially infectious individuals.” OSHA requires employers to record COVID-19 illnesses among the workforce when the virus is contracted in the workplace. These records must be submitted to OSHA on [Form 300A](#) and maintained onsite.

An employer’s failure to inquire of employees about exposure could give rise to legal claims. Workers’ compensation claims are also possible for respiratory diseases to the extent an employee can establish causation from the workplace environment and that his or her occupation presents a particular hazard of the disease occurring so as to distinguish other occupations. Therefore, IHEs should consider excluding or sending home an employee who is symptomatic or returning from travel from high-risk locations specified by the Centers for Disease Control and Prevention (CDC).

During a pandemic, exceptions to the American with Disabilities Act’s (ADA) restrictions on employer health inquiries allow employers to inquire about an employee’s potential infection with the disease and travel from high risk locations. See the U.S. Equal Employment Opportunity Commission’s (EEOC) [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#). The ADA’s “direct threat” rule allows inquiries because an employee infected with COVID-19 will pose a direct health and safety threat to co-workers and others in the workplace. 29 C.F.R. § 1630.2(r). The bona fide occupational qualification defense may also be applicable on these facts. In contrast, an employee who is ill with something else such as the seasonal influenza does not have a disability under the ADA. State and municipal disability laws should also be consulted.

The [CDC recommends that employers separate sick employees from other employees](#). Asking an employee who has been absent from work for a medical reason for the absence is not a violation of the ADA. Nor is requiring an employee to provide a doctor’s note certifying fitness to return to work. The [CDC also recommends](#) that if an employee is confirmed to have COVID-19, employers should inform co-workers immediately so that they can seek appropriate medical screening or care. Employers should provide general information to employees if an employee is infected, but should not specifically disclose the identity of any infected employee, except, as discussed below, with persons who can prevent or lessen a serious and imminent threat to the health or safety of the public. See 45 C.F.R. § 164.510(a); cf. 45 C.F.R. § 164.508. The personal information disclosed should be the minimum necessary to accomplish the purpose.

Employers may ask employees if they believe they have come into contact with someone who has been exposed to the virus, but may not ask employees whether they have a medical condition that

could make them especially vulnerable to the virus. Furthermore, due to the Genetic Information Nondiscrimination Act (GINA) and corollary state laws, employers are restricted from inquiring about family members or their recent potential exposure. 42 U.S.C. §199gg-91(d)(16)(A); 29 C.F.R. § 1635.3(c) (protected genetic information includes “[t]he manifestation of disease or disorder in family members of the individual (family medical history)”). An employee who is asked by the employer to self-quarantine for the COVID-19’s incubation period (which is currently identified as 14 days) may be eligible for protected leave under the Family and Medical Leave Act (FMLA) and corresponding state laws. Any information gathered about an employee’s health must be kept separate from his or her general employment file and treated as a confidential medical record.

### **3. May IHEs Inquire of Students About Coronavirus Exposure? When May They Have a Duty to Inquire?**

Colleges and universities are commonly places of public accommodation with on-campus housing. The ADA provides that a public accommodation may exclude an individual if that individual poses a “direct threat” to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation’s policies or procedures, or by the provision of auxiliary aids. 28 C.F.R. § 36.208(a). In addition, [according to the U.S. Department of Justice \(DOJ\)](#), “The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others.” State and municipal public accommodation and housing discrimination laws should also be consulted.

The failure of an IHE to inquire of students about exposure could give rise to legal claims. State landlord and tenant laws commonly require landlords and tenants of residential properties to comply with the requirements of applicable health codes. Landlords are ordinarily responsible for the sanitary condition of common areas. Threats or dangers to public health may also constitute a public nuisance under applicable municipal laws. Were tenants in client facilities to become infected with COVID-19, the buildings or portions of buildings could be deemed unfit for human habitation until remediated.

The Federal Housing Administration’s Office of Multifamily Housing (MFH) [recommends that property owners and agents follow CDC guidelines](#) and the direction of local health officials, especially in the event of property quarantine. Accordingly, IHEs may have a duty to inquire about the potential exposure of students to COVID-19 and to separate them from others. The information solicited should be the minimum necessary to accomplish the purpose. Any records created by personnel on behalf of the IHE are likely to be “education records” within the meaning of the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. § 99.3 (definition of “education records”). Records created and maintained by a healthcare worker not acting for the school would not qualify as education records.

### **4. Must Institutions Report a Threat of Exposure and, if So, What Should They Report?**

The [CDC recommends](#), and the U.S. Department of Education endorses, sharing accurate information with staff, students and faculty about steps the IHE is taking to prevent and limit exposure risks. In addition to the obligation as an employer to report confirmed-cases to OSHA, IHEs should also notify local health officials about potential virus exposure, as permitted by local law.

In emergencies, when necessary to prevent or lessen a serious and imminent threat to the health or safety of the public, healthcare providers may share protected health information (PHI) without prior written consent with persons in a position to prevent or lessen the threatened harm. See [Joint Guidance](#) on the application of FERPA and the Health Insurance Portability and Accountability Act (HIPAA); 45 C.F.R. § 164.512(j). According to the U.S. Department of Health and Human Services

(HHS), examples include state and local health departments, the U.S. Food and Drug Administration, and CDC.

Similarly, FERPA provides that personally identifiable information (PII) from a student's education records, including student health records, may be disclosed by educational agencies and institutions to appropriate parties in connection with a health or safety emergency, without the consent of the parent or eligible student, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36. HHS has stated that [an emergency includes the outbreak of an epidemic](#). 45 C.F.R. §§ 164.501 and 164.512(b)(1)(i).

A school that provides healthcare to students in the normal course of business, such as through its health clinic, may be a "health care provider" under specific HIPAA analysis. If a school that is a "health care provider" transmits any PHI electronically in connection with a transaction for which HHS has adopted a transaction standard, it typically would be a covered entity under HIPAA. However, many schools that meet the definition of a HIPAA-covered entity do not have to comply with all of the requirements of HIPAA rules as related to students because, with limited exceptions, the school's student health records are considered "education records" or "treatment records" under FERPA. See 45 CFR § 160.103 (definition of PHI ¶¶ (2)(i), (ii)). The HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA by excluding such records from the definition of PHI. As relates to the records of nonstudents (such as staff) treated at a school healthcare clinic, those records would be regulated by HIPAA. Likewise, the records of hospitals associated with IHEs would be regulated by HIPAA.

HIPAA permits covered entities to disclose PHI, without a patient's authorization, to persons at risk of contracting or spreading a disease, 45 C.F.R. § 164.512(b)(1)(iv), and PHI about the patient as necessary to treat the patient or to treat a different patient.<sup>1</sup> Treatment includes the coordination or management of healthcare and related services by one or more healthcare providers and others; consultation between providers; and the referral of patients for treatment. See 45 CFR §§ 164.501, 164.502(a)(1)(ii), 164.506(c).

With students and staff in dozens of countries across the world, institutions may face a request from a foreign government agency or institution for health information in order to combat COVID-19. For staff medical records, HIPAA allows disclosures to foreign government agencies, but only if a domestic public health authority directs the disclosure. 45 C.F.R. § 164.512(b)(1)(i). Requests from partner foreign institutions (for either staff or student records) cannot be satisfied, absent written authorization. For student records, FERPA allows for disclosure to foreign public agencies if "it is necessary to protect the health or safety of the student or other individuals."

## **5. When Institutions Cancel Classes, Educational Programs or Close Their Campuses, What Are Their Obligations Under Title IV?**

Many IHEs are extending spring break or closing their campuses. The [CDC reports](#), "When classes are suspended, IHE may stay open for staff or faculty (unless ill) while students temporarily stop attending in-person classes. Keeping the IHE facilities open a) allows faculty to develop and deliver lessons and materials electronically, thus maintaining continuity of teaching and learning; and b) allows other staff members to continue to provide series and help with additional response efforts."

On March 5, 2020, the U.S. Department of Education [issued "broad approval" for IHEs to use online technologies to continue students' educations](#) without violating Title IV or the Higher Education Act (HEA). The Department is also allowing IHE accreditors to waive their distance education requirements for institutions implementing distance learning solely due to COVID-19. For distance

education, institutions may communicate with students via email, use chat features, set up conference calls, and allow for submission of work electronically. DOE has also authorized IHEs to enter into temporary consortium agreements with other institutions, so that students can complete courses. In addition, an IHE may continue to pay federal work-study wages to students during a closure if it occurred after the beginning of the term, the institution is continuing to pay its other employees and the institution continues to meet its institutional wage share requirement.

If an institution ceases operation during a payment period or a student fails to return when an institution reopens, the requirement for return of Title IV funds kicks in. But if an institution reopens during the same payment period and students return to class at that time, the students are considered to have reentered the same period and retain Title IV eligibility. Importantly, IHEs may also [petition DOE to approve a reduced academic year](#).

## **6. When Students Withdraw from Classes or Educational Programs, What Are the Consequences Under Title IV?**

The U.S. Department of Education is [permitting students to take an approved leave of absence](#) for COVID-19-related concerns or limitations, even if a student notifies the institution in writing after an approved leave of absence has begun. In such an event, the institution may retain the Title IV funds to apply when the student continues enrollment and must ensure that the student is permitted to complete the coursework. IHEs are invested with professional discretion to adjust on a case-by-case basis the cost of attendance. IHEs may offer non-standard term schedules to students who have been recalled from travel abroad programs or canceled out of experiential learning opportunities after the semester began.

## **7. May Quarantines Be Enforced Against Employees and Students?**

COVID-19 meets the definition for “severe acute respiratory syndromes” as set forth in Executive Order 13295, as amended by Executive Orders 13375 and 13674, and, thus, is a federally “quarantinable communicable disease.”<sup>2</sup> Apart from a public order, private employers may require employees to self-quarantine if they pose a “direct threat” or “a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”<sup>3</sup> The assessment by the CDC or public health authorities would provide the objective evidence needed for this determination. If the condition is met, the individual is not protected by the ADA in this context.

[OSHA advises employers](#) to “develop policies and procedures for immediately isolating people who have signs and/or symptoms of COVID-19, and train workers to implement them.” [OSHA recommends](#) isolating people “suspected of having COVID-19 separately from those with confirmed cases of the virus to prevent further transmission.”

**Holland & Knight LLP** – Nathan A. Adams IV, Paul G. Lannon, Miriam McKendall and Matthew W Sloane

March 18 2020

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## **[The SEC’s Fixed Income Market Structure Advisory Committee Approves Two New Recommendations.](#)**

The Securities and Exchange Commission’s (SEC) Fixed Income Market Structure Advisory

Committee (FIMSAC) held its latest meeting on February 10, 2020.<sup>1</sup> The SEC formed FIMSAC to provide advice to the SEC on the efficiency and resiliency of the fixed income markets and identify opportunities for regulatory improvement. During the February meeting, FIMSAC considered and voted to approve:

- a recommendation from the Technology and Electronic Trading Subcommittee regarding reporting additional indicators for corporate bond trades to the Financial Industry Regulatory Authority's (FINRA) Trade Reporting and Compliance Engine (TRACE); and
- a recommendation from the Municipal Securities Transparency Subcommittee involving the timeliness of financial disclosures in the municipal securities markets.

FIMSAC also convened a panel to consider internal fund crosses.<sup>2</sup>

On November 13, 2019, the SEC renewed the charter for FIMSAC for another year.<sup>3</sup> With its newly renewed charter, FIMSAC will continue discussions regarding potential enhancements to the fixed income markets during the coming year. FIMSAC's next meetings for this year are currently scheduled for April 27, 2020 and August 3, 2020 (although the dates are subject to change). In addition to considering issues discussed in the February meeting, FIMSAC is considering a request from SEC Chairman Jay Clayton to analyze and comment on various structural and macroeconomic factors in the fixed income markets, including, without limitation:

- developments in monetary policy and corresponding financial conditions as they relate to the fixed income markets;
- the transition away from LIBOR;
- developments in the sub-investment grade and leveraged finance markets, including covenant packages; and
- developments in the municipal finance markets, including issuer disclosure.

## **Introductory Remarks**

In his introductory remarks for the February meeting, FIMSAC Chairman Michael Heaney summarized the work performed by FIMSAC over the past two years, including having provided the SEC with 10 recommendations on nine topics.<sup>4</sup> Chairman Heaney also described the progress to date in implementing two of the recommendations. On April 9, 2018, FIMSAC introduced a recommendation for a pilot program to study the market implications of changing the reporting regime for block-size trades in corporate bonds.<sup>5</sup> To implement this recommendation, FINRA requested comment on a proposed pilot program to study the recommended changes to corporate bond block trade dissemination.<sup>6</sup> FINRA received over 30 comment letters, which expressed divided views on the proposal. FINRA continues to evaluate next steps for such a pilot program.

In addition, on October 29, 2018, FIMSAC recommended that the SEC, in conjunction with FINRA, establish a reference data service for corporate bonds which would contain specified data elements on TRACE-eligible corporate bond new issues.<sup>7</sup> On December 4, 2019, the SEC, pursuant to delegated authority, approved FINRA's proposal to establish a central depository for public dissemination of new-issue corporate bond reference data that was in line with FIMSAC's recommendation.<sup>8</sup> On December 12, 2019, however, the SEC stayed approval of the service in response to a petition to review the delegated approval, until it orders otherwise.<sup>9</sup>

## **Recommendation to Enhance Data Reported to TRACE for Corporate Bond Trades**

One panel of the FIMSAC meeting discussed the Technology and Electronic Trading Subcommittee's preliminary recommendation to improve price transparency for certain types of fixed income

transactions reported to TRACE. The recommendation addressed two particular types of trades for which the TRACE reported price may not be reflective of the current market price, namely completed spread trades awaiting a Treasury spot and portfolio trades. After discussing issues raised by the proposal, FIMSAC voted to approve the subcommittee's recommendation, with 17 votes in favor and no votes in opposition or abstentions.<sup>10</sup>

Completed spread trades awaiting a Treasury spot<sup>11</sup> are reported to TRACE following the completion of the spotting process, even if the parties agreed to the spread much earlier in the day. As corporate bond spreads and Treasury prices can move throughout a day, the delayed spot process allows for a potential mismatch between the assumed value of the trade when the spread is agreed on and the price reported to TRACE following the Treasury spot later in the day. To address this issue, FIMSAC recommends that the SEC, in conjunction with FINRA, require that reporting parties include a flag or modifier for delayed spot trades that will alert market participants that the spread-based economics of the trade had been agreed on earlier in the day, and that the reporting party on a delayed spot trade be required to report the time at which the spread was agreed on.

In addition, with respect to portfolio trades, FIMSAC recommends that the SEC, in conjunction with FINRA, require that reporting firms use a TRACE modifier to identify whether a particular trade was executed as part of a portfolio trade. For purposes of this recommendation, a "portfolio trade" is defined to mean a trade that is executed between only two parties involving a basket of securities of at least 30 unique issuers for a single agreed price for the entire basket and that was executed on an all-or-none or most-or-none basis. FIMSAC believes that requiring a modifier for the TRACE report of a bond that is part of a portfolio trade would allow market participants to know with certainty that the price was agreed on as part of a portfolio and therefore may not reflect the independent market price for the particular bond.

FIMSAC also believes that market participants would benefit from a complete and accurate picture of the number and volume of fixed income trades that are executed electronically in order to track e-trading trends and to better inform transaction cost analysis. FIMSAC, however, did not provide a recommendation that FINRA and the Municipal Securities Rulemaking Board (MSRB) incorporate an "electronic trade" modifier for the fixed income markets due to the issues raised by the varying regulatory treatment afforded electronic trading platforms (i.e., regulated as broker-dealers, alternative trading systems or not at all). Once there is a unifying regulatory framework for all fixed income electronic trading platforms, FIMSAC believes that FINRA and MSRB should establish an appropriate definition of an "electronic trade" that could form the basis for a comprehensive electronic trading flag.

### **Recommendation Regarding Timeliness of Municipal Issuer Disclosure**

Another panel discussed the Municipal Securities Transparency Subcommittee's preliminary recommendation regarding timeliness of municipal issuer disclosure. After discussion of the proposal, FIMSAC voted in favor of the recommendation, with 14 votes in favor, two votes in opposition and no abstentions.<sup>12</sup>

FIMSAC recommends that the SEC be given additional statutory authority to (1) provide a mechanism for the SEC to enforce compliance with continuing disclosure agreements and other obligations of municipal issuers to protect municipal securities bondholders, and (2) provide a safe harbor from private liability for forward-looking statements for municipal issuers that satisfy certain conditions, including, but not limited to, appropriate risk disclosure relating to such forward-looking statements, and if projections are provided, disclosure of significant assumptions underlying such projections and that the financials are provided in good faith.



FIMSAC also recommends that the SEC explore ways in which it could make disclosure deadlines for annual financial information and audited financial statements more certain and predictable. This recommendation is intended to give investors more certainty regarding when a municipal issuer has agreed to provide annual financials. FIMSAC further recommends that the SEC seek wide-ranging public comment about the concerns raised by market participants about disclosures in the municipal markets and the potential need for the SEC to establish a disclosure framework, including time frame obligations for municipal issuers. After reviewing comments, the SEC can determine whether it would be appropriate for the SEC to seek legislation to give the SEC additional (but still limited) authority over municipal disclosures. Finally, FIMSAC recommends that the SEC explore ways in which it can raise municipal issuers' awareness of the potential consequences of providing less timely and less robust disclosure information, such as the potential for the market to demand higher yields from such municipal issuers.

### **Internal Fund Crosses Panel**

The final panel of the FIMSAC meeting discussed the risks and benefits of internal fund crosses, and the potential advantages and disadvantages of providing relief from certain regulatory requirements related to such crosses. Certain panelists noted that such crosses can be beneficial to both the buyer and seller, and may assist funds with liquidity risk management. Certain panelists also noted the practical difficulty of obtaining and using bids and quotes for purposes of complying with Rule 17a-7 under the Investment Company Act of 1940, and the improved coverage and quality of pricing services that are now available. The discussion also recognized the need to prevent inappropriate self-dealing in cross trades.

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

**Wilmer Cutler Pickering Hale and Dorr LLP** - Andre E. Owens, Cherie Weldon and Mahlet Ayalew

March 17 2020

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### **[S&P: U.S. State Unemployment Insurance Claims Are Not An Immediate Challenge To State Liquidity](#)**

NEW YORK (S&P Global Ratings) March 23, 2020—While the economic fallout from potentially massive unemployment levels will be a credit challenge for U.S. states, S&P Global Ratings does not believe that near-term state liquidity pressure will stem directly from payments on unemployment insurance claims that have recently spiked because of the coronavirus pandemic.

This is because the program structure allows states to receive federal loans, if necessary, to cover state unemployment insurance trust fund deficiencies, if any, under current law. These federal loans must eventually be paid back to the federal government, however, through higher taxes on businesses or through other means.

During the Great Recession, some of these federal loans became quite substantial (see "Unemployment Insurance Fund Bonds Help States Pay Off Federal Unemployment Loans," published Sept. 6, 2012, on RatingsDirect) and in some cases prompted states to issue bonds carrying lower interest rates to pay off higher-interest federal unemployment insurance loans. In the first quarter of 2012, loans from the federal unemployment account reached \$40.7 billion. In 2011,

California's unemployment loan from the federal government peaked at \$11.0 billion alone. As of Dec. 31, 2019, federal unemployment account loans were only \$63.3 million, attributable entirely to the Virgin Islands, and aggregate state unemployment trust fund balances were \$75.7 billion. While the federal government has indicated that certain states have below-optimal levels of state trust fund balances (such as California at \$3.3 billion as of Jan. 1, 2020), we believe the ability to tap into federal loans relieves short-term unemployment trust fund liquidity pressures for any particular state.

If states meet certain technical requirements and maintain a certain threshold of unemployment insurance tax rates on businesses over time, they can initially receive these federal unemployment trust fund loans interest-free. Qualifying states receive interest-free federal unemployment loans if a state takes a federal advance after Jan. 1, and repays it by Sept. 30, of the same year. After that, interest charges are imposed and if the state continues to fail to repay the loan by Nov. 10, of the year in which a second Jan. 1, has passed, then all taxable employers in a state will be subject to a reduced credit of 0.3% on the Federal Unemployment Tax Act tax, for which the credit reduction grows in subsequent years depending on state tax rates and changes in state law. For 2020, 31 states meet the eligibility criteria for interest-free borrowing.

The Louisiana Workforce Commission announced on March 19 that employers within the state will get a temporary deferral from paying their first-quarter 2020 unemployment taxes to June 30. If similar deferrals spread to other states, it could cause the amount of federal unemployment loans to rise higher than what they might be otherwise, but again would be unlikely to cause near-term state liquidity issues. These funds would still need to be repaid to the federal government from later business taxes, but potentially at a higher tax rate.

S&P Global Ratings will continue to monitor unemployment insurance trust funds and the extent to which higher taxes that are imposed on businesses to replenish these funds could reduce economic competitiveness, or cause a state to issue tax-backed debt to repay federal loans. However, we believe the short-term credit effects are limited.

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.

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## **[S&P: Updated Scores For U.S. Metropolitan Statistical Areas Based On Various Criteria For 2019](#)**

S&P Global Ratings has updated its scores for U.S. metropolitan statistical areas (MSAs) based on its local government GO criteria, priority-lien criteria, water/sewer criteria, and special assessment debt criteria (see "U.S. Local Governments General Obligation Ratings: Methodology And Assumptions" (published Sept. 12, 2013, on RatingsDirect), its "Priority-Lien Tax Revenue Debt" (published Oct. 22, 2018), "U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions" (published Jan. 19, 2016), and "Special Assessment



Debt Criteria" (published April 2, 2018).

Overall, 31 of the 384 MSA scores changed with 18 improving and 13 weakening. Additionally, one MSA was added: Poughkeepsie-Newburgh-Middletown, N.Y. This number of changes is lower than it has been during the past three years. The changes are due almost entirely to the employment growth aspect of the MSA score, which represents a comparison of each MSA's percentage change in employment over the past five years against the sum for all MSAs. The change in employment is measured through 2019, and does not take into account recent or projected economic changes in 2020 accompanying the COVID-19 pandemic.

Other factors influencing the changes include:

[Continue reading.](#)

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## **Cities Reel From Hammer Blows of Sports, Events Going Dark.**

- **Cutting big-ticket events ripples through local economies**
- **Spokane's arenas to lose \$1.5 million from loss of tournaments**

March was looking like a great month for Spokane: The eastern Washington city was going to host games in the NCAA's March Madness basketball tournament as well as the Pacific Northwest Qualifier, which brings thousands of volleyball players and their families.

But both have been canceled because of the coronavirus pandemic, at a cost of more than \$1.5 million in revenue for the Spokane Public Facilities District, which runs the venues for the events.

"This is a major hit to our economy," said Stephanie Curran, chief executive officer of the facilities district.

City and state officials across the U.S. are confronting the sweeping economic toll wrought by the virus that has emptied stadiums, arenas, hotels, restaurants and other businesses that just a few weeks ago were bustling.

Concerts and tours have been canceled along with New York's Broadway theaters. Major League Baseball, the National Basketball Association and the National Hockey League last week suspended operations and the NCAA canceled all spring championship events.

### **Sports and Taxes**

Major sporting events can provide large infusions of tax revenue for host cities. The city of Omaha, Nebraska, has seen its three biggest events of the year — the NCAA basketball tournament, College World Series baseball tournament and Berkshire Hathaway's annual meeting — canceled within the past week.

Those events have a combined economic impact of roughly \$100 million for the city, an estimated \$5 million to \$10 million of which is city tax revenue, said Stephen Curtiss, the city's finance director.

"It's not the ideal scenario for us as a city," he said. Event-related tax revenues account for 1%-1.5% of the city's general fund, a loss he said would pale in comparison to the hotels, restaurants and other businesses that have closed or limited operations after federal officials urged people to avoid gatherings of 10 or more people.

Some \$9 billion in tax-free municipal bonds to have been issued to finance sports stadiums and arenas that could remain empty for months due to the virus, nearly half in New York and Florida, according to Bloomberg Intelligence.

Florida's Miami-Dade County, for example, services the debt that financed the Miami Marlins' baseball stadium in part with hotel taxes, and the area is seeing a 9% decline in bookings, said Eric Kazatsky, senior municipals strategist at Bloomberg Intelligence. If that revenue stream dries up, the county would need to tap other revenue streams to service that stadium debt.

"When you hit an unexpected rough patch in the economy, you could find yourself in a situation where the municipality is on the hook," he said.

In New York City, budget officials estimate some \$3.2 billion in tax revenue will be lost over the next six months as the virus hollows out entertainment, tourism, hotel and other key sectors of its economy. Hotels are projected to be at 20% occupancy through June while restaurant sales are forecast to be down by 80%. Some \$1.4 billion in spending cuts are needed to preserve services vital to the city's most vulnerable, according to the city comptroller's office.

Social distancing measures will push thousands of small businesses in Maryland into bankruptcy without additional cash from the state or federal government to get them through the near-term shutdown of normal life caused by the virus, said Peter Franchot, Maryland's comptroller.

The economic turmoil will eventually become a threat to the state's tax revenues. Franchot said an accurate estimate isn't possible until the scope of the outbreak is better understood, but his staff has told him state tax revenues could be reduced by 15% to 20%. Such a dramatic decline could push state officials to make emergency spending cuts, which is what unfolded in the wake of the 2009 financial crisis, he said.

"I hope it doesn't happen, but it could based on a lengthy self-quarantine lockdown of the state's economy," Franchot said.

Big-ticket events have vast effects on the the regional economies of the cities that host them, said Anirban Basu, an economist and chief executive officer at Sage Policy Group Inc. in Baltimore.

"The supply chain around these events is extraordinarily extensive and it's difficult to know when these supply chains actually end because they're so extensive," he said.

Cities that are heavily dependent on hotel rooms, ticket taxes, casinos and other event-based sources stand to see the greatest pressure in the near term, which could lead to service reductions as officials adjust to maintain balanced budgets.

"All of that revenue is about to tumble, so to try to cobble together savings, you're going to see services curtailed," Basu said.

Spokane has also canceled its St. Patrick's Day parade, a middle school basketball tournament that regularly fills the Spokane Convention Center and the girls' volleyball tournament that spreads over two weekends and is the area's highest grossing event, Brian Coddington, communications director for the city of 200,000.

The city is trying to assess the impact on local revenue, adjusting hiring plans and trying to figure out options.

"The information is coming quickly and there are a lot of variables we don't know, like how long the

impact might last," Coddington said.

To soften the blow, Mayor Nadine Woodward, who took office Jan. 1, and other Spokane Valley officials are promoting an #OrderUpSpokane program to encourage people to buy takeout or pickup from local restaurants.

"All the businesses are really responding and trying to do the best they can to adjust to this," Coddington said. "We're asking people to be really creative about how they are making adjustments in their daily lives."

## **No Choices**

In normal times, there's little financial loss to a community from the cancellation of an event, said Andrew Zimbalist, an economics professor at Smith College in Northampton, Massachusetts. For people who live near a stadium or an arena, it's often a choice between paying for the night out at the event or spending the money at a local restaurant or different location.

"Now they just can't go to the local theater or the local concert because those places are shut down too," Zimbalist said. "There's less money the households are spending in the local economy. If you don't spend money at the ball park, there's no place to spend it."

Greensboro, North Carolina, hotel entrepreneur Dennis Quaintance said the abrupt nature of the cancellations added to the sting for his companies.

First the Atlantic Coast Conference basketball tournament was called off, and then the NCAA March Madness games.

"We went from about 100% occupancy to about 10% in one day," Quaintance, chief executive officer of the employee-owned Quaintance-Weaver Restaurants & Hotels, said in an interview.

"If none of that had been on the books, we would have had different business that didn't go away," he said.

## **Bloomberg Markets**

By Ryan Beene, Todd Shields, and Susan Decker

March 18, 2020, 8:23 AM PDT Updated on March 18, 2020, 9:22 AM PDT

— *With assistance by Danielle Moran*

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## **Fitch Rtgs: Oil Price Plunge to Pressure US Energy States & Locals**

Fitch Ratings-Austin/San Francisco/New York-17 March 2020: The sharp decline in oil and natural gas prices will reduce economic output and revenues in US states, cities, counties, and single-purpose districts with significant energy sector exposure, says Fitch Ratings. Governments' vulnerabilities to these fiscal pressures will be compounded by the broader economic pressures caused by the coronavirus outbreak and related containment efforts, although the situation remains uncertain and is evolving rapidly.

The current price decline may represent a longer-term shift in the demand and supply landscape,

causing these states and local governments to adjust to a longer period of negative or reduced growth in the building blocks of their revenue bases. This could lead to a change in Fitch's assessment of the underlying economic fundamentals of these credits and in some cases, a reassessment of these ratings.

States that have increased their financial resilience since the 2014-2016 natural resources downturn are expected to weather the current tumult with a limited rating impact, although those outcomes are predicated on the continuation of sound fiscal policies, which include provisions for an extended period of market weakness. Energy states whose revenue systems are less reliant on natural resources development, feature more diverse economies, or have accumulated significant reserves, such as Colorado and Texas, are also expected to maintain greater financial stability.

A sustained drop in oil prices could negatively affect the ratings of a handful of local government issuers with a high degree of economic and taxpayer concentration in the energy sector. However, most local governments in oil producing regions appear well prepared for a transitory period of stress and have withstood temporary prior price declines of up to one to two years with minimal ratings migration.

The effects to the energy sector will be a function of the duration of depressed oil prices and a government's level of economic diversity, structure of its revenue framework, spending flexibility and current level of reserves. The nature of a local government's participation in the industry and location in their state will also determine how vulnerable it may be to declining prices. Communities with 'downstream' energy facilities such as petrochemical manufacturing may benefit from lower energy prices.

Generally, Fitch believes US energy states and most local governments have sufficient fiscal tools to address near-term economic and financial stress linked to energy price drops. However, strained energy markets coupled with the coronavirus pandemic creates significant uncertainty as to the extent to which policy actions can address a longer-term shift in the demand/supply equation, requiring state and local officials to make greater and more fundamental budgetary adjustments than they have in past energy industry downturns.

Following the 2014-2016 natural resources downturn, when the price of West Texas Intermediate dropped to a low of \$36.82 per barrel (bbl) from more than \$100.00/bbl, sharp declines in financial resilience or weak budgetary responses resulted in rating downgrades for the states of Alaska, Louisiana, Oklahoma and West Virginia. These states have rebuilt their financial resilience since the downturn and are now rated 'AA-', 'AA-', 'AA' and 'AA', respectively, all with Stable Rating Outlooks, although Alaska's multiple downgrades from 'AAA' reflected its inability to advance financial policies that ensure stable financial performance.

Texas' rating of 'AAA' remained intact through this period of stress due to its greater economic and revenue diversity and sizable reserves. Montana also sustained its 'AA+' rating due to increased economic diversification and conservative fiscal policies. As oil and natural gas development has expanded in the US over the past several years, current oil and natural gas price turmoil may cause economic harm to a broadened group of US states.

As it did during the 2014-2016 period, Fitch is monitoring 15-20 local governments with energy concentration in Texas, California and Alaska that are at elevated risk for negative rating action. Issuers consist primarily of smaller communities in production areas but also include industry headquarter cities. Fitch ultimately took no negative rating actions on at-risk issuers during the last energy downturn as prices recovered, alleviating much of the economic concern. In the current environment, we expect the combination of reduced exploration activity and coronavirus economic

pressures will be felt most acutely in the smaller, more concentrated oil-based economies, while larger cities may experience less severe effects, given the size and diversity of their regional economies.

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