
11 U.S. Neighborhoods Emerge As Best Candidates For Opportunity Zone Investments.

Areas Identified Are More Impoverished and Densely Populated, With Low Homeownership Rates; Most Already Have Home Prices Far Exceeding National Levels; While Prices Have Both Increased and Decreased Since First Half of 2019

IRVINE, Calif., Sept. 3, 2020 /PRNewswire/ — ATTOM Data Solutions, curator of the nation’s premier property database and first property data provider of Data-as-a-Service (DaaS), teamed up with CityBldr, a Seattle-based proptech company that uses AI to determine the best use of land, to discover that a widespread group of mostly-impooverished, densely-packed urban neighborhoods ranging from Anacostia in southeast Washington, DC, to the South Shore area of Chicago, IL, to City Heights in central San Diego, CA, offer some of the most attractive opportunities in the nation for housing developers to take advantage of federal reinvestment tax benefits.

CityBldr data spotlights 11 neighborhoods in seven states and the District of Columbia with some of the best potential for using Opportunity Zone tax benefits designed to spur revival in low-income communities across the United States. The zones were established by Congress under the 2017 Tax Cut and Jobs Act.

Along with Anacostia, South Shore, and City Heights, other neighborhoods identified include Mid-City in central Los Angeles; Parramore in west-central Orlando, FL; Central District in eastern Seattle, WA; West Colfax in western Denver, CO; Spartan Keyes in eastern San Jose, CA; North End/New Center in northern Detroit, MI; Buckman/Kerns in southeastern Portland, OR; and Hilltop in central Tacoma, WA.

Most of those areas stand out as notably poorer and more densely populated than the U.S. as a whole, with lower income and educational levels and far higher percentages of renters than homeowners. However, contributing to their economic potential, a few have above-average educational levels, and most have home values that far exceed the national median home price. They also have seen a wide range of median home price increases and decreases over the past year, from nearly doubling in Chicago’s South Shore neighborhood, to a drop of 12 percent in the Mid-City section of Los Angeles, according to ATTOM.

The areas were identified by CityBldr as among those where both communities and housing developers have the most to gain from Opportunity Zone tax benefits, based on machine learning technology from various data sources and a detailed understanding of the various markets.

“This data tells us that housing developers should consider investing in these neighborhoods because they have an immense amount of potential, plus tax benefits aimed at realizing that

potential,” said Bryan Copley, co-founder and CEO of CityBldr. “What we’ve done with this study is create a standardized score to compare every opportunity zone in the U.S. to determine which areas would yield the highest average return on investment.”

Todd Teta, chief product officer with ATTOM Data Solutions, noted that ATTOM contributed another key element showing home price changes from the first half of 2019 to the first half of 2020 in those areas.

“Factoring in home values and how they’ve done in the past year adds a critical piece of data to the picture,” said Teta. “Developers can get a demographic snapshot of what these areas look like, plus the hard numbers on how home prices are changing.”

Key data points for areas spotlighted in the study:

- Median household incomes in these areas range from \$20,205 in Tacoma’s Hilltop area to \$57,009 in the Spartan Keyes section of San Jose. Seven of the 11 areas have median household incomes below \$40,000 and all 11 are beneath the national level of \$61,937.
- Population densities range from about 2,400 people per square mile in the North End/New Center neighborhood in Detroit to 19,400 per square mile in Chicago’s South Shore area. Nationwide, the number is just 93 per square mile.
- All 11 areas have poverty levels that are higher than the national rate of 13.1 percent, running from 16.3 percent in the Mid-City section of Los Angeles to 49.4 percent in the City Heights area of San Diego.
- Between 53 percent and 98 percent of households rent homes in the 11 areas, compared to 36 percent nationwide. The lowest rental rate is in Detroit’s North End/New Center area, while the highest is in Orlando’s Parramore community.
- In three areas, the percentage of adults with college degrees outpaces the national figure of 32.6 percent: Spartan Keyes in San Jose (37.5 percent), Central District in Seattle (48.7 percent) and Buckman/Kerns in Portland (56.5 percent). Levels in other spotlighted areas range from 3.6 percent in the Parramore section of Orlando to 31.5 percent in Denver’s West Colfax neighborhood.
- Despite relatively high levels of economic distress, the typical home sells for more than the national median home price in eight of the 11 areas, according to data collected by ATTOM in the first half of 2020. The lowest median home prices are in North End/New Center in Detroit (\$40,501), Parramore in Orlando (\$105,000) and Hilltop in Tacoma (\$217,000). The highest are in Central District in Seattle (\$795,500), Mid-City in Los Angeles (\$860,750) and Spartan Keys in San Jose (\$885,000).
- The largest increases in median home prices from the first half of 2019 to the first half of 2020, based on ATTOM data, were in North End/New Center in Detroit (up 25 percent), Parramore in Orlando (up 31 percent) and South Shore in Chicago (up 91 percent). The biggest declines were in Spartan Keys in San Jose (down 7 percent), Mid-City in Los Angeles (down 12 percent) and Hilltop in Tacoma (down 32 percent). However, while the opportunity zone in Hilltop (census tract 614) saw a sharp decline of 32 percent, the city of Tacoma, WA saw an increase of 12 percent in median home sales prices from last year.

Report methodology

The overview of these opportunity zones looked at high redevelopment values defined by CityBldr in an analysis designed to showcase areas that offer the greatest value to be gained by investors for building multifamily apartments, rowhomes or townhomes in those areas. Those census tracts included in the analysis also must have sufficient home sales prices from ATTOM Data Solutions, to show a year-over-year and two-year median home sales price change. Various data points mentioned

above to help offer context for these opportunity zones came from Censusreporter.org.

About CityBlDr

CityBlDr is a technology company that determines the best use of land. The company offers commercial real estate, residential real estate, government and architecture products and powers acquisitions for some of the world's most admired companies. For a ranking of sites within these or other opportunity zones, submit inquiries to hello@cityblldr.com.

About ATTOM Data Solutions

ATTOM Data Solutions provides premium property data to power products that improve transparency, innovation, efficiency and disruption in a data-driven economy. ATTOM multi-sources property tax, deed, mortgage, foreclosure, environmental risk, natural hazard, and neighborhood data for more than 155 million U.S. residential and commercial properties covering 99 percent of the nation's population. A rigorous data management process involving more than 20 steps validates, standardizes and enhances the data collected by ATTOM, assigning each property record with a persistent, unique ID — the ATTOM ID. The 9TB ATTOM Data Warehouse fuels innovation in many industries including mortgage, real estate, insurance, marketing, government and more through flexible data delivery solutions that include bulk file licenses, property data APIs, real estate market trends, marketing lists, match & append and introducing the first property data delivery solution, a cloud-based data platform that streamlines data management - Data-as-a-Service (DaaS).

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[San Luis Obispo Regional Transportation Authority Closes First TIFIA Loan Under Rural Projects Initiative](#)

San Luis Obispo Regional Transportation Authority Closes First TIFIA Loan Under Rural Projects Initiative Proposed San Luis Obispo Regional Transit Facility Project.

On September 3, 2020, San Luis Obispo Regional Transportation Authority (SLO RTA) closed the first TIFIA loan under the U.S. Department of Transportation's (Department's) Transportation Infrastructure Finance and Innovation Act (TIFIA) [Rural Project Initiative](#) (RPI). The SLO RTA manages several local and express fixed-route transit lines, as well as several paratransit and dial-a-ride services throughout San Luis Obispo County located in the Central Coast region of California. The SLO RTA's current administration, operations, and bus maintenance facility has ...

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California's Two Debt Entities: What's the Difference?

Assisting all state and local government units in the planning, preparation, marketing, and sale of debt issues

California has two debt-related entities: California Debt Limit Allocation Committee and California Debt and Investment Advisory Commission. What's the difference?

California Debt Limit Allocation Committee

Government Code Title 2, Division 1, Chapter 11.8 sets forth the California Debt Limit Allocation Committee in Sections 8869.80 to 8869.94. Section 8869.80 makes a number of legislative findings and declarations regarding the volume ceiling on the aggregate amount of private activity bonds that can be issued in each state. The stated purpose of the Committee is "to designate a state agency and create an allocation system to administer the state volume ceiling."

Moreover, there is "a substantial public benefit by promoting housing for lower income families and individuals. A substantial public benefit is served by preserving and rehabilitating existing governmental assisted housing for lower income families and individuals. A substantial public benefit is served by providing federal tax credits or reduced interest rate mortgages to assist teachers, principals, vice principals, assistant principals, and classified employees who are willing to serve in high priority schools to purchase a home. A substantial public benefit is served by constructing educational facilities for the state's children."

As a result, Chapter 11.8 was enacted to implement the state volume limit established by the Federal Tax Reform Act of 1986 and other federal acts and provisions of the Internal Revenue Code. Section 8869.83 establishes in state government the California Debt Limit Allocation Committee which consists of the following six members:

- The Treasurer, or his or her designee.
- The Controller, or his or her designee.
- The Governor, or his or her designee.
- The Director of Housing and Community Development, who is a nonvoting member.
- The Executive Director of the California Housing Finance Agency, who is a nonvoting member.
- A representative from local government who is a nonvoting member, selected by two voting members of the committee.

The Treasurer serves as chairperson of the Committee and the office of the Treasurer must provide an executive director and any administrative assistance and support staff that is needed for the Committee to operate. The Committee members do not receive compensation and two voting members of the Committee constitute a quorum. The affirmative vote of two voting members of the Committee is necessary for any action taken by the committee.

Under Section 8869.85, each state agency must apply to the Committee for allocation of a portion of the state ceiling, supplying any information which the Committee may require. The application may be for a specific project, or it may be for a designated dollar amount, to be utilized for projects or programs at the discretion of the state agency. No private activity bonds issued by any state agency is be deemed to receive the benefit of any portion of the state ceiling unless the Committee has

allocated or permitted the transfer of a portion of the state ceiling to the state agency.

Pursuant to Section 8869.90, the Committee may charge fees to the lead underwriter, the bond purchaser, or the bond issuer to cover the Committee's costs in carrying out the duties and responsibilities set forth in the law. Under Section 8869.93, the Treasurer, or his or her designee, is designated as the state official to certify that an issue of private activity bonds meets the requirements of the Internal Revenue Code.

According to the California Debt Limit Allocation Committee (CDLAC), it is a three-member body that was created in 1985 by a gubernatorial proclamation in response to the 1984 Tax Reform Act, which imposed an annual limit on the dollar amount of tax-exempt private activity bonds that may be issued in a state. Private activity bonds included student loan bonds and industrial development bonds (including exempt facility bonds, small-issue industrial development bonds, and bonds for industrial parks).

In 1987, the California Legislature statutorily established CDLAC and the 1998 Omnibus Budget Act raised the volume cap on private activity bonds to \$75 per capita or a minimum of \$225 million. The purpose of CDLAC is to implement Section 1301 of the Federal Tax Reform Act of 1986 and Section 146 of the Internal Revenue Code which impose a limit on the amount of tax-exempt private activity bonds which a state may issue in a calendar year. According to CDLAC, its programs have resulted in the allocation of more than \$65 billion of private activity, tax-exempt bonds to over 220 municipal, state, and joint powers authority issuers.

California Debt and Investment Advisory Commission

Government Code Title 2, Division 1, Chapter 11.5 sets forth the California Debt and Investment Advisory Commission in Sections 8855 to 8859. Section 8855 creates the California Debt and Investment Advisory Commission, which consists of nine members, selected as follows:

- The Treasurer, or his or her designee.
- The Governor or the Director of Finance.
- The Controller, or his or her designee.
- Two local government finance officers appointed by the Treasurer, one each from among persons employed by a county and by a city or a city and county of this state, experienced in the issuance and sale of municipal bonds and nominated by associations affiliated with these agencies.
- Two Members of the Assembly appointed by the Speaker of the Assembly.
- Two Members of the Senate appointed by the Senate Committee on Rules.

The term of office of each appointed member is four years, but appointed members serve at the pleasure of the appointing power. In addition, any legislators appointed to the Commission meet with and participate in the activities of the Commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature.

The Treasurer serves as chairperson of the Commission and presides at meetings of the Commission. The Commissioners do not receive a salary but are entitled to receive per diem allowance for attending meetings. The office of the Treasurer furnishes all administrative assistance required by the Commission.

The Commission is charged with numerous duties, including assisting all state and local government units in the planning, preparation, marketing, and sale of debt issues to reduce cost and to assist in protecting the issuer's credit; maintain contact with state and municipal bond issuers, underwriters, credit rating agencies, investors, and others to improve the market for state and local government

debt issues; and, publishing a monthly newsletter describing and evaluating the operations of the Commission during the preceding month.

According to the California Debt and Investment Advisory Commission (CDIAC), it improves the practice of public finance in California by providing responsive and reliable information, education, and guidance to state and local public agencies and other public finance professionals. The Commission was created in 1981 as the State's clearinghouse for public debt issuance information and required it to assist state and local agencies with the monitoring, issuance and management of public debt.

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By Chris Micheli, September 11, 2020 7:50 am

[MSRB Event-Based Continuing Disclosures.](#)

Event-based continuing disclosures that cite COVID-19 continue their downward trajectory.

[Read this week's disclosure summary report.](#)

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- **Ed. Note:** Welcome to possibly the most useless issue of the newsletter to date, which is truly saying something. Some combination of plague and pestilence, standard-issue summer doldrums, and pre-election paralysis has resulted in a drastic dearth of muni market developments. Rather than consider the sorry landscape of weekly public finance publications, we invite you to enjoy the fact that your children are back in school, to congregate at your favorite bars and restaurants, and to mingle with the masses at sporting events, concerts and festivals. Oh. Wait. Never mind.
 - [Forget Pension Obligation Bonds. Two Cities Are - No Joke - Leasing Their Streets To Fund Pensions.](#)
 - [Novogradac 2020 Credit and Bond Financing for Affordable Housing Virtual Conference.](#)
 - [Platte County v. UMB Bank, N.A., Trustee of Transportation Refunding and Improvement Bonds \(Zona Rosa Retail Project\) Series, 2007](#) - After default of revenue bonds, Court of Appeals holds that County had absolutely no obligation to pay the revenue shortfall on the debt service, despite County's agreement in the Financing Agreement to annually consider appropriating funds to do so; interesting discussion of the role of moral obligations as credit enhancements.
 - And finally, With Fans Like These, Who Needs Drive-By Shootin is brought to us this week by [Lona v. City of Fullerton Police Department](#), in which we learned that the Fullerton Tokers Town criminal street gang has adopted a truly unlikely mascot: the California State University Fullerton soccer team. We kid you not. In fact, the *People v. Fullerton Tokers Town gang injunction*, explicitly prohibits alleged gang members from wearing CSUF clothing and insignia. We imagine that the CSUF soccer squad is simultaneously, a) bewildered by the presence of this particular fan-base in the stands and 2) deeply heartened by the abject terror struck in the hearts of the hated UC Irvine (Go Anteaters!) contingent.

[Redondo Beach Waterfront, LLC v. City of Redondo Beach](#)

Court of Appeal, Second District, Division 3, California - July 9, 2020 - 51 Cal.App.5th 982 - 265 Cal.Rptr.3d 556 - 20 Cal. Daily Op. Serv. 6861 - 2020 Daily Journal D.A.R. 7200

Real estate developer brought actions against city, seeking declaratory judgment that it had obtained statutory vested rights regarding waterfront development project against city which vested before passage of initiative that would substantially curtail project.

Individual residents and resident groups intervened. The Superior Court entered judgment on pleadings for developer, and denied residents and groups' motion for attorney fees and litigation costs. Residents and groups appealed, and appeals were consolidated.

The Court of Appeal held that:

- Developer's right to proceed with project vested as to the city before passage of initiative;
- California Coastal Act did not preclude developer's statutory vested rights claims as to project; and
- Developer's action against city constituted an "actual controversy" ripe for adjudication.

Real estate developer's right to proceed with waterfront development project vested as to the city before passage of initiative that would substantially curtail project, as developer submitted an application for vesting tentative tract map to city, and city notified developer in writing that application was "deemed complete."

California Coastal Act did not preclude real estate developer's statutory vested rights claims as to city waterfront development project, to extent claims related to development in coastal zone; Act and its provision for oversight of local land use decisions in coastal zones coexisted with statutory vested rights provision, and such vested rights flowing from local agency's approval of vesting tentative map bound the local agency, not the state.

Real estate developer's action against city, seeking declaratory judgment that it had obtained statutory vested rights regarding waterfront development project against city which vested before passage of initiative that would substantially curtail project, constituted an "actual controversy" ripe for adjudication; city took position that agreement's force majeure clause had been triggered and that some of its obligations under agreement could be impacted by initiative, and it also suggested it believed the project could be impacted by amendments to local coastal program contained in initiative, virtually guaranteeing a future controversy relating to legal rights and duties of parties.

MUNICIPAL CORPORATIONS - CALIFORNIA

[Lona v. City of Fullerton Police Department](#)

Court of Appeal, Fourth District, Division 3, California - August 24, 2020 - Cal.Rptr.3d - 2020 WL 4933571 - 20 Cal. Daily Op. Serv. 9030

Requester, an admitted former member of a criminal street gang, filed a petition against city police department requesting removal of his name from a shared gang database that listed him as a suspected gang member or associate.

The Superior Court denied requester's petition. Requester appealed.

The Court of Appeal held that:

- Any error in trial court's admission of department's second letter denying requester's request to be removed from database was harmless for purposes of trial court's ruling on requester's petition;
- Substantial evidence established that requester was an active "associate" or "affiliate" of the gang he previously belonged to, thus, supporting trial court's denial of requester's petition; and
- Trial court's denial of requester's attempt to introduce evidence to rebut department's denial letter with reference to department's opposition to requester's petition did not violate requester's due process rights.

BALLOT INITIATIVE - MAINE

[Avangrid Networks, Inc. v. Secretary of State](#)

Supreme Judicial Court of Maine - August 13, 2020 - A.3d - 2020 WL 4692295 - 2020 ME 109

Power company brought action for declaratory judgment, seeking to enjoin Secretary of State from placing citizen initiative on ballot, which initiative proposed resolve that would reverse Maine Public Utilities Commission order granting power company's request for certificate of public convenience and necessity for transmission line.

Business-advocacy organization and consumer-advocacy organization intervened and joined power company's complaint. Citizens' group and individual voters also intervened and moved to dismiss. The Superior Court granted motion. Power company and advocacy organizations appealed. Secretary, citizens' group, and voters cross-appealed.

The Supreme Judicial Court held that:

- Question of whether subject matter of proposed initiative was within scope of people's right to initiate legislation was ripe for judicial review, and
- Initiative did not propose legislation, and thus initiative was not within citizens' power under Maine Constitution to enact legislation.

Question of whether subject matter of proposed citizen initiative, which would have reversed Maine Public Utilities Commission order granting power company's request for certificate of public convenience and necessity for transmission line, was within scope of people's right to initiate legislation was ripe for judicial review; plainly, proposal that was outside scope of people's right to initiate legislation could not, as constitutional matter, proceed to electorate as direct initiative.

Citizens' initiative, which would have reversed Maine Public Utilities Commission order granting power company's request for certificate of public convenience and necessity for transmission line, did not propose legislation, and thus initiative was not within citizens' power under Maine Constitution to enact legislation, where initiative, although labeled a "resolve," directed Commission, in exercising its executive adjudicatory powers, to reverse its findings and reach different outcome in already-adjudicated matter.

BONDS - MISSOURI

[Platte County v. UMB Bank, N.A., Trustee of Transportation Refunding and Improvement Bonds \(Zona Rosa Retail Project\) Series, 2007](#)

Missouri Court of Appeals, Western District - August 25, 2020 - S.W.3d - 2020 WL 4941592

In October, 2007, the Industrial Development Authority of Platte County (“Development Authority”) issued the Zona Rosa Bonds in the amount of \$32,200,000. The Zona Rosa Bonds provided funding for the construction of parking garages at an outdoor shopping mall located in Platte County, Missouri. The Zona Rosa Bonds are revenue bonds.

Subsequently, Trustee sent the County written notice of default under the Financing Agreement and threatened to sue the County unless it issued a binding written commitment to pay the revenue shortfall on the debt service.

In connection with the issuance of the Zona Rosa Bonds, the Development Authority executed the Trust Indenture with Trustee and the Financing Agreement with the County, and Platte County, Missouri South Transportation Development District I and District II (“Districts I and II”). Pursuant to the Trust Indenture, Trustee agreed to undertake certain duties and responsibilities as corporate trustee of the Zona Rosa Bonds and represents the interests of the holders of the Zona Rosa Bonds (“Bondholders”). Under the terms of the Trust Indenture and the Financing Agreement, the Development Authority assigned its rights under the Financing Agreement to Trustee.

Districts I and II are special taxing districts formed under state law to support transportation-related retail projects like the parking garages at Zona Rosa. Pursuant to the Financing Agreement, the Zona Rosa Bonds are paid from revenues generated by a 1% sales tax collected by Districts I and II on retail sales within their respective boundaries, which includes Zona Rosa. The County does not control or operate Districts I or II. Instead, Districts I and II are distinct legal entities that collect the 1% sales tax at Zona Rosa.

Article II of the Financing Agreement outlines the obligations of the County, which provides:

Section 2.2. Annual Appropriations. The County intends, on or before the last day of each Fiscal Year, to budget and appropriate, specifically with respect to this Agreement, moneys sufficient to pay the Appropriation Amount for the next succeeding Fiscal Year. The County shall deliver written notice to the Trustee no later than 15 days after the commencement of its Fiscal Year stating ***whether or not the County Commission has appropriated funds*** in an amount equal to the Appropriation Amount estimated to become due during such Fiscal Year. Notwithstanding any provision in the Indenture or herein to the contrary, if the Letter of Credit is in effect, the parties hereto agree that such Letter of Credit shall be drawn on prior to any payment of the Appropriation Amount by the County.

Section 2.3. Annual Budget Request. The County further covenants that its responsible financial officer³ shall do all things lawful within his power to obtain and maintain funds from which the Appropriation Amount may be paid, including making provision for such payments to the extent necessary in each proposed budget or appropriation request submitted for adoption in accordance with applicable provisions of law and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved; ***it being the intention of the County that the decision to appropriate or not to appropriate under this Agreement shall be made solely by the County Commission*** and not by any other official of the County.

Section 2.4. Appropriation to Constitute Current Expenses. The parties hereto acknowledge and agree that the Appropriation Amount shall constitute currently budgeted expenditures of the County ***and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the County*** in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, ***nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of [the] County.*** The County’s obligations under this Agreement shall be from

year to year only, and shall not constitute a mandatory payment obligation of the County in any ensuing Fiscal Year beyond the then current Fiscal Year.

The court concluded that, “The plain and ordinary meaning of the language used in these provisions supports the trial court’s Judgment that the Financing Agreement does not contain a promise by the County to pay on the Zona Rosa Bonds.”

The court then turned to Trustee’s contention that the County had a moral obligation to pay the revenue shortfall on the debt service.

A moral obligation is a form of credit enhancement typically provided by a government to another entity. Generally, a highly credit-worthy government pledges its ‘moral obligation’ to enhance a specific borrowing by a government of lesser credit quality. The debt is usually issued by a separate government entity, and the morally obligated government typically pledges to consider appropriating funds to replenish a debt service reserve that has been drawn upon. Creditor recourse in the event of non-payment is very limited for moral obligations, which, as the name suggests, are based more on good faith and a belief in market discipline than on legally enforceable covenants.... The moral obligation pledge is neither a guarantee to pay debt service or replenish a debt service reserve, nor is it a legal obligation to seek appropriation to pay for debt service or refill a reserve. Rather, it is the declaration that the pledging entity intends to support the debt with appropriations and will consider providing funding under certain circumstances.... While a moral obligation is weaker than a legal obligation to pay debt service, the entity providing the moral obligation pledge is signaling its support for the transaction to investors. Therefore, as with lease-backed obligations and non-lease annual appropriation obligations, the failure of a government to honor its moral obligation commitment is generally an indicator of severe stress that would likely result in negative rating action on the government’s [general obligation] rating. Similarly, in weighing the decision whether or not to honor a moral obligation, governments typically consider the market impact of the decision. The potential impact is usually sufficient to motivate the government to make the moral obligation appropriation, absent severe stress.

The court concluded that, “County did not promise to use best or reasonable efforts to pay, County did not promise to pay at all. It is undisputed that the Zona Rosa Bonds are revenue bonds to be paid from the 1% sales tax collected by Districts I and II. A Letter of Credit was also in place as was a Reserve Fund. Under the express and plain terms of the Financing Agreement, the County was never obligated to pay the shortfall on the Zona Rosa Bonds.”

SCHOOL DISTRICTS - MONTANA

[Poplar Elementary School District No. 9, v. Froid Elementary School District No. 65](#)

Supreme Court of Montana - August 25, 2020 - P.3d - 2020 WL 5014937 - 2020 MT 216

Elementary school district appealed a decision of the deputy county superintendent of schools approving a transfer of territory from district to a neighboring elementary school district.

The District Court vacated the decision. Receiving district appealed, and the Supreme Court reversed and remanded. After a new transfer petition was filed, transferring district appealed the decision of the acting county superintendent of schools approving the transfer. The District Court affirmed the decision. Transferring district appealed, and Attorney General intervened to defend the constitutionality of the territory transfer statute.

The Supreme Court held that:

- Acting superintendent did not abuse her discretion in concluding that proposed transfer would result in a negligible increase in the tax burden on transferring district;
- Acting superintendent did not abuse her discretion in concluding that proposed transfer would improve the safety of student transportation;
- Collateral estoppel barred relitigation of the issue of territory transfer statute's facial validity; and
- Doctrine of res judicata also barred relitigation of the issue.

Sufficient evidence supported finding by acting county superintendent of schools that transfer of territory from elementary school district to neighboring district would reduce the transferring district's bonding capacity by 15.47%, as factor relevant to the determination of whether to approve the transfer; though bonding capacity relating only to the elementary school district would be reduced by 27% as a result of the transfer, including the transferring district's high school district would result in the lower figure, and there was testimony that transferring district had no bonded debt and could therefore bond 100% of its bonding capacity.

Acting county superintendent of schools did not abuse her discretion in concluding that proposed transfer of territory from elementary school district to neighboring district would result in a negligible increase in the tax burden on transferring district, as factor supporting approval of the transfer; superintendent of receiving district testified, based on 20 pages of data compiled from Office of Public Instruction, that transfer would add \$24.29 of additional taxation per year to a house valued at \$100,000, with correspondingly higher and lower impacts on more and less valuable houses, and there was no evidence to support the testimony of transferring district's superintendent and chair of transferring district's school board that even that level of increase would be burdensome.

Acting county superintendent of schools could consider, in deciding whether to approve transfer of territory from elementary school district to neighboring district, the availability of federal funding to make up for any decrease in tax revenue suffered by transferring district; though statute governing territory transfer did not list federal funding as a factor to consider, it also did not limit consideration to the listed criteria.

Acting county superintendent of schools did not abuse her discretion in concluding that proposed transfer of territory from elementary school district to neighboring district would improve the safety of student transportation; receiving district was already providing transportation services to the transfer territory, as nine of the 11 elementary school students in the transfer territory attended school in the receiving district, and its school was closer to the transfer territory than was school in the transferring district.

Issue of the facial validity of statute governing transfer of territory between school districts, as raised in elementary school district's appeal from the approval of transfer petition, was identical to issue raised in prior appeal from approval of a prior petition to transfer the same territory, as element supporting application of collateral estoppel to bar relitigation of the issue; both appeals involved identical circumstances, namely district's opposition to neighboring district's petitions to acquire the same territory, and in both appeals district argued that statute was unconstitutionally

vague because it did not provide reasonably clear and definite standards, objective criteria, and ascertainable limits to guide county superintendent of schools in making the transfer decision.

Appeal from the approval of a prior petition to transfer territory from elementary school district to neighboring district resulted in a final judgment on the merits of transferring district's challenge to the facial validity of the territory transfer statute, as element supporting application of collateral estoppel to bar relitigation of the issue on appeal from the approval of a subsequent petition to transfer the same territory; judge in prior appeal rejected the facial challenge based on briefing by the parties and a summary judgment hearing, and devoted seven pages of his order to addressing the constitutionality of the statute, and transferring district had an opportunity to appeal the decision upholding the statute but declined to do so.

Doctrine of res judicata barred elementary school district from relitigating, in its appeal from the approval of a petition to transfer territory to neighboring district, the facial validity of the territory transfer statute; transferring and receiving districts were both parties to prior litigation arising out of an earlier transfer petition, issues in the two actions were the same and related to the same territory, and judge in prior action awarded final summary judgment to receiving district on the issue of whether the statute was unconstitutionally vague, upholding the validity of the statute.

Statute governing transfer of territory between school districts was not unconstitutional as applied to elementary school district from which certain territory was transferred; as a political subdivision of the state, district had no due process rights that could be violated by trial court's reliance on the fact that tax-exempt tribal lands made up the transfer territory and that district received significant federal funding to mitigate the effect of the transfer.

HIGHWAYS - NEW HAMPSHIRE

[Bellevue Properties, Inc. v. Town of Conway](#)

Supreme Court of New Hampshire - August 25, 2020 - A.3d - 2020 WL 4980818

Hotel owner appealed town's decision to discontinue road, which provided access to hotel property, as part of neighboring retail center's redevelopment plan.

The Superior Court affirmed, and hotel owner appealed.

The Supreme Court held that:

- As a matter of first impression, when the town's decision to discontinue a highway is based upon interests in addition to alleviating the burden of maintenance, the trial court may consider those interests in reviewing the decision, and
- Evidence was sufficient to support town's decision to discontinue road.

Evidence was sufficient to support town's decision to discontinue road which provided access to hotel, as part of retail center development project; retail center had agreed to build and maintain new road and historically had maintained and provided public access to portion of road ringing retail center and hotel, even if retail center failed to maintain or provide access to road, primary access road to hotel still existed, as well as secondary access road, and town had interest in cost-free construction of new road with additional amenities and the elimination of the town's yearly maintenance obligations.

Trial court's finding that new road constructed by retail center would be "dedicated to public use"

did not constitute an improper finding in road discontinuance appeal that retail center would legally dedicate the new road to the town, but instead, that it would construct and maintain the new road for public use; court's findings and rulings demonstrated that it found that retail center, not town, would be responsible for operating and maintaining the new road upon its completion.

MUNICIPAL GOVERNANCE - TEXAS

[City of Leon Valley v. Martinez](#)

Court of Appeals of Texas, San Antonio - August 19, 2020 - S.W.3d - 2020 WL 4808711

Former city council member who had been removed from elected office brought action alleging the procedures used to remove him from office violated his due process rights and seeking declaratory judgment to determine his right to be reinstated.

The District Court denied the City's plea to the jurisdiction. The City appealed.

The Court of Appeals held that former city council member's claims could only be brought in quo warranto proceeding, and thus he lacked standing to bring private action for declaratory judgment.

Allegations by former city council member that his removal from elected office violated his due process rights could exclusively be brought in quo warranto proceeding, and thus he lacked standing to bring private action for declaratory judgment that he be reinstated to office; former city council member challenged only the type of notice he should have been provided and the number of votes required to remove him, but he did not allege that the city council acted without any authority such that its action was void.

[America's College Towns Are Facing an Economic Reckoning.](#)

Communities that rely on student spending and higher education jobs are struggling with fiscal woes and Covid-19 fears as the school year begins.

Curtis Shulman is the director of operations for Hotel State College, a hospitality company that runs a group of six bar-restaurants in State College, Pennsylvania. Home to Penn State's University Park campus, the town depends heavily on the 45,000-student campus, largest of Penn State's 24 outposts.

"We make 20% of our revenue just from football weekends," said Shulman. "About 60% of the remaining revenue we make during the school year."

But Penn State students were sent home back in March, when the coronavirus arrived, and lockdown orders forced Schulman to shutter watering holes like the Corner Room, a local staple since 1926. "We had 250 employees and laid everyone off except for two people," said Shulman. The group's restaurants partially reopened in June, but are currently operating at only 25% capacity as Covid-19 cases surged over the summer.

[Continue reading.](#)

Bloomberg CityLab

By Kara Harris

August 21, 2020, 2:01 PM PDT

Fortress Eyes Building Two Phases of Las Vegas Rail Concurrently.

The company backed by Fortress Investment Group's private-equity funds plans to build two phases of a Las Vegas rail project concurrently, although it has yet to secure financing or break ground.

The venture that goes by the name of DesertXpress Enterprises in California and Nevada has proposed building a 170-mile (274-kilometer), high-speed line to Las Vegas from a southern Californian desert town called Apple Valley. It has approval to sell \$4.2 billion in municipal bonds for that initial phase, and has said it intends to market those unrated securities, the largest such high-yield deal ever, by the end of September.

For the second phase, the company that also operates under the name Brightline Trains is looking to extend that yet-to-be-built line from Apple Valley to an existing California commuter rail station in Rancho Cucamonga, some 50 miles from downtown Los Angeles. Its representative Sarah Watterson told members of the San Bernardino County Transportation Authority at a meeting Wednesday that construction of both segments would occur at the same time and the Rancho Cucamonga hub would open for service at the end of 2023, which would be the same as the first phase.

The extension could include a station in Hesperia, located between Apple Valley and Rancho Cucamonga.

"There is strong market demand," Watterson told the board, which oversees various modes of transportation in the region. "We would expect that our system could actually capture thousands of riders daily."

The firm hasn't yet secured regulatory permits or California's approval to sell municipal bonds for the expansion. Its first passenger rail in Florida, financed through tax-free bonds issued under the name Virgin Trains USA, has suspended service because of the pandemic. It's looking to boost ridership of the unprofitable line by adding stations.

Bloomberg Business

By Romy Varghese

September 2, 2020, 12:45 PM PDT

California Hit by Fires and Virus Sells \$2.6 Billion in Debt.

- **Blazes create more stress on pandemic response, resources**
- **Service cuts, ratings downgrade loom if recovery falls short**

Last September, California entered its bi-annual bond sale flush with a ratings upgrade from Fitch Ratings and a \$21 billion budget surplus.

A year later, California kicks off its fall debt sales under dramatically different circumstances. Wildfires scorching thousands of acres are creating another stress on the state's resources and its response to the coronavirus pandemic. S&P Global Ratings is warning that it may lower the Golden State if its finances become unbalanced for a long period. To close a \$54 billion shortfall, California resorted to deferring payments and plumbing reserves, while holding out hope for federal aid that has yet to materialize.

For Franklin Templeton's Jennifer Johnston, the blazes, which came much earlier in the fire season than usual, could exacerbate the state's existing problems with housing affordability and the economic wreckage from pandemic-related shutdowns. They can eventually undermine local tax bases, especially if the disease persists without a vaccine, she said.

"Will wildfires be the last straw? And over time, will we see population decline? It's bringing general climate-related risk more to the forefront," said Johnston, a vice president and research analyst. "You have to factor it into your analysis, if you're going to own a credit where this happens every year, versus communities that don't have this as an issue."

Relative Yields

Such long-term concerns won't impede the state's access to capital. But relative yields on its \$2.6 billion general-obligation sale, which sold Wednesday, show investors receiving more in compensation. Ten-year bonds were priced to yield 1.2% yield, or 40 basis points over benchmark debt, compared with 0.94% yield, or 13 basis points over benchmark debt for California securities, according to data compiled by Bloomberg. Because of demand, the state increased the deal size from \$2.4 billion.

So far, wildfires have burned 1.48 million acres, with three of the 20 largest blazes in California history occurring in August, according to the state's fire service. The agency has already consumed about 80% of the amount budgeted for the year ending in June 2021 to deal with them, finance department figures show.

The blazes, many of them sparked by lightning from extreme weather, forced evacuations, with about 27,000 still unable to return to their homes as of Tuesday and facing the difficulty of relocating safely as the pathogen continues to spread. The far-drifting smoke is pushing air quality to dangerous levels, undermining the ability of restaurants in cities to offer outdoor dining to keep afloat during the pandemic.

Meanwhile, the state's about a month away from cuts that will be triggered absent federal aid, including \$6.6 billion to its schools and community colleges, under the budget lawmakers passed for the current fiscal year.

So far, the three major credit rating companies have held their stable outlooks on the state, meaning a downgrade isn't imminent. And California has sufficient cash on hand so it doesn't need to borrow through revenue anticipation notes, unlike during past crises. But S&P has flashed a warning in a release ahead of the bond sale.

Stressed Liquidity

"Should reserves drop to the point where liquidity is stressed, or the state experiences undue political difficulty in making necessary budget adjustments when addressing its projected sizable budget gaps in fiscal 2022 and beyond, we could potentially lower the rating or revise the outlook," the company said.

For this year's budget, the state deferred \$12.9 billion in payments to schools and community colleges and borrowed \$9.3 billion from other funds — obligations officials must honor, even if the economic recovery lags. They anticipate general fund revenue growing by 2% for the year beginning in July and then by more than double for the year after that, bond documents show.

"If we don't see a rapid recovery in the economy, I think the budget may create greater challenges for them in 2022 and 2023 than we expect," said James Dearborn, director of municipal credit research at DWS.

Bloomberg Markets

By Romy Varghese

September 2, 2020, 8:36 AM PDT Updated on September 2, 2020, 12:50 PM PDT

[Stadium Bonds: A Homerun or Strike Out During the COVID-19 Pandemic?](#)

The smell of fresh peanuts in the air. Frank Sinatra's 'Take me out to the ball game' playing on loop. And the road to the World Series stretched out ahead. For fans of Major League Baseball, it's officially a favorite time of year, but maybe not in 2020.

Despite spring training games being canceled due to the COVID-19 pandemic, regular season games began in late July. However, it's not simply cardboard cutout fans who look different this year. Teams' hometown financial situations aren't playing out as in years past, either.

[Continue reading.](#)

municipalbonds.com

by Wayne Anderman CFP® MBA

Sep 02, 2020

[Forget Pension Obligation Bonds. Two Cities Are - No Joke - Leasing Their Streets To Fund Pensions.](#)

It sounds preposterous, and the headline of a recent article here at Forbes by Marilyn Cohen is certainly eye-catching: "[The Lunacy Of Using City Streets To Collateralize New Municipal Bond Deals.](#)" And these aren't just any municipal bond deals — two cities in California are issuing bonds *with their own city streets as collateral* to pay down their unfunded pension liabilities.

In West Covina, the city council voted to do so on July 7, as reported at the *San Gabriel Valley Tribune*. The city, a suburb of Los Angeles with a population of 100,000, a median household income of \$71,200, and nearly \$200 million in pension liabilities, is using the proceeds of \$205 million in debt to pay off its own debt to CalPERS.

Likewise, according to the [East Bay Times](#), the city of Torrance, also in suburban Los Angeles, population 150,000, median household income \$80,900, pension debt \$500 million, will issue \$350

million in bonds. (See the [formal report of the recommendation](#) and the [minutes of the July 28 city council meeting](#).)

Now, it turns out, they're not turning their streets into toll roads, or giving bond-buyers the ability to "foreclose" or take control either now or in the future.

They're using a bond-issuing mechanism called "lease revenue bonds." We're all used to cities paying for public works, stadiums, and the like by issuing bonds which are paid off by a dedicated revenue source — sewer bills, hotel taxes, etc. But lease revenue bonds are different. Here's the [layperson's description](#) at Charles Schwab:

"Lease revenue bonds are a unique structure in the muni market. Instead of issuing long-term debt, like general obligation bonds do, to finance improvements on a public facility, the municipality may enter into an arrangement that uses lease revenue bonds. Often a trust, not the municipality, issues bonds and generates revenues to pay the bonds back by leasing the facility to the municipality. The municipality will generally appropriate money during each budget session to meet the lease payment.

"Bonds backed by structures with lower essentiality and limited protections for appropriating funds will usually be lower-rated and have higher yields. Our opinion is to be cautious of bonds backed by lease revenues, as these bonds should be viewed more like general government bonds, not revenue bonds."

This means that the city of San Francisco used lease revenue bonds to [buy items ranging from hospital beds to a witness protection van](#). And Torrance and West Covina are each using these bonds to, in principle, lease their city streets to a special Financing Authority, which will pay the city their up-front money, and "rent" the streets back to the city for the 25 year term of the agreement, in order to pay off the bonds.

Despite the fact that the streets are nominally being "leased," the bondholders will not have any particular rights to lay claim to the streets; despite their status as "collateral," the bondholders can't take them over and charge tolls if either city defaults on their "rent" payments. The city will simply pay the "rent" based on their ordinary tax revenue rather than any special purpose taxes. The "lease" component then becomes little more than a gimmick, a loophole, a way to use the existing "menu" of bond choices available to them in the most advantageous way possible, especially since, at least in California, ["general obligation bonds" require voter approval](#).

(Lease revenue bonds exist at the state level, too; and a group opposing the construction of prisons has a [helpful explainer](#) on these due to their use for that purpose.)

What, then, is the purpose of a lease revenue bond in this case? [The Bond Buyer](#) explains that these are functionally pension obligation bonds, but can be implemented more quickly, citing Mike Meyer of NHA Advisors: "Depending on the legal structure, there may be added flexibility for use of proceeds to CalPERS or more strategic timing of investing in the market. . . . These things aren't possible under a traditional POB structure." At the same time, there's a trade-off, as rating agencies rate pension obligation bonds more highly than lease revenue bonds. Brian Whitworth, director of Hilltop Securities, which underwrote the West Covina bonds, [further claimed](#), "This is the fastest form which the city would be able to use and issue bonds."

And why are the cities in such a hurry to issue these bonds? In one respect, it's the same rationalization as appears every time pension obligation bonds pop up, the notion that they are

“refinancing” a debt at a lower interest rate, because of the difference in rates between the bond rate, and the interest being accrued on the books, at the higher actuarial valuation rate — so, for example, a 7% rate appears to be dropped to a 4% rate due to the “savings” of “refinancing.” (See [my explainer from 2019](#), when this was a hot topic in Chicago.) This is a mirage, though — since it’s all just a matter of how liabilities are accounted for; their true cost is the payment of pension benefits in the future, regardless of what the plan account is now. And the nature of a pension obligation bond, the hope to get a higher asset return for the money you’ve borrowed at a low bond rate, remains the same.

Now, to be sure, there is a further wrinkle in California. The state agency CalPERS manages their pensions, and prescribes a required annual contribution. This makes it all the more difficult to perceive that pension bonds’ “savings” come solely from the hope of higher asset returns than bond interest rates (which are, incidentally, fully-taxable rather than offering the investors the benefit being of tax-free).

And what are those annual contributions? The [most up-to-date reports](#) on the CalPERS website are from July 2019, based on June 30, 2018 and calculating the required contributions for the 2020 - 2021 plan year. The [city of West Covina pension plan](#) is 71% funded, but to pay down its underfunding and fund new accruals, must pay 44% of payroll. The West Covina public safety plan is 62% funded and requires a contribution of 74% of payroll to fund new accruals and pay down underfunding. The [Torrance city pension](#) is 79% funded with 24%-of-payroll contributions; the [Torrance fire pension](#), 65% funded, 68%-of-payroll contributions; and the [Torrance police pension](#), 62% funded, 78% of payroll contributions. What’s also important to know is that these high contributions are not the result of having to make up underfunding in an unreasonably-short period of time; the underfunding level as of 2008 was set at a 30 year amortization, and gains and losses since then are likewise given 30 years to be paid off. This means that the high contributions are simply a reflection of the high cost of the pensions themselves, and the tremendous impact of even marginally-poor funding levels.

Forbes

by Elizabeth Bauer

Sep 2, 2020,03:44pm EDT

[States Plan for Cuts as Congress Deadlocks on More Virus Aid.](#)

Spending cuts to schools, childhood vaccinations and job-training programs. New taxes on millionaires, cigarettes and legalized marijuana. Borrowing, drawing from rainy day funds and reducing government workers’ pay.

These are some actions states are considering to shore up their finances amid a sharp drop in tax revenue caused by the economic fallout from the COVID-19 pandemic.

With Congress deadlocked for months on a new coronavirus relief package, many states haven’t had the luxury of waiting to see whether more money is on the way. Some that have delayed budget decisions are growing frustrated by the uncertainty.

As the U.S. Senate returns to session Tuesday, some governors and state lawmakers are again urging action on proposals that could provide hundreds of billions of additional dollars to states and

local governments.

Some state officials, such as Republican Gov. Eric Holcomb of Indiana, are pushing for greater flexibility in spending the money they already received. Others, such as Republican Gov. Mike DeWine of Ohio, say more federal aid is needed, especially to help small businesses and emergency responders working for municipalities with strained budgets.

In mid-May, the Democratic-led U.S. House voted to provide nearly \$1 trillion of additional aid to states and local governments as part of a broad relief bill. But the legislation has stalled amid disagreements among President Donald Trump's administration, Republican Senate leaders and Democrats over the size, scope and necessity of another relief package. In general, Republicans want a smaller, less costly version.

The prospects for a pre-election COVID-19 relief measure appear to be dimming, with aid to states and local governments one of the key areas of conflict.

The bipartisan National Governors Association and Moody's Analytics have cited a need for about \$500 billion in additional aid to states and local governments to avoid major damage to the economy. At least three-quarters of states have lowered their 2021 revenue projections, according to the National Conference of State Legislatures.

While Congress has been at loggerheads, many states have pressed forward with budget cuts.

Wyoming Gov. Mark Gordon, a Republican, recently announced \$250 million of "agonizing" cuts that he described as "just the tip of the iceberg" in addressing a \$1 billion budget shortfall caused by the coronavirus and declining revenue from coal and other natural resources. The cuts will reduce funding for childhood vaccinations and eliminate a program to help adults learn new job skills, among other things.

"It is not likely that these trends are going to turn around rapidly or as significantly as we would like," Gordon said.

In August, Rhode Island Management and Budget Director Jonathan Womer sent a memo to state agencies instructing them to plan for a 15% cut in the fiscal year that starts next July.

In some states, however, the financial outlook is not as dire as some had feared earlier this year.

Previous federal legislation pumped money into the economy through business subsidies, larger unemployment benefits and \$1,200 direct payments to individuals. The resulting consumer spending led to a rebound in sales tax revenue in some states. Many states also delayed their individual income tax deadlines from April to July, which led to a larger than usual influx of summer revenue from taxpayers' 2019 earnings.

In Vermont, where lawmakers are expected to work on a budget next week, a deficit that some had feared could reach \$400 million now is pegged around \$55 million. A predicted \$518 million shortfall in Arizona for the current fiscal year has been revised to just \$62 million.

Local governments in New Mexico said revenue has been propped up by surprisingly strong sales taxes. But "that sugar high from the federal stimulus will fall off, and our communities will be affected," said A.J. Forte, executive director of the New Mexico Municipal League.

New Mexico Gov. Michelle Lujan Grisham, a Democrat, is urging the Legislature to legalize and tax recreational marijuana as a way to shore up state revenue. Democratic Pennsylvania Gov. Tom Wolf

also wants the Legislature to legalize marijuana, with the tax revenue going toward grants for small businesses and criminal justice reforms.

State tax revenue often lags economic trends because individuals' income losses aren't reflected on tax returns until months later. As a result, experts warn that states might experience the lagging effects of the recession well into their 2021 and 2022 budget years.

"The worst is still yet to come," said Brian Sigritz, director of state fiscal studies at the National Association of State Budget Officers.

The 2021 fiscal year began July 1 in most states. But seven states have yet to enact a full-year budget, in some cases because they have been waiting for congressional action on another relief bill.

One such state is New Jersey, which shifted the start of its budget year from July to October because of the coronavirus pandemic. Democratic Gov. Phil Murphy recently proposed a budget that would slash about \$1 billion in spending, take on \$4 billion in debt and raise taxes on millionaires, businesses, yachts, cigarettes and health insurance plans.

Murphy has said the initial federal aid didn't provide enough "to deal with the variety of tsunamis that we're facing."

In New York, Democratic Gov. Andrew Cuomo's administration estimates the state will receive about \$8 billion less in tax revenue than once expected this fiscal year. Cuomo, who recently became chairman of the National Governors Association, wants Congress to provide an additional \$30 billion to New York to plug budget holes that he warns will compound in coming years.

"There is no combination of savings, efficiencies, tax increases that could ever come near covering the deficit," Cuomo said, "and we need the federal government to assist in doing that. Period."

By The Associated Press

Sept. 6, 2020

Associated Press writers Adam Beam in Sacramento, California; Mike Catalini in Trenton, New Jersey; Bob Christie in Phoenix; Tom Davies in Indianapolis; David Eggert in Lansing, Michigan; Mead Gruver in Cheyenne, Wyoming; Morgan Lee in Santa Fe, New Mexico; Marc Levy in Harrisburg, Pennsylvania; Wilson Ring in Stowe, Vermont; Andrew Taylor in Washington; Andrew Welsh-Huggins in Columbus, Ohio; and Marina Villeneuve in Albany, New York, contributed to this report.

[Chicago Eyes Refinancing, Pension Bonds With Rebound Elusive.](#)

- **City is looking at ways to cut debt service to ease budget gap**
- **Chief financial officer says refinancing may save \$100 million**

Chicago is looking to the \$3.9 trillion municipal-bond market for options to close its ballooning budget deficits, Chief Financial Officer Jennie Huang Bennett said.

Options on the table include selling pension obligation bonds, as well as refinancing general obligation and sales tax-backed bonds, Bennett said in a telephone interview on Wednesday. The refinancing of a yet-to-be-determined amount of debt is targeted for the fourth quarter, she said,

adding it could save as much as \$100 million in the 2020 budget.

Mayor Lori Lightfoot on Monday projected that the 2020 deficit in the corporate fund, which accounts for most services the city offers, would expand to almost \$800 million from a June projection of \$700 million. The gap would reach \$1.2 billion in 2021 with revenue losses connected to the Covid-19 pandemic making up 65% of the hole. A complete budget proposal will be released in October.

The city has mulled pension obligation bonds in past years. Former Mayor Rahm Emanuel had considered issuing \$10 billion of them to cover rising costs of public employee retirement funds. The pension costs have weighed on the city's credit rating for years with Moody's Investors Service giving the city a junk rating in 2015. The city's unfunded retirement liability stands at about \$30 billion.

"Everything is on the table," Bennett said. "We've spent time analyzing a pension obligation bond, what the pros and cons are and have had a number of conversations about what that could mean for the city."

Risky Bet

Pension obligation bonds come with risk, especially for Chicago. Proceeds from the sale would need to be invested in such a way that returns exceed the bonds' fixed interest rate, a tough target given how much the city pays in yield penalty because of its fiscal troubles. Pension bonds contributed to municipal bankruptcies in Detroit as well as Stockton and San Bernardino in California. The Government Finance Officers Association has advised against them.

It's premature to discuss the size of any potential pension bond deal because the city still hasn't decided whether these bonds will be used, Bennett said. Any discussion about pension obligation bonds should be paired with potential reforms for how the city pays for retirement costs and what benefits are provided, she said. Bennett declined to comment on specifics for reforms but said the city plans to have conversations with groups including beneficiaries.

"We ought to work on the solution together as it relates to how we make sure that the pension funds remain healthy financially," Bennett said. "That conversation is really important with the rating agencies in demonstrating that we have a credible path forward" for financial sustainability for pensions, she said.

Hiring slowdowns, changes to procurement and contracts and new revenue sources are also under consideration to fill the budget shortfall, she said. Raising property taxes is toward the end of the list, she added.

Washington Help

Meanwhile, the city doesn't expect revenue to begin recovering to pre-pandemic levels until early 2022, according to its baseline scenario. Before the virus hit, the city had planned on reaching a so-called structural balance in 2022 but now that target appears to be later.

States and municipalities across the country are pushing Congress to come to an agreement that includes aid for governments trying to make up for revenue losses. Illinois is counting on additional federal aid and loans from the Federal Reserve's Municipal Liquidity Facility of up to \$5 billion to balance its budget. The Chicago Board of Education last month approved a budget that assumes \$343 million in additional federal funding.

Chicago has not yet determined how much additional federal aid it will incorporate into its spending plan because the final agreement may or may not pass before the city's budget proposal is released in October, Bennett said. The city is actively looking at contingency plans in case more federal stimulus doesn't come through, she said.

"Ultimately, we are going to have to make some hard choices," Bennett said. "What's really important is federal stimulus."

Bloomberg Markets

By Shruti Singh

September 3, 2020, 2:00 AM PDT

Florida Seizes on Low Rates for Hurricane Fund as Storms Start.

- **Reinsurance fund selling \$2.25 billion of taxable bonds**
- **'This is an extraordinary opportunity,' state official says**

With hurricane season barreling down on Florida, the state is seizing on low interest rates to borrow \$2.25 billion for its catastrophe insurance fund.

The State Board of Administration Finance Corp. is joining state and local governments that have rushed to sell bonds since yields tumbled this year to the lowest in decades. While rates have edged up over the past three weeks, benchmark 10-year debt is still yielding only about 0.8%, matching the lows seen before the pandemic upended financial markets in March.

"The market has been extraordinarily strong on the demand side and interest rates are very low — those two things don't normally go hand and glove," Ben Watkins, Florida's director of bond finance, said in an interview. "From an historical perspective, this is an extraordinary opportunity."

The pace of debt sales surged as rates tumbled in July, with the volume of new municipal bond offerings jumping 58% from a year earlier to about \$46 billion that month, according to data compiled by Bloomberg. Even with the uptick in rates since then, sales have stayed strong, with another \$41 billion issued this month.

The offering will be the first since 2016 by the Florida Hurricane Catastrophe Fund, which acts as a backstop for the state's insurance market.

Because of the amount of money already in the fund, Watkins said it didn't need to borrow more, but the low level of interest rates was too good to pass up.

"We don't really need to borrow, we want to," he said. "I don't know what interest rates or demand is going to be like in five, seven, ten years from now, so let's put some debt on the balance sheet because we don't know when we'll need it."

The bonds are rated Aa3 by Moody's Investors Service and AA by S&P Global Ratings and Fitch Ratings. They will be federally taxable and marketed to non-traditional municipal buyers, like corporate-debt investors and overseas firms, Watkins said.

The move to shore up the fund comes as scientists anticipate that climate change will cause more

damaging hurricanes.

The Florida fund is estimated to incur total losses of about \$8 billion from Hurricanes Irma and Michael, which hit the state in 2017 and 2018, respectively, according to projections as of June 30.

Watkins said that the state is preparing for the future by selling bonds now. "It's out of an abundance of caution and we are looking at how beneficial it will be and how inexpensive it will be to have that borrowing on the balance sheet," he said.

Bloomberg Finance

By Danielle Moran

August 31, 2020, 10:30 AM PDT

[Chicago Projects \\$2 Billion Deficit Through 2021 on Pandemic.](#)

- **2021 gap seen at \$1.2 billion and nearly \$800 million in 2020**
- **Mayor Lightfoot warns of layoffs, calls for more federal aid**

Chicago faces a 2021 budget deficit of \$1.2 billion as the coronavirus pandemic decimates the city's revenue with businesses shut down due to social distancing while recent unrest hurt reopening efforts.

Next year's projected gap comes on top of a 2020 deficit of nearly \$800 million for its corporate fund, which accounts for many of the services the city provides, Chicago Mayor Lori Lightfoot said on Monday. That's up from a June forecast of \$700 million because rising virus cases have hampered the city's recovery. Lightfoot called for additional federal stimulus for states and cities and stressed in prepared remarks that Chicago is struggling with "a catastrophic collapse of our local and national economy."

Revenue losses spurred by the pandemic are the biggest factor hobbling city finances in 2020 and 2021, she said. To make up for the gaps this year and next, Lightfoot's administration will likely need to cut headcount, control spending, refinance debt, borrow and ask for more federal aid. The city has not ruled out raising property taxes and is also looking at a personal property levy on computer leases, which may help raise money as telework expands.

"This is the reality of a budget deeply impacted by this horrible virus," Lightfoot said in prepared remarks.

The pandemic is exacerbating the challenges for the city that's seen retirement costs climb and financial stress build up for years, factors which led Moody's Investors Service to give Chicago a junk rating in 2015. The corporate fund contributions to pensions will increase \$91.4 million to \$426.9 million next year. Chicago's total 2021 contributions to its four pension funds will reach \$1.8 billion from \$1.7 billion this year, according to budget documents.

Purely Covid

"Astounding and quite staggering as those numbers are, they are kind of in line with what we've been expecting," said Ty Schoback, senior analyst for Columbia Threadneedle Investments, which owns Chicago debt as part of its \$16 billion in muni assets under management. "As a bondholder

what we look for is budget solutions that are longer-term in nature.”

The city has identified \$550 million, including up to \$350 million in funding from the CARES Act and at least \$200 million from debt refinancing, to help close the 2020 shortfall.

Chicago’s confirmed virus cases, which have disproportionately hit black and brown communities, are above 71,000 and climbing back to concerning levels. Deaths stand at more than 2,800. Business activity is still limited to curb the spread of the virus, and protests since May have led to looting and violence in key commercial corridors and impoverished neighborhoods.

About 65% of next year’s budget gap is “purely” due to Covid-19-related revenue loss, and the city continues to work toward structural balance, according to Chicago Chief Financial Officer Jennie Huang Bennett.

No Bankruptcy

Among the financial solutions to close the gap could be pension obligation bonds, which are a vehicle to spread out and defer payments in future years, along with reforms, Bennett said in response to reporters’ questions on Monday. She quashed the notion of Chicago filing for bankruptcy because she said it doesn’t solve the city’s problems. Bennett also said the city currently isn’t looking at the Federal Reserve’s Municipal Liquidity Facility because it could access the bond markets at better rates if needed.

“This disease has forced a seismic disruption of our economy, and — as a consequence — our city’s finances,” Lightfoot said during her remarks. “Also affecting the recovery was looting and damage to our businesses that occurred three months ago and again more recently.”

Meanwhile, the costs of Chicago’s health and social services are growing as Lightfoot’s administration works to curb the spread of Covid-19, reassure businesses that it’s safe to operate in Chicago and rejuvenate communities with scant investment for decades.

More than 900,000 Chicago-area residents have filed for unemployment since the pandemic began and the region’s unemployment rate has risen to 12.6% from 3.6% in February. Sectors such as hospitality, convention and tourism and personal services are among the hardest hit by shutdowns.

‘Exceptionally Large’

“Many are still seeing a fraction of their typical revenues and some businesses have sadly closed with no hope of coming back,” Lightfoot said. “While we are fortunate to have a diverse economy, nonetheless, the significant loss of revenues in these areas continues to be felt now and likely deep into 2021,” she said referring to tourism, hospitality and transportation.

In early July, the city pegged the economic cost of canceled conventions and similar events at \$900 million, according to Moody’s. Lightfoot reiterated her call for more federal stimulus for municipalities like Chicago. Lightfoot said even amid a campaign season leading up the November election she’s advocating for a bipartisan solution.

“The fiscal gap that Mayor Lightfoot announced is exceptionally large and absent new federal help there are no easy solutions for Chicago,” said John Ceffalio, municipal credit research analyst at AllianceBernstein, which has about \$50 billion in municipal securities under management. “The weight of the city’s debt and unfunded pension liabilities severely limit the mayor’s flexibility to cope with budgetary impact of the pandemic and the recession. The mayor didn’t create any of those problems but they are now hers to manage.”

By Shruti Singh

August 31, 2020, 12:42 PM PDT Updated on August 31, 2020, 4:17 PM PDT

[How the Fed's Expanded Support Can Help the Muni Market.](#)

Analysts warn, however, that downgrades and negative outlooks could nevertheless increase.

The Federal Reserve has stepped in once again to help a part of the economy suffering from the coronavirus-fueled recession while it waits on more support from Congress.

It is expanding its \$500 billion municipal liquidity facility (MLF) to include more cities and counties as well as multi-state entities.

U.S. counties with at least 500,000 residents and cities with a population of at least 250,000 residents will now be eligible for the Fed backstop. The comparable requirements were 2 million and 1 million residents previously, when the Fed first announced the MLF earlier in the month.

“The new population thresholds allow substantially more entities to borrow directly from the MLF than the initial plan announced on April 9,” the Fed explained in a statement.

The facility was created to help states, cities and counties that cannot meet their financial needs through the capital markets because their spending rose sharply while their tax revenues fell substantially due to the COVID-19 pandemic.

“The Fed is effectively providing a guarantee on the ability for these issues to borrow,” explained Matt Fabian, partner at Municipal Market Analytics, an independent research firm.

It will purchase eligible notes from municipal issuers that can prove they could not borrow in the capital markets without paying much higher interest rates than “normal” and can provide confirmation of that so long as they meet other requirements, said Fabian.

“It’s unclear to us how the Fed will determine ‘normal’ pricing,” wrote analysts at Morgan Stanley. The Fed said pricing guidance “will be forthcoming” and it is also considering extending the use of the lending facility to municipal entities that issue revenue bonds.

The municipal notes available for the Fed backstop include tax anticipation notes (TANs), tax and revenue anticipation notes (TRANs), bond anticipation notes (BANs), and other similar short-term notes from eligible issuers. They also must have a term no longer than 36 months, an increase from the 24-month limit the Fed originally announced, and must be rated investment grade as of April 8.

The expansion of the municipal liquidity facility “will help states and localities “get through immediate liquidity issues,” Fabian said.

Current liquidity in the muni market is thin but better than it was in late March and early April before the Fed announced its municipal lending facilities. But it could be tested as downgrades and negative outlooks increase.

In the last two months, Illinois, New Jersey, New York, Alaska, Connecticut, Hawaii and the New

York Metropolitan Transportation Authority have been hit by downgrades or negative watches from the major rating agencies, and many more could follow as a result of the current economic downturn.

But even in the midst of the developments, there are opportunities for muni investors, says Fabian.

MTA bonds, which have been downgraded by major credit agencies to the equivalent of A or A-, are yielding 6% for a 10-year term. On a tax-equivalent basis that's around 12% for New Yorkers in the highest bracket for federal, state and local taxes. Investors, however, "have to assume that debt will be downgraded to BBB, but that the MTA will survive the current crisis. You're effectively betting it's too big to fail," said Fabian.

The agency has seen its ridership fall by over 90%, which has hurt revenues, leading the MTA to seek federal and state aid to help close a \$8.5 billion budget deficit this year.

No matter what the municipal issue, advisors need to alert clients to the fact that municipal bond servicing is subordinate to local governments providing health and welfare services.

"Clients have to understand that there could be issues [with munis] that they haven't had to deal with before," Fabian said.

Morgan Stanley analysts said the Fed's latest move was "an additional boost to high grade" muni bonds. The high-yield muni market, in contrast, will remain "weak for the foreseeable future," according to the analysts.

They expect the municipal bond issuers will tap the majority of the \$500 billion muni lending facility from the Fed, but the Fed could eventually provide even more support "if market conditions deteriorate further, at least until the broader economy is clearly healed."

ThinkAdvisor

By Bernice Napach | April 28, 2020

[Opportunity Zones Continue to Make an Impact.](#)

Edmon Rakipi, principal at Opp Zone Capital, shares why he expects the Opportunity Zone Program to revitalize some of the hardest-hit real estate sectors going forward.

The investment activity trajectory in qualified Opportunity Zones has been fluctuating since the end of last year, when important clarifications were added to the program legislation. Mirroring the economic outlook, the program had a great start to 2020, followed by a slowdown in spring and a rebound at the beginning of summer, according to commercial real estate valuation firm BBG.

Although the nation is bracing for a new slowdown in the last quarter of the year, Notice 2020-39—issued by the Internal Revenue Service in June—is expected to boost investors' confidence in placing capital. Edmon Rakipi, principal at Opp Zone Capital—an entity that provides specialized Opportunity Zone investment and fund management services nationwide—expects the OZ program to contribute to the revitalization of some of the hardest-hit real estate sectors.

[Continue reading.](#)

Commercial Property Executive

By Roxana Baiceanu

AUG 31, 2020

[S&P Credit FAQ: How COVID-19 And The Recession Could Affect Credit Quality For U.S. K-14 Schools](#)

Table of Contents

Since the onset of the COVID-19 pandemic the U.S. educational landscape has changed markedly, and it may never go back to the way it was. This means that schools—from local districts to charter schools to independent schools and community colleges—will transform their operations to respond to a situation that may last no longer than a year. While this is daunting enough considering the number of students enrolled in these schools, for many there is the added pressure of possible funding cuts stemming from tighter state budgets. The blow could be cushioned a bit for some districts after they ended the 2019-2020 school year with lower-than-budgeted expenditures following several months of savings from not having students in their buildings. However, while it may provide a little extra cushion, we don't expect this to solve all the problems facing schools in 2020-2021.

We held a “back-to-school” webcast in August covering this wide range of K-14 education operators. (For more on higher education, also covered in our webcast, see “Not-For-Profit Higher Education Mid-Year Sector View: Fall 2020 Enrollments Will Drive Credit,” published Aug. 15 on RatingsDirect). While each type of educational environment has its unique challenges, there are two common themes: revenue uncertainty and enrollment fluctuation. This FAQ details where schools stand to date during the pandemic, some key issues facing credit quality in this uncertain environment, and what we will be watching for as schools ramp up across the country this fall.

[Continue reading.](#)

3 Sep, 2020 | 17:15

[S&P U.S. State Ratings And Outlooks: Current List](#)

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1 Sep, 2020

[State and Local Budget Pain Looms Over Economy's Future.](#)

Providing more aid to struggling governments has become one of the biggest issues tangling up the debate over another pandemic rescue package.

WASHINGTON — The U.S. economy struggled to shake off the last recession, with historically slow growth and a labor market that took more than six years to recover its earlier employment levels. A big part of the reason: state and local governments, which cut spending and fired workers amid widespread budget shortfalls.

The same dynamic poses one of the biggest threats to America's recovery from the pandemic downturn. State governments are again experiencing extreme budget problems as they pay out increasing sums to cover unemployment and health costs caused by the coronavirus crisis while revenues from sales taxes and corporate and personal income tax payments plummet. States could face a gap of at least \$555 billion through the 2022 fiscal year, according to one estimate.

Economists warn that the long-term risk coming from struggling states could prove even more damaging this time than the last recession, which spanned 2007 to 2009, unless Washington steps in. Yet providing more aid to state and local governments has become one of the biggest political battles in the fight over another pandemic rescue package.

[Continue reading.](#)

The New York Times

By Jeanna Smialek, Alan Rappeport and Emily Cochrane

Aug. 14, 2020

[Opportunity Zone Investing in Silicon Valley, with Urban Catalyst.](#)

Does the Silicon Valley tech migration create a unique investment case for ground-up development in fast-growing downtown San Jose's Opportunity...

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Opportunity Db

September 2, 2020

[Local Governments Add Some Jobs in August, But State and Local Payrolls Still Way Down.](#)

State and local governments have about 1 million fewer employees than they did a year ago.

Local governments added 95,000 jobs in August and state employment remained relatively flat, as the coronavirus continued to strain public budgets, according to figures the Labor Department released Friday.

Despite the improvement, there were still about 1 million fewer workers on state and local government payrolls in August compared to a year earlier.

The U.S. economy more broadly added 1.4 million jobs in August, and the unemployment rate fell to 8.4% from 10.2% in July, the latest Labor Department statistics show. The employment gains were weaker than the 1.7 million jobs added in July, or the 4.8 million posted in June.

Now about six months into the pandemic, the U.S. has roughly 11.5 million fewer jobs than it did in February, before the virus upended the economy.

About 31,000 of the local government jobs added in August, were in education-related positions. The rise in local government employment outside of education—63,000 jobs—was the strongest since employment in the sector plummeted in April.

Overall local governments had an estimated 13.7 million employees in August, compared to nearly 14.6 million last August.

At the state level, non-education employment ticked up slightly by an estimated 2,000 jobs, while state jobs tied to education fell by 3,900, for a net loss of about 2,000 jobs. State employment totaled about 4.9 million, compared to about 5.1 million a year earlier.

States and localities have resorted to a mix of layoffs, furloughs and hiring freezes as the coronavirus outbreak has put a historic drag on economic activity and tax revenues, while also driving unplanned government spending on the response to the public health crisis.

Economists and state and local leaders have warned that widespread and lasting public sector layoffs at the state and local level could hamper the nation's economic recovery.

"As in the Great Recession, the pursuit of austerity will stifle a quick and full recovery," Elise Gould, an economist with the left-leaning Economic Policy Institute wrote on Friday.

Gould added that schools around the country are likely in need of more, not less, staff in the coming months, as they try to reopen with the added challenges posed by the coronavirus.

She also suggested the federal government could boost public employment through hiring more public health workers and contact tracers—the workers who track down and follow up with people who've come in close contact with someone found to have the virus.

Democrats and Republicans in Congress are at odds over whether to provide states and localities with more federal aid that could help them to avoid cuts to jobs and services. It's a major sticking point in talks about another coronavirus relief package, with Republicans less supportive of the idea.

Government employment overall increased by about 344,000 jobs in August. But about 238,000 of those added jobs were temporary workers hired by the federal government to conduct the census.

In the hospitality and leisure industry, which includes establishments like restaurants, hotels and bars, which have been particularly hard hit by the pandemic, payrolls rose by 174,000 in August.

While job gains in the sector have totaled 3.6 million over the last four months, employment in food services and drinking places is still down by 2.5 million since February.

Some Republicans offered an upbeat take on Friday's employment report.

U.S. Rep. Kevin Brady, the top Republican on the House Ways and Means Committee, noted that it marked "a fourth consecutive month of job growth," and added: "We have recovered nearly half of the jobs lost at the lowest point of the pandemic in March."

Route Fifty

by Bill Lucia

SEPTEMBER 4, 2020

Bill Lucia is a senior reporter for Route Fifty and is based in Olympia, Washington.

[Fitch Ratings Releases 2020 Median Ratios for Not-for-Profit Life Plan Communities.](#)

Related Fitch Ratings Content: [2020 Median Ratios \(Not-for-Profit Life Plan Communities Seek Stability\)](#)

Fitch Ratings-New York-01 September 2020: Fitch Ratings has released its 2020 Median Ratios for Not-for-Profit Life Plan Communities (LPCs). The data presented in this report are limited solely to audited fiscal 2019 results.

‘The sector is trying to regain a place of stability – a new normal, which for at least the remainder of 2020, will include the impact of the coronavirus’, says Margaret Johnson, Director. ‘The pandemic has resulted in increased expenses and lower revenues as a result of a decline in post-acute rehabilitation volumes and pressured cash flows. However, none of this impact is captured in this set of medians, as the impact from the coronavirus is only first seen in 1Q20, which will be captured in next year’s median report.’

As of Aug. 18, 2020, Fitch rated a total of 158 LPC providers, of which 156 are included in the median ratio calculations. The median rating is ‘BBB’ and the number of ratings in the ‘BBB’ rating category remains the most numerous at 76 (or about 49%) versus 37 (or 24%) in the ‘A’ rating category. Within Fitch’s median portfolio, Type A contract providers remain the plurality with 62 (about 40% of the portfolio), followed by Type C contract providers and Type B contract providers.

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[Fitch: Pandemic Likely to Sting Over Time for U.S. NFP Hospitals](#)

Related Fitch Ratings Content: [2020 Median Ratios \(Not-for-Profit Hospitals and Healthcare Systems\)](#)

Fitch Ratings-Austin-01 September 2020: Median ratios improved for a second straight year for U.S. not-for-profit hospitals and health systems, though the unprecedented coronavirus pandemic will still likely stress healthcare providers as the pandemic continues, and as future pandemic readiness requirements and payor mix shifts erode margins over time, according to Fitch Ratings in a new report.

“Additionally, capital spending will generally be reduced in the initial years post-pandemic as organizations scrutinize every dollar of capital spending,” said Senior Director Kevin Holloran. “However, we expect that providers who emerge from the pandemic as strong as they are now or stronger will ultimately accelerate spending in anticipated merger, acquisition and expansion activity.”

2020 median operating margins and operating EBITDA increased incrementally to 2.3% and 8.7%, respectively, from 2.1% and 8.6% in the prior year. Median operating profitability also improved for the second straight year following prior years of operating income declines. Additionally, days cash on hand increased approximately five days (2.3%) to 219.8, compared to 214.9 in the prior year.

The across-the-board median improvements obviously do not yet address the direct impact of coronavirus on hospitals, with the first signs likely to emerge in Fitch’s 2021 medians update. “Health organizations will be trying to adapt to a new normal in moving further away from traditional fee-for-service reimbursement due to their experience during the coronavirus pandemic which results in no services and no fees,” said Holloran. “The pandemic is already resulting in increased expenses, initially significantly lower revenues and significant questions about the path forward for the remainder of the year.”

In order to shed some light on what lies ahead, Fitch conducted a brief prospective analysis of the fallout that the coronavirus is likely to create for the sector. Absent stimulus relief and re-bounding elective procedural volumes, hospitals would have taken a considerable shock to all key financial metrics. Thus, it is safe to say that the pandemic fallout will be felt by hospitals for some time to come. “With Medicaid likely to be cut by states balancing their own budgets, additional federal assistance is likely still to come in order to help hospitals stem the proverbial bleeding that the pandemic has and will continue to precipitate.”

Fitch’s ‘2020 Median Ratios: Not-for-Profit Hospitals and Healthcare Systems’ is available at [‘www.fitchratings.com’](http://www.fitchratings.com).

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[Novogradac 2020 Credit and Bond Financing for Affordable Housing Virtual Conference.](#)

October 1, 2020 - 12:00pm to October 2, 2020 - 3:30pm

From Bourbon Street to Virtual Street

For the first time in over 10 years Novogradac's Credit and Bond Financing for Affordable Housing Conference will not be in New Orleans as planned, but instead we're taking you down "virtual street" Oct. 1st and 2nd.

We expect our 300 alumni and newcomers to gather online, including developers, syndicators, housing agencies, lenders, property managers and others in affordable housing, as we deep-dive into how these extraordinary circumstances affect the financial side of affordable housing. We'll discuss how to prosper together in the context of America's affordable housing crunch.

Our virtual platform includes an exhibit hall, chat rooms by topic to quickly connect with those who hold similar interests, Q&A with our experts, plus, plenty of content to immerse yourself in from the comfort of home. We will miss that gumbo, though.

[Click here](#) to learn more and to register.

[Novogradac 2020 Opportunity Zones Fall Virtual Conference.](#)

October 22, 2020 - 12:00pm to October 23, 2020 - 5:30pm

Opportunity Zones Investments are Accelerating

Join us online to learn how opportunity zones (OZ) investments are continuing to push forward despite the impacts of the COVID-19 pandemic. Learn what changes current OZ funds are making to their strategy in reaction to the pandemic, what OZ funds are gaining momentum and the importance of OZs in building up low-income communities.

Our sessions will be all live with more than 25 OZ experts available to answer your most complex questions. The virtual platform will also allow you to easily connect with other attendees to discuss and share best practices on deal structure and investment strategies.

[Click here](#) to learn more and to register.

Michigan Supreme Court Holds City Attorney Records and Communications Subject to FOIA Disclosure.

The Michigan Supreme Court (MSC) recently held in *Bisio v City of Clarkston*, ___NW3d___; 2020 Mich. LEXIS 1237 (July 24, 2020), that non-privileged documents and communications involving a city attorney may be subject to disclosure under the Freedom of Information Act (“FOIA”), MCL 15.231 et seq.

Plaintiff Susan Bisio filed a FOIA request with the City of the Village of Clarkston (“City”) seeking correspondence between the City’s attorney and a developer of vacant property within the City. The City denied the request on the basis that a public record was not subject to the FOIA under MCL 15.232(i) because it must be created or obtained by a public body and the City Attorney is not a public body.

The Supreme Court reiterated the democratic purpose of the FOIA of providing Michiganders with “full and complete information regarding the affairs of the government and the official acts of those who represent them as public officials and public employees.” The Court held that the determination of whether records are public records under the FOIA is a question of “whether the public body prepared, owned, used, possessed, or retained them in the performance of an official function.”

To answer this question, the Court looked to the definition of a “public body” under the FOIA and noted that, while the definition includes a collective group, it also includes “[a] state officer [or] employee” and “other body in the executive branch of state government.” MCL 15.232(h)(i). The Court also drew on the FOIA’s distinction between individual state officers and their offices, which the Court interpreted to mean that individual officers are distinct from their offices.

Further, the governor, lt. governor, and county clerk are expressly excluded from the definition of public body under the FOIA, which lead the Court to conclude that those offices are “presumptively an ‘other body’ under MCL 15.232(h)(i)” which required their express exclusion if they were not to be subject to FOIA requirements. With the understanding that the category “other body” encompasses an office, the continued definition of public body in MCL 15.232(h)(iv), which includes “[a]ny other body that is created by state or local authority,” must also encompass offices. Accordingly, the office of the city attorney, which is typically created by local authority, must be included as an “other body” in the definition of “public body.”

Here, because the office of a city attorney is a public body and the documents were indisputably prepared and possessed by the city attorney, the Court held that the documents requested by Bisio were subject to the FOIA.

This decision may have a significant impact for both municipal attorneys and those seeking public records held by municipal attorneys. Under this decision, documentation controlled by a municipality’s attorney and not protected by the attorney-client privilege may be subject to the FOIA.

Foster Swift Collins & Smith PC - Alexander J. Thibodeau

September 2 2020

With Washington Deadlocked on Aid, States Face Dire Fiscal Crises.

Local officials are slashing funding for everything from education and health care to orchestra subsidies.

Alaska chopped resources for public broadcasting. New York City gutted a nascent composting program that could have kept tons of food waste out of landfills. New Jersey postponed property-tax relief payments.

Prisoners in Florida will continue to swelter in their cells, because plans to air-condition its prisons are on hold. Many states have already cut planned raises for teachers.

And that's just the start.

Across the nation, states and cities have made an array of fiscal maneuvers to stay solvent and are planning more in case Congress can't agree on a fiscal relief package after the August recess.

House Democrats included nearly \$1 trillion in state and local aid in the relief bill they passed in May, but the Senate majority leader, Mitch McConnell of Kentucky, has said he doesn't want to hand out a "blank check" to pay for what he considers fiscal mismanagement, including the enormous public-pension obligations some states have accrued. There has been little movement in that stalemate lately.

Economists warn that further state spending reductions could prolong the downturn by shaking the confidence of residents, whose day-to-day lives depend heavily on state and local services.

"People look to government as their backstop when things are completely falling apart," said Mark Zandi, chief economist at Moody's Analytics. "If they feel like there's no support there, they lose faith and they run for the bunker and pull back on everything."

States and municipalities are also crucial employers and spenders that keep the economy moving. "We run the risk of descending into a dark vicious cycle," Mr. Zandi said.

State and local governments administer most of America's programs for education, public safety, health care and unemployment insurance. They also provide a wide variety of smaller services, such as outdoor recreational facilities or highway rest stops, that improve the quality of life. The costs of many of these programs have spiraled because of the pandemic, which has at the same time caused an economic slump that has driven down tax revenues.

Collectively, state governments will have budget shortfalls of \$312 billion through the summer of 2022, according to a review by Moody's Analytics. When local governments are factored in, the shortfall rises to \$500 billion. That estimate assumes the pandemic doesn't get worse.

Lawmakers soon passed the \$2 trillion CARES Act, which authorized one-time stimulus payments and temporary supplemental unemployment payments, which buoyed consumer spending and helped states' sales-tax revenues. The law also allocated about \$150 billion to states for expenses directly attributable to the pandemic, in areas ranging from education and health care to the operation of nearly empty airports. But the rules for what expenses that money can cover have kept much of it from being spent, according to the Treasury Department. New York State, for example, has been sent about \$2.9 billion that it can't put toward other uses.

Although states' budget challenges would be eased if Congress relaxed those rules, that still wouldn't be enough to fill the gap.

Gov. Andrew M. Cuomo has warned that without further relief New York will cut \$8.2 billion in grants to local governments, a blow he said had “no precedent in modern times.” The cuts would hit “nearly every activity funded by state government,” including special education, pediatric health care, substance abuse programs, property-tax relief and mass transit, he said.

No two states have tackled the budget crunch the same way. Several have torn up their annual budgets and are doling out money to programs one or two months at a time. Some have earmarked cuts but not yet carried them out.

Delaware has decided to issue less debt, and a bond issue that was supposed to fund clean-water projects has been shelved. In California, people who go to court without lawyers — an estimated 4.3 million a year — will continue to deal with confusion because the state has scrapped plans for “court navigators” to shepherd them through. Nevada said it would forgo the penalties and interest it normally charged tax cheats, hoping to coax them and their unpaid millions up from underground. In Maryland, the Baltimore Symphony Orchestra will lose a \$1.6 million state subsidy.

Some states are trying to save cash on their pension contributions. Kentucky has delayed its payments to the state workers’ pension fund, already one of the most poorly funded in the country. Colorado and Maryland are among the states planning to reduce their contributions. Some, like California and New Jersey, had recently committed to raising their contributions to cover past underpayments — but now can’t afford to do so.

Without further federal aid, some of the biggest cuts will be to education and health care. California says it will send its school districts \$12.5 billion in I.O.U.s if Washington doesn’t step in, and it will be on the schools to figure out how to fund themselves in the meantime. Preschool programs are being cut in many states; so are free-tuition college programs. State university systems are slated to lose billions of dollars in state funding, although some states say the cuts will be quickly reversed if enough federal money arrives.

And many states say they will reduce their outlays for Medicaid. The health care program for low-income people has been growing rapidly in the pandemic as millions have lost their jobs along with their employee health benefits. States are struggling to find a way to pay for all these additional people. Some, like Colorado, are increasing the co-payments that their Medicaid patients must pay for doctor visits, pharmaceuticals and medical transport.

State officials say they have little choice but to keep cutting if more aid doesn’t arrive. All but one state, Vermont, are legally bound to balance their budgets every year, and Vermont does so voluntarily. They can’t borrow their way out of a cash crunch, the way Washington can, because they have laws limiting how much bond debt they can carry. If they veer too close to the limit, lenders will start demanding higher interest rates and the rating agencies will downgrade them.

In May, the Federal Reserve offered to buy states’ bonds if terms in the municipal bond market become onerous. But most states think the Fed loans cost too much and have to be paid back too quickly to be of much help. So far only one state, Illinois, and one state authority, New York’s Metropolitan Transportation Authority, have taken the Fed up on its offer. New Jersey and Hawaii are exploring deals, according to the National Conference of State Legislatures, which tracks the states’ fiscal plans as they develop.

Public pensions have been a central point of contention in discussions over additional federal aid.

In April, with economic activity at low ebb, Illinois lawmakers sent a detailed wish list to their state’s congressional delegation that included \$10 billion for the coming year’s pension contribution. They

also asked for \$9.6 billion for Illinois's cities, which needed the money to "fund retirement systems for the police, firefighters and other first responders providing emergency services during this Covid-19 outbreak."

On a syndicated radio show, Mr. McConnell said Senate Republicans would "certainly insist that anything we'd borrow to send down to the states is not spent on solving problems that they created for themselves over the years with their pension programs."

Glenn Hubbard, an economic conservative who was chairman of the Council of Economic Advisers under President George W. Bush, said he agreed that federal money should not be used to prop up failing state pension funds. But he acknowledged that the states' cash needs were becoming urgent and said there wasn't time for a complete overhaul of troubled state pension systems.

For the sake of speed, Mr. Hubbard said in an interview, Congress could send the states money with a simple, and probably breakable, rule that it not be used to reduce taxes or bail out pensions. Public pension reform, which would be grueling, could come later.

Or, as Mr. Hubbard said in an online seminar hosted by the Economic Policy Institute last month, "if an overweight person comes to the E.R. with a heart attack, you treat the heart attack before you lecture him or her about weight."

The New York Times

By Mary Williams Walsh

Sept. 7, 2020

[Muni-Fund Investors Have Been Their Own Worst Enemies.](#)

A more disciplined approach should lead to better results.

Municipal-bond fund investors have often been their own worst enemies, but they don't have to be.

With holdings that help finance state and local governments and other essential projects like schools, water systems, bridges, and toll roads, muni funds might seem like a staid backwater of the fixed-income world. When it comes to investor behavior, though, they've often been prone to erratic cash flows that have ended up hurting investor returns (also known as dollar-weighted returns or internal rates of return).

In our annual "[Mind the Gap](#)" study, which estimates the gap between investors' dollar-weighted returns and reported total returns, we found that in aggregate, the returns muni-fund investors earned for the trailing 10-year period ended Dec. 31, 2019, continued to fall short of reported total returns by a fairly wide margin. This gap has averaged about 1.1% per year over the past five 10-year periods. It improved slightly for the most recent 10-year period but still stood at 94 basis points per year, as shown in the chart below. That's particularly painful given that returns on muni funds aren't that high to begin with.

[Continue reading.](#)

morningstar.com

by C. Arnott, CFA

Aug 31, 2020

Florida Seizes on Low Rates for Hurricane Fund as Storms Start.

(Bloomberg) — With hurricane season barreling down on Florida, the state is seizing on low interest rates to borrow \$2.25 billion for its catastrophe insurance fund.

The State Board of Administration Finance Corp. is joining state and local governments that have rushed to sell bonds since yields tumbled this year to the lowest in decades. While rates have edged up over the past three weeks, benchmark 10-year debt is still yielding only about 0.8%, matching the lows seen before the pandemic upended financial markets in March.

“The market has been extraordinarily strong on the demand side and interest rates are very low — those two things don’t normally go hand and glove,” Ben Watkins, Florida’s director of bond finance, said in an interview. “From an historical perspective, this is an extraordinary opportunity.”

The pace of debt sales surged as rates tumbled in July, with the volume of new municipal bond offerings jumping 58% from a year earlier to about \$46 billion that month, according to data compiled by Bloomberg. Even with the uptick in rates since then, sales have stayed strong, with another \$41 billion issued this month.

The offering will be the first since 2016 by the Florida Hurricane Catastrophe Fund, which acts as a backstop for the state’s insurance market.

Because of the amount of money already in the fund, Watkins said it didn’t need to borrow more, but the low level of interest rates was too good to pass up.

“We don’t really need to borrow, we want to,” he said. “I don’t know what interest rates or demand is going to be like in five, seven, ten years from now, so lets put some debt on the balance sheet because we don’t know when we’ll need it.”

The bonds are rated Aa3 by Moody’s Investors Service and AA by S&P Global Ratings and Fitch Ratings. They will be federally taxable and marketed to non-traditional municipal buyers, like corporate-debt investors and overseas firms, Watkins said.

The move to shore up the fund comes as scientists anticipate that climate change will cause more damaging hurricanes.

The Florida fund is estimated to incur total losses of about \$8 billion from Hurricanes Irma and Michael, which hit the state in 2017 and 2018, respectively, according to projections as of June 30.

Watkins said that the state is preparing for the future by selling bonds now. “It’s out of an abundance of caution and we are looking at how beneficial it will be and how inexpensive it will be to have that borrowing on the balance sheet,” he said.

Bloomberg Markets

by Danielle Moran

August 31, 2020

Risk Creeps Into Municipal Bond Market, Yet Prices Stay High.

Rock-bottom yields leave risk-averse investors with few options

Add the municipal market to the long list of American institutions reshaped by Covid-19.

The pandemic is threatening the creditworthiness of many municipal securities long seen as safe investments—bonds for higher education, health care, tourism and travel.

Prices across much of the market remain at or near pre-pandemic highs even as borrowers' finances have become more precarious.

Moody's Investors Service has lowered its outlook to negative on all municipal bond sectors except for housing-finance agencies and water, sewer and public power.

Analysts predict downgrades.

"It's amazing that we've sustained six months of being shut down to some degree with very minimal rating actions," said Lisa Washburn, a managing director at Municipal Market Analytics.

Municipal bond defaults have reached their highest rate since 2011, the aftermath of the last recession, according to Municipal Market Analytics data.

Still, Americans continue to pour money into municipal bond mutual funds, which are clocking 17 straight weeks of inflows since mid-May.

After prices cratered in March, they rebounded to pre-pandemic highs as investors flocked to the tax-exempt investments.

Rock-bottom yields across the fixed-income market have left risk-averse investors with few other appealing options. Municipal bonds default far less often than corporate debt. Moves by the Federal Reserve to backstop the municipal market have stoked investor confidence.

Some fund managers see big-name borrowers who have good relationships with creditors as a good long-term buy even if their bonds are at risk of a short-term downgrade.

"We're modestly more comfortable with those guys because there is a possibility that we're entering a terrain where sophistication and access to markets is a big credit differentiator," said Adam Stern, co-head of research at Breckinridge Capital Advisors.

Such buyers have helped bolster prices in the thinly traded \$4 trillion market. Many high-net-worth households buy municipal securities for retirement income and hesitate to erode the value of their portfolios by trading.

Prices are rising on bonds backed by essential services. Water system improvement bonds issued by the San Francisco Public Utilities Commission that mature in 2029 are trading at 108 cents on the dollar compared to 104 cents in January.

Debt manager Richard Morales is expecting strong investor demand for a September water-syste-

-improvement bond issue and planning a money-saving refinancing in October.

“Everybody needs to flush the toilet,” Mr. Morales said. “And the water that comes out of their sink has to go down a drain.”

Tourism-linked borrowers, however, face more uncertainty and sometimes wary investors.

At the Greater Columbus Convention Center in Ohio, hotel tax revenues are falling from about \$26 million a year to a roughly projected \$10 million, said Executive Director Don Brown.

“Hotel occupancy has plummeted,” Mr. Brown said.

Over the past five months, the Franklin County Convention Facilities Authority has withdrawn about \$4.9 million from a reserve fund to cover debt payments on bonds issued to renovate the center. The authority plans to restructure about \$200 million to bring annual debt payments below \$10 million until 2025 to avoid drawing on a revenue pledge by Columbus and Franklin County, Mr. Brown said.

Convention center bonds due in 2025 are trading at highs of 118 cents on the dollar versus 119 cents before the pandemic.

Bonds for communal-living developments such as senior housing and student dormitories are defaulting at greater rates than during the last downturn, according to Municipal Market Analytics data.

The pandemic has drained revenue from universities as Covid-19 outbreaks prompted schools to cancel sports and forgo housing fees. Public universities get a median 13% of their revenue from those types of sources and private universities get a median 16%, according to an analysis by Merritt Research Services.

Moody’s downgraded 10 health-care borrowers and 17 higher-education and nonprofit borrowers in the second quarter of this year. Both S&P and Fitch Ratings have lowered Northwestern University to AA+ as a result of pandemic-related pressures.

A stress test by Merritt found that if universities lost a quarter of their revenues, 44% of public schools and 39% of private schools would exhaust any available financial cushion unless they made cuts.

“I would expect that some are vulnerable to that kind of loss,” said Richard Ciccarone, Merritt’s president and chief executive.

In the same scenario, about a fifth of hospitals would run out of cash, the firm found.

Some health-care facilities are already running into trouble. Petaluma Health Center, a nonprofit network of clinics in Sonoma County, Calif., that serves students and the homeless, last month disclosed to bondholders it had recorded a \$3.7 million deficit for the second quarter. The group said it expects forgiveness on a federal loan to plug the shortfall.

In many cases, investors are continuing to pay pre-pandemic prices despite added risk.

Ten-year tax-exempt bonds New York City issued last month paid out yields of 1.45%—nearly the same as bonds priced Feb. 13, about a month before the city shut down in response to Covid-19.

Jonathan Kahn, a New York state resident and a buy-and-hold individual investor in New York

municipal debt, said he hasn't bought muni bonds since March because prices are too high to justify exposing himself to the uncertain environment for state and local government finance.

"There's no clarity as to revenues and expenses for the duration of the bonds that they are selling," Mr. Kahn said. "Therefore it is impossible to gauge the risk, and interest rates are so low there is no offsetting reward."

Fitch: NJ Proposal Aims to Stabilize Finances; Challenges Remain.

Fitch Ratings-New York-01 September 2020: New Jersey's budget proposal for the shortened nine-month fiscal 2021 year marks a further step toward fiscal stabilization since the coronavirus pandemic upended the state's economic and budgetary situation earlier this year, according to Fitch Ratings. Fitch downgraded New Jersey's Issuer Default Rating to 'A-' / Rating Outlook Negative on April 21 given the narrow fiscal resilience the state had available to confront the emerging crisis, relative to most other states. Since then, swift action by the Governor and Legislature and the presence of federal response funds appear to be laying the groundwork for the state to steady its finances. However, multiple uncertainties weighing on New Jersey's credit quality have yet to be clarified, including the ultimate course of the pandemic, its economic and fiscal ramifications and whether additional federal support emerges. Moreover, the significant one-time actions necessary to address the downturn now, including planned deficit borrowing, may temporarily derail the state's progress in recent years in addressing its many fiscal challenges, including its persistent structural imbalance, high liabilities and limited reserves.

The Governor's proposed budget for the shortened, nine-month fiscal 2021 period reflects the state's progress toward stabilizing its finances. It forecasts that fiscal 2020 (12 months through June 2020) will have ended with a revenue gap of only \$1.4 billion relative to the January 2020, pre-pandemic forecast; this compares with the \$2.7 billion gap expected as of the May financial condition report.

Better performance in fiscal 2020 partly reflects economic trends before the pandemic, which have supported recent income tax collections, but withholding has not deteriorated as sharply as expected since the pandemic began and enhanced federal unemployment benefits have shored up sales tax receipts. More than \$1 billion in planned fiscal 2020 appropriations were also held back by the state early in the crisis, which appears to have offset most of the estimated fiscal 2020 revenue gap, enabling the state to end the year with a fund balance now estimated at over \$1.7 billion.

The projected revenue decline in fiscal 2021 remains more of a challenge, despite the improved outlook. Prior to any tax law changes, New Jersey is forecasting a \$5.6 billion revenue gap relative to the pre-pandemic forecast, compared with a \$7.2 billion gap in the May fiscal update. The governor's proposal targets ending fiscal 2021 with a fund balance exceeding \$2.2 billion, a potentially critical cushion against the many uncertainties the state faces through the remainder of the fiscal year.

The revenue gap identified by the state is addressed most notably by \$4 billion in deficit borrowing, either via General Obligation bonds or through the Federal Reserve's Municipal Liquidity Facility, in lieu of deeper spending cuts. Additionally, \$1 billion in revenue actions are in the proposal, the largest of which is raising the top rate on taxable income over \$1 million to 10.75%; the Legislature has rejected this proposed increase several times before. The proposal cuts a range of spending but preserves the state's ramp up schedule to full actuarial contributions (ADC) for pensions with a payment equal to 80% of the ADC, an important signal of the state's commitment to stabilizing its

pension funding and addressing a source of credit weakness. The Governor and the Legislature have only a few short weeks to reach consensus on a final budget, but their quick agreement at several critical junctures since the start of the pandemic raises expectations for a smooth process.

Yet, even as state finances appear to be solidifying, significant risks remain for the state beyond the current fiscal year. Economic recovery is likely to be slow, and thus the rebound of tax revenues in fiscal 2022 is unlikely to fully recoup the lost revenues being offset in fiscal 2021 through deficit borrowing and other one-time actions. Moreover, future baseline spending will have to rise both to cover debt service on the operating debt and the next scheduled increase in pensions contributions.

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[Mesirow Arranges Tax-Exempt P3 for University of Illinois.](#)

Mesirow Financial's Public Finance and Credit Tenant Lease and Structured Debt Products teams acted as the senior underwriter for one of the first tax-exempt healthcare public-private partnership financings in the U.S.

Mesirow acted as the financing arm of the winning development team that was assembled by the University of Illinois to outsource the development, design, financing, and maintenance of the university's Outpatient Surgery Center and Specialty Clinics building near the Chicago campus.

The 200,000-square-foot clinical building, to be located across from the University of Illinois Chicago Hospital on the Near West Side, is slated for fall 2022 completion. By incorporating a 501(c)(3) ownership structure, the bonds could be secured on a tax-exempt basis at very competitive borrowing levels.

"This is a terrific transaction for the University of Illinois, as well as for the State of Illinois because of its public-private partnership model," said Dominick Mondì, Mesirow Financial president & CEO.

September 1, 2020

[Getting A Yield Pickup In Misunderstood Airport Bonds.](#)

Summary

- The risk of airport bonds is more quantifiable relative to comparable General Obligation bonds.
- Yield on airport bonds versus comparable GOs put airports slightly on top.
- Major airports have the cash to pay bondholders.
- All the information needed to assess an airport bond is easily available and understood.
- Specific recommendations of three airport bonds we believe are “money good.”

[Continue reading.](#)

Seeking Alpha

by Chris Malburg

Sep. 4, 2020

[Muni Market Update: The Big Picture - MAGNY Webinar](#)

Date: Friday, September 11, 2020

Time: 12:00 pm

Join us September 11th at noon ET as we kick off MAGNY’s 71st season!

We will hear from three very well informed speakers who will share their perspectives on the legislative and regulatory landscape in Washington, overall economic conditions and how issuers are navigating through these challenging times.

Our Speakers:

Emily Brock, Director, Federal Liaison Center, Government Finance Officers Association (GFOA)

Ben Watkins, Director of Bond Finance, State of Florida

Mark Zandi, Chief Economist of Moody’s Analytics

Moderated by Patrick Luby, MAGNY Program Chair and Senior Municipal Strategist at CreditSights

Cost: This is a free event for NFMA members.

Registration via Zoom:

https://us02web.zoom.us/webinar/register/WN_UTn1xD7cQQy70MFEjYWWWA

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

Contact E-mail: programchair@magny.org

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- [NABL: Disclosure Industry Working Group Publishes Paper on Timely Disclosures](#)
 - [The Lunacy Of Using City Streets To Collateralize New Municipal Bond Deals.](#)
 - [Better Data Can Highlight Climate Exposure: S&P Focus On U.S. Public Finance](#)
 - [Morning Zoo Radio and Cash Flow Relief for Issuers: Part 1 - Squire Patton Boggs](#)
 - [Morning Zoo Radio and Cash Flow Relief for Issuers: Part 2 - Squire Patton Boggs](#)
 - [Williams v. Bank of Ozarks as Trustee for Registered Owners of \\$4,400,000 Benton County Property Owners' Improvement District No. 7 Special Assessment Bonds](#) - Court of Appeals holds that failure of bank, as trustee for bondholders, to collect special-assessment taxes, after the special-assessment bonds issued by property owners' improvement district to fund infrastructure improvements for residential subdivision had matured, did not constitute a material alteration that relieved guarantors from liability under guaranty agreements, under which guarantors had guaranteed payment of the principal and interest due on the bonds.
 - And finally, Great Moments In Misplaced Lyricism is brought to us this week by [Estate of Casillas v. City of Fresno](#), in which the court noted that, "the sands of municipal finances can shift swiftly in times such as these." We checked with the GFOA and it agreed that it had neglected to incorporate the shifting sands of time into required financial reporting. Working group being formed. Volunteers needed.

BONDS - ARKANSAS

[Williams v. Bank of Ozarks as Trustee for Registered Owners of \\$4,400,000 Benton County Property Owners' Improvement District No. 7 Special Assessment Bonds](#)

Court of Appeals of Arkansas, Division II - May 22, 2019 - 2019 Ark. App. 281 - 577 S.W.3d 434

Bank, as trustee for holders of special-assessment bonds issued to fund the construction of infrastructure improvements for residential subdivision, brought suit for breach of contract against guarantors of the bonds, alleging that guarantors had breached their guaranty agreements.

The Circuit Court granted bank's motion for summary judgment and denied guarantors' counter-motion for summary judgment. Guarantors appealed.

The Court of Appeals held that:

- Parol evidence rule prohibited consideration of extrinsic evidence of tax order and pledge-and-mortgage agreement;
- Bank's failure to collect special assessment tax did not constitute a material alteration that relieved guarantors of liability under guaranty agreements; and
- Guarantors waived any defense based on impairment of collateral.

Guaranty agreements under which guarantors guaranteed the principal and interest due on special-assessment bonds issued by property owners' improvement district to fund construction of infrastructure improvements for residential subdivision unambiguously imposed an absolute and unconditional obligation on guarantors, and thus parol evidence rule prohibited court from considering extrinsic evidence of district's tax order and district's pledge-and-mortgage agreement with bank as trustee for bondholders, when considering whether bank's alleged failure to collect special tax after the bonds had matured was a material alteration and impairment of collateral that

released guarantors from liability.

Alleged failure of bank, as trustee for bondholders, to collect special-assessment taxes, after the special-assessment bonds issued by property owners' improvement district to fund infrastructure improvements for residential subdivision had matured, did not constitute a material alteration that relieved guarantors from liability under guaranty agreements, under which guarantors had guaranteed payment of the principal and interest due on the bonds; the guaranty agreements were absolute and unconditional, such that liability of guarantors became fixed upon default, and under the guaranty agreements, bank did not assume any responsibility for collection of the special tax.

Guarantors of delinquent bonds issued to fund the construction of infrastructure improvements for residential subdivision failed to preserve for appellate review their claim that, pursuant to choice-of-law provisions in the guaranty agreements, bank was obligated under state law to pay special-assessment tax associated with the underlying properties, although guarantors raised argument based on state's law in response to bank's motion for summary judgment in bank's action for breach of guaranty agreements, where trial court relied on other grounds in entering summary judgment, and guarantors did not obtain ruling on their state-law argument.

Guarantors of delinquent special-assessment bonds waived any defense based on impairment of collateral arising from bank's alleged failure to collect the special-assessment tax collateral securing the debt obligation they guaranteed, in a breach-of-contract action brought by bank, as trustee for bondholders, to enforce guaranty agreements; guaranty agreements contained a term providing any omission by bank did not affect liability of guarantors, guarantors' obligations were absolute and unconditional, and guaranty agreements stated that bank "assumed no responsibility whatsoever" for collecting "any of the special tax."

PUBLIC UTILITIES - CALIFORNIA

[MetroPCS California, LLC v. Picker](#)

United States Court of Appeals, Ninth Circuit - August 14, 2020 - F.3d - 2020 WL 4726364 - 20 Cal. Daily Op. Serv. 8433 - 2020 Daily Journal D.A.R. 8787

Prepaid wireless telephone service provider brought action against members of the California Public Utilities Commission (CPUC) in their official capacities, alleging that requirement in CPUC's resolution that prepaid providers use the intrastate allocation factor to determine intrastate revenue subject to state universal service surcharges pursuant to California's Prepaid Mobile Telephony Services Surcharge Collection Act conflicted with federal law and was therefore preempted.

The United States District Court granted summary judgment in favor of provider. Members appealed.

The Court of Appeals held that:

- Expiration of Act did not render moot provider's action;
- Requirement in CPUC's resolution that prepaid wireless providers use intrastate allocation factor to determine intrastate revenue was not facially preempted by Federal Communications Commission's (FCC) policy that universal service support rules cannot not unfairly advantage one provider over another; and
- Requirement in CPUC's resolution was not facially preempted by FCC's ruling permitting states to impose universal service contribution requirements on intrastate interconnected Voice over

Internet Protocol (VoIP) providers.

PUBLIC PENSIONS - CALIFORNIA

[Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association](#)

Supreme Court of California - July 30, 2020 - P.3d - 9 Cal.5th 1032 - 2020 WL 4360051

In consolidated cases, public employees and public employee organizations brought mandamus actions against county retirement boards challenging constitutionality of Public Employee Pension Reform Act (PEPRA) as it applied to certain plan members under County Employees Retirement Law (CERL).

The Superior Court entered writ of mandate, ruling that county employees possessed vested right to continuation of some, but not all, pre-existing practices. Employees and organizations appealed and state and county sanitary district filed appeals and cross-appeals. The Court of Appeal affirmed in part, reversed in part, and remanded. Supreme Court granted petitions for review.

The Supreme Court held that:

- Employees had no express contractual right to receive benefits calculated in manner inconsistent with PEPRA;
- Item that does not fall within statutory definition of “compensation earnable” may not be included in member’s pensionable compensation, disapproving *Guelfi v. Marin County Employees’ Retirement Assn.*, 145 Cal.App.3d 297, 193 Cal.Rptr. 343.
- Doctrine of equitable estoppel did not require boards to adhere to interpretation of CERL found in settlement agreements;
- PEPRA provision excluding from “compensation earnable” any compensation paid to enhance member’s retirement benefit constituted modification of county pension systems;
- PEPRA provision excluding termination pay from “compensation earnable” did not violate Contract Clause; and
- PEPRA provisions excluding from “compensation earnable” compensation paid to enhance member’s retirement benefit, compensation for services rendered outside normal working hours, and compensation for surrender of unused paid time off did not violate Contract Clause.

JUDGMENTS - CALIFORNIA

[Estate of Casillas v. City of Fresno](#)

United States District Court, E.D. California - July 7, 2020 - F.Supp.3d - 2020 WL 3802749

After city, police department, and police officer were found liable for \$4,750,000 in connection with police shooting, they moved to stay enforcement of judgment and waive bond pending resolution of appeals.

The District Court held that city, police department, and police officer were entitled to unsecured stay.

City, police department, and police officer, that jury found liable for \$4,750,000, were entitled to unsecured stay during appeal of judgment regarding police shooting; city had \$34.8 million in

emergency reserves, a sound credit rating, and \$10 million insurance policy.

MUNICIPAL ORDINANCE - MARYLAND

[Pizza di Joey, LLC v. Mayor of Baltimore](#)

Court of Appeals of Maryland - August 17, 2020 - A.3d - 2020 WL 4745777

Food trucks brought action against city, seeking injunctive relief and declaration that a city code provision prohibiting food trucks from operating within 300 feet of brick-and-mortar establishments that sold primarily the same kind of food violated substantive due process and equal protection under State Constitution.

After a bench trial, the Circuit Court concluded that the provision did not violate due process or equal protection but that it was unconstitutionally vague. Food trucks appealed and city cross-appealed. The Court of Special Appeals affirmed in part and reversed in part. Food trucks appealed.

The Court of Appeals held that:

- Food trucks' claims were ripe for review;
 - Food trucks had standing;
 - Rational basis review applied to due process and equal protection claims;
 - The 300-foot rule did not violate due process or equal protection;
 - Trial court erred in *sua sponte* deciding vagueness claim after food trucks affirmatively waived claim; and
 - The 300-foot rule was not facially vague in violation of due process.
-

SCHOOL FINANCE - OKLAHOMA

[Independent School District # 52 of Oklahoma County v. Hofmeister](#)

Supreme Court of Oklahoma - June 23, 2020 - P.3d - 2020 WL 3428194 - 2020 OK 56

School districts brought action for writs of mandamus against defendants including Department of Education, alleging districts received insufficient state aid payments for certain years. Other school districts intervened.

The District Court granted summary judgment to intervening districts, finding no requirement for defendants to seek repayment of excessive state aid payments made to certain schools until an audit was performed by auditors approved by the State Auditor and Inspector. Plaintiff districts appealed.

The Supreme Court held that:

- The audit used by the State Board of Education when demanding repayment of improper state aid payments to schools must be performed by auditors approved by the State Auditor and Inspector;
- A school district must possess a legally cognizable right to bring a mandamus proceeding when seeking the payment of funds from a government entity;
- In a mandamus action to compel payment of state aid funds to district, such legally cognizable right must be based upon appropriations and funds which have not lapsed; and
- A district has a legally cognizable interest in funds correctly apportioned to that district, independent of the statutory procedure used by the State Board of Education to recoup improper

state aid payments.

BIDDING. - PENNSYLVANIA

[Reading Blue Mountain and Northern Railroad v. Seda-Cog Joint Rail Authority](#)

Commonwealth Court of Pennsylvania - July 6, 2020 - A.3d - 2020 WL 3636387

Private railroad operator brought a complaint against joint rail authority board, and named highest-scoring proposer as an indispensable party, seeking declaratory relief that authority violated non-competition provision of Municipality Authorities Act (MAA) by allegedly prohibiting direct completion with private enterprise and that authority violated competitive bidding section of MAA and Procurement Code, and operator sought an injunction prohibiting authority from continuing request for proposal (RFP) process until merits of the case were decided.

The Court of Common Pleas granted authority's motion for summary judgment and proposer's motion for summary judgment. Operator appealed.

The Commonwealth Court held that:

- Services provided by authority's operating agreement were distinct from enterprise of operator;
- Competitive bidding section of both MAA and Procurement Code did not apply to joint rail authority board's operating agreement;
- Trial court's error in relying on extraneous factors in granting authority's motion for summary judgment was harmless;
- Financial details requested by authority as part of RFP process in awarding lease of railroad tracks owned by authority were reasonable; and
- Operator did not adduce sufficient evidence that RFP process was improper, unjust or failed to comply with basic fairness standards.

[Morning Zoo Radio and Cash Flow Relief for Issuers: Part 1 - Squire Patton Boggs](#)

The pandemic is forcing even the most frugal issuers to seek to reduce or postpone their debt repayment requirements. There are many ways to do this. Each approach has pros and cons from a business perspective. Not surprisingly, each approach also has tax consequences that are often not intuitive and sometimes downright devilish. We will tackle them one at a time in a series of bite-size (relatively speaking) posts. First up: *It's America's #1 Morning Zoo Tag-Team Radio Show: **SCOOP AND CHUCK!***

Like "Cinderella Bonds" and "[total return swaps](#)," the term "Scoop and Chuck" can mean several things. To your stir-crazy author, it conjures images of two zany morning radio hosts bantering and giving incessant weather reports ("*It's 99 degrees and miserable in Houston, 99 degrees and miserable in Galveston, 99 degrees and miserable in Katy, 99 degrees and miserable in the Woodlands. . .*"), while their dopey sidekick hosts a 2-for-1 giveaway from a dunk tank at a local discount mattress store. (Maybe that's just me.)

[Continue reading.](#)

Squire Patton Boggs

By Johnny Hutchinson on August 23, 2020

[Morning Zoo Radio and Cash Flow Relief for Issuers: Part 2 - Squire Patton Boggs](#)

In Part 1, we introduced the cash flow relief technique/staple of your morning commute known as “Scoop and Chuck.” In particular, we discussed an issuer that will issue new bonds and use the proceeds to pay interest (but no principal) on a prior issue of bonds. The new bonds will have a debt service schedule that is pushed out later in time compared to the debt service schedule on the prior bonds. This enables the issuer to keep some of the revenues that it otherwise would have used to pay debt service on the prior bonds. In Part 2, below, we’ll add more facts and try to provide some answers.

We left our last post with you heading to the local mattress store to check in with a radio sidekick. More to the point, we left you with Reg. 1.150-1(d)(2)(i), which provides a way for us to avoid treating our scoop and chuck issue as a refunding issue, meaning that it can’t be an advance refunding issue, meaning that we could use proceeds of our scoop and chuck issue to pay interest that accrues more than 90 days (but within 1 year) of the issue date of our scoop and chuck bonds.

[Continue reading.](#)

Squire Patton Boggs

By Johnny Hutchinson on August 24, 2020

[Better Data Can Highlight Climate Exposure: S&P Focus On U.S. Public Finance](#)

Key Takeaways

- **Better data could provide a foundation for understanding current and future climate risks** on the county level across the U.S. in coming years, providing insight into U.S. public finance—where consistent and comparative disclosure has been lagging.
- **Data also improves our understanding of the possible scale of entities’ risks and can facilitate a richer dialogue about adaptation actions.** For USPF entities, location and regulation will drive sensitivity to physical climate risks, so enhanced analytics about the degree of potential exposures and when the exposures could crystallize can improve our understanding of their preparedness and the potential future influence of climate risk on credit quality, if adaptation actions are not taken.
- **Water stress and heat waves are on the rise in the U.S.,** where water scarcity will affect 38% of counties in 2050 under a high-stress climate scenario (RCP8.5), raising risks under this scenario for their municipal water utilities, public-owned power utilities, and local governments. Heat wave risk will continue to increase across all states and under all scenarios to midcentury with Florida particularly exposed.
- **Wildfires are already a risk.** Western and southeastern states are most highly exposed to

wildfire risk now. Sixteen counties in Oregon, Wyoming, Montana, Minnesota, and New Mexico see the greatest increase in exposure through 2050.

- **Sea level rise and river flooding is most severe in Louisiana.** The state has the greatest number of counties affected by sea level rise and river flooding to 2050 under the RCP8.5 scenario. Other states are also highly exposed. Without adaptation, entities will remain exposed to these hazards.

[Continue reading.](#)

24 Aug, 2020

[The Lunacy Of Using City Streets To Collateralize New Municipal Bond Deals.](#)

I felt my hair on fire as I read a [Bond Buyer article](#) about cities, with underfunded pensions, issuing taxable municipal bonds using city streets as collateral. I mean the *actual physical streets* complete with traffic lights, striping, stop signs. The works. This is no joke.

The two California cities featured in this article are West Covina and Torrance. Torrance happens to be in my own back yard. Who knew they were up to such pension shenanigans? They intend using the bond proceeds to catch up on unfunded pension obligations.

Over the years, I've tried never to skip a chance of sharing my disdain for Pension Obligation Bonds (POBs). Those are taxable municipal bonds issued to investors of which the proceeds go into various public pension funds to improve their funding ratios. The pension investment managers then invest in stocks, bonds, and real estate in order to meet their liabilities as public employees retire.

So, this relatively new twist on things has red flags posted all over it. First, since city streets are pledged as collateral and if a default occurs, what happens? Unclear. Can bondholders order toll booths set up on what just became *their* street to raise the money needed to make them whole? Who knows? Sure, Southern California has Express Lanes and a few toll roads. But tolls on city streets sounds absurd, unworkable and downright stupid.

The city fathers may believe these lease revenue bonds are the cure for underfunded pension incompetency we've witnessed over the last few decades. Paper over and borrow over the unfunded pension obligations is no solution. This is a bad idea that should get no traction from investors.

Apparently, the Torrance deal can be up to \$350 million and may come to market in October. West Covina already issued their bonds in July. The Official Statement specifically states, "The Leased Property consists of City streets constituting an estimated 303 miles of streets, with 557 lane miles, and 47,267,942 square feet of pavement." You're probably wondering along with me just how 47 million square feet of pavement could generate cash to repay bondholders. Even more absurd, the Official Statement goes on to say:

"Limited Remedies. The City has not granted any security interest in the Leased Property for the benefit of the owners of the 2020A bonds, and there is no remedy of foreclosure on the Leased Property upon the occurrence of an Event of Default under the Indenture or the lease. If an event of default occurs under the Lease, there is no right for the Authority, the Trustee, or the Owners to terminate the Lease and re-let the Leased Property."

From this, it sounds like West Covina could decide to stop paying bondholders without any available

remedy whatsoever. I wouldn't touch these bonds with a 10-foot pole. But investors did. The bonds sold.

My message is simple: If you desire taxable income for your IRA , pension plan or just to supplement your income, then invest in corporate bonds. Do not buy lease revenue pension bonds collateralized by city streets.

With corporates you know where you stand in the pecking order of default. With corporates you can follow quarterly earnings, balance sheets, and news. With municipals, if you're lucky, the issuer will post their financial results just a year later.

This is truly a bad idea and even worse timing with stocks at all-time highs and bond yields at all-time lows.

Forbes

by Marilyn Cohen

Aug 28, 2020

[Is Your State in Financial Trouble? Here's How All 50 Stack Up.](#)

Covid-19 is decimating tax revenue for states, but the pain is hardly spread evenly. Some states are in much better financial shape than others.

Barron's asked asset-manager Eaton Vance to rank all 50 states based on creditworthiness. Idaho, Wyoming and South Dakota lead the pack, while New Jersey and Illinois bring up the rear. While Wyoming's rainy day fund is equal to a year's worth of revenue, Illinois' is down to zero, the ranking shows.

The ranking is based on crunching essential financial and economic data from the past fiscal year, ended June 2019, including debt levels and pension liabilities. The table includes updated numbers on projected budget shortfalls, unemployment rates and rainy day funds.

[Continue reading.](#)

Barron's

By Leslie P, Norton

Aug. 31, 2020 8:51 am ET

[S&P: U.S. Public Finance Housing Mid-Year Sector View: Uncertainty Lies Ahead](#)

Key Takeaways

- The COVID-19 pandemic is hitting some U.S. public finance (USPF) housing subsectors harder

than others.

- As enhanced benefits start to phase out, we expect some households will struggle to meet their housing payments, challenging housing issues' certainty to meet debt service payments.
- Age-restricted and unenhanced rental housing properties, typically volatile, have become even more so as the pandemic and shutdown have intensified financial stress.

[Continue reading.](#)

27 Aug, 2020

[Fitch: Resilient Air Cargo Volumes Benefit Some Airports Amid Pandemic](#)

Fitch Ratings-New York-26 August 2020: Air cargo volumes have been more resilient to coronavirus pandemic-related effects than passenger traffic activity, but the overall effect on stabilizing airport revenues is mostly limited to the largest cargo hubs, given smaller cargo revenue contributions at the majority of US airports, says Fitch Ratings. At the 10-largest US cargo airports, passenger volumes were down 80%-90% in the initial period of peak declines after March 2020, while cargo volumes have seen more mild declines or, in a few cases, significant growth.

Despite the negative economic fallout of the pandemic, stay-at-home orders and increased ecommerce and online purchases have bolstered cargo volumes in the short-term. However, Fitch believes volumes could soften over the medium term due to global economic uncertainties. Historically, air cargo trends have exhibited a strong correlation with GDP growth, suggesting that volumes are susceptible to declines in the event of prolonged economic downturns.

[Continue reading.](#)

[Fitch Ratings Releases 2020 Median Ratios for Not-for-Profit Life Plan Communities.](#)

Fitch Ratings-New York-01 September 2020: Fitch Ratings has released its [2020 Median Ratios for Not-for-Profit Life Plan Communities \(LPCs\)](#). The data presented in this report are limited solely to audited fiscal 2019 results.

'The sector is trying to regain a place of stability - a new normal, which for at least the remainder of 2020, will include the impact of the coronavirus', says Margaret Johnson, Director. 'The pandemic has resulted in increased expenses and lower revenues as a result of a decline in post-acute rehabilitation volumes and pressured cash flows. However, none of this impact is captured in this set of medians, as the impact from the coronavirus is only first seen in 1Q20, which will be captured in next year's median report.'

As of Aug. 18, 2020, Fitch rated a total of 158 LPC providers, of which 156 are included in the median ratio calculations. The median rating is 'BBB' and the number of ratings in the 'BBB' rating category remains the most numerous at 76 (or about 49%) versus 37 (or 24%) in the 'A' rating category. Within Fitch's median portfolio, Type A contract providers remain the plurality with 62 (about 40% of the portfolio), followed by Type C contract providers and Type B contract providers.

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Additional information is available on www.fitchratings.com

[23 Muni Bond Payment Defaults Sets Record for Retirement Community Sector.](#)

Twenty-three retirement communities have reported first-time payment defaults on municipal bonds in 2020.

Since 2009, the retirement sector has never before posted more than 22 defaults in a given calendar year, according to a recently released report from Municipal Market Analytics (MMA). That previous high of 22 was recorded in 2016.

So far in 2020, 52 muni borrowers across all sectors have recorded first-time payment defaults, representing \$5.04 billion of outstanding principal, the MMA report showed. The retirement sector has been the hardest hit. In addition to having the most first-time payment defaults, the sector also has had the most emergency draws (13) on contingent security provisions such as reserve funds and bond insurance to avoid default.

[Continue reading.](#)

Senior Housing News

By Tim Mullaney | August 24, 2020

[Rural Hospitals Are Sinking Under COVID-19 Financial Pressures.](#)

Jerome Antone says he is one of the lucky ones.

After becoming ill with COVID-19, Antone was hospitalized only 65 miles away from his small Alabama town. He is the mayor of Georgiana — population 1,700.

“It hit our rural community so rabid,” Antone says. The town’s hospital closed last year. If hospitals in nearby communities don’t have beds available, “you may have to go four or five hours away.”

As COVID-19 continues to spread, an increasing number of rural communities in the U.S. find themselves without their hospital or on the brink of losing already cash-strapped facilities.

[Continue reading.](#)

WABE

SARAH JANE TRIBBLE • AUG 22, 2020

[Fitch: Pandemic Likely to Sting Over Time for U.S. NFP Hospitals](#)

Related Fitch Ratings Content: [2020 Median Ratios \(Not-for-Profit Hospitals and Healthcare Systems\)](#)

Fitch Ratings-Austin-01 September 2020: Median ratios improved for a second straight year for U.S. not-for-profit hospitals and health systems, though the unprecedented coronavirus pandemic will still likely stress healthcare providers as the pandemic continues, and as future pandemic readiness requirements and payor mix shifts erode margins over time, according to Fitch Ratings in a new report.

“Additionally, capital spending will generally be reduced in the initial years post-pandemic as organizations scrutinize every dollar of capital spending,” said Senior Director Kevin Holloran. “However, we expect that providers who emerge from the pandemic as strong as they are now or stronger will ultimately accelerate spending in anticipated merger, acquisition and expansion activity.”

2020 median operating margins and operating EBITDA increased incrementally to 2.3% and 8.7%, respectively, from 2.1% and 8.6% in the prior year. Median operating profitability also improved for the second straight year following prior years of operating income declines. Additionally, days cash on hand increased approximately five days (2.3%) to 219.8, compared to 214.9 in the prior year.

The across-the-board median improvements obviously do not yet address the direct impact of coronavirus on hospitals, with the first signs likely to emerge in Fitch’s 2021 medians update. “Health organizations will be trying to adapt to a new normal in moving further away from traditional fee-for-service reimbursement due to their experience during the coronavirus pandemic which results in no services and no fees,” said Holloran. “The pandemic is already resulting in increased expenses, initially significantly lower revenues and significant questions about the path forward for the remainder of the year.”

In order to shed some light on what lies ahead, Fitch conducted a brief prospective analysis of the fallout that the coronavirus is likely to create for the sector. Absent stimulus relief and re-bounding elective procedural volumes, hospitals would have taken a considerable shock to all key financial metrics. Thus, it is safe to say that the pandemic fallout will be felt by hospitals for some time to come. “With Medicaid likely to be cut by states balancing their own budgets, additional federal

assistance is likely still to come in order to help hospitals stem the proverbial bleeding that the pandemic has and will continue to precipitate.

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Additional information is available on www.fitchratings.com

[Munis in Focus: Bloomberg Radio](#)

Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses his newsletter "New York Aint Dead But It Should Be Thankful Rates are Low."

[Play Episode](#)

August 28, 2020

[Ransomware Attacks Demanding Larger Payouts from Local Governments.](#)

The average ransom demanded of a local government in a cyberattack grew from \$30,000 to \$380,000, according to one cybersecurity firm.

Hackers carrying out ransomware attacks against local governments are demanding larger sums of money and finding that smaller municipalities are willing to pay up, according to cybersecurity experts.

The ransom demands made on local governments after computer systems are breached or private data is stolen have increased from an average of \$30,000 in 2017 to \$380,000 in 2019, according to a [report](#) published this month by BlueVoyant cybersecurity firm. Several ransom demands exceeded \$1 million last year.

The increased monetary demands reflect a shift in technique among hackers, according to the report. Ransomware attacks on local governments were previously opportunistic in nature, exploiting vulnerabilities for the possibility of a quick payout. But more recent attacks are "targeted ransomware intrusions focused on larger organizations, with critical digital services, that could be ransomed for high amounts," the BlueVoyant report states.

The firm analyzed 108 attacks on state and local governments going back to 2017 to better understand cybersecurity issues facing local governments.

Another [report](#), released Thursday, found that the number of ransomware attacks affecting local governments has decreased over the last 12 months. The cybersecurity company Barracuda found that hackers made ransom demands against 33 municipal governments in the last 12 months compared to 55 attacks the year before.

But smaller municipalities have come under increasing attack as hackers exploit their vulnerabilities and lack of resources, said Fleming Shi, the chief technology officer of Barracuda. At least 15% of the 33 municipalities attacked in the last 12 months paid the demanded ransom, with payments ranging from \$45,000 to \$250,000, the Barracuda report found.

“All the municipalities studied that made payments had populations less than 50,000, and they deemed the cost and labor associated with manually recovering from the ransomware attacks too high,” the Barracuda report states. “That’s a significant change compared to last year, when practically none of the municipalities attacked paid any ransom.”

While prior ransomware attacks have often centered on locking government officials out of their own computer systems and demanding payment to let them back in, Shi said hackers now more likely steal private information from local governments and to demand payment not to release it.

“Data breaches and exposing very private or critical data is becoming part of their tactic,” he said.

To protect themselves from ransomware attacks, the BlueVoyant report recommends local governments conduct cybersecurity risk assessments and consider purchasing cyber insurance or working with a managed security service.

Managed service providers have increasingly come to the aid of smaller municipalities to help them recover their data or restore access to computer systems, Shi said.

“Without any help, they are likely to pay because they don’t have the infrastructure to remediate or recover data,” Shi said.

Andrea Noble is a staff correspondent with Route Fifty.

Route Fifty

By Andrea Noble

AUGUST 27, 2020

[Hurricane Laura's Impact on the Muni Market.](#)

Christopher Brigati, Advisors Asset Management head of municipals, discusses how Hurricane Laura is impacting the municipal bond market with Bloomberg’s Taylor Riggs on “Bloomberg Markets: The Close.”

[Watch video.](#)

Bloomberg Markets

August 27th, 2020, 3:04 PM PDT

FEMA Spends More Preparing for Terrorism Than Hurricanes.

Readiness grants aimed at hurricanes and floods have for years been far smaller than those for counter-terrorism.

In the days and hours before Hurricane Laura reached the Gulf Coast, emergency personnel took up positions in Texas and Louisiana and readied half a million meals and 800,000 liters of water. It's the role of the Federal Emergency Management Agency to coordinate the immediate response to storms, floods and wildfires, all of which have become more common as a result of global warming. But even though scientists have warned of increasingly extreme weather, preparation for climate-related disasters hasn't been FEMA's top spending priority.

An analysis of preparedness grants disbursed by FEMA shows the agency spends far more on counter-terror than natural disasters. In 2019, for example, the U.S. Government Accountability Office found more than \$1 billion in FEMA grants assigned to counter-terror preparation and only \$315 million in readiness for natural disasters.

Most Americans think of FEMA as the agency that responds to major storms. Its role is most visible in aftermath of hurricane like Laura, which forecasters described as the worst in a century to hit the western U.S. From 2005 to 2019, FEMA spent at least \$460 billion to clean up and rebuild after natural disasters, according to the GAO. That's about \$30 billion per year, on average.

FEMA is part of the Homeland Security Department, so preparation for terrorism threats is also part of its job. The current spending disparity is a result of laws passed after the Sept. 11 terrorist attacks. "Most preparedness grants since 9/11 have been spent on counter-terrorism," said Chris Currie, a director in GAO's homeland security team who wrote a recent report on FEMA disbursements. FEMA did not respond to a request for comment.

Only one of FEMA's three main preparedness grant programs allows money to be spent without meeting a terrorism requirement. That program, the Emergency Management Preparedness Grant, has been funded sporadically over the years and, unlike the two counter-terror grants, requires a 50/50 matching expenditure from localities receiving the funds. As a result, poorer municipalities have less access to preparedness money for storms and floods.

There are new FEMA grant programs for 2020 that will disburse \$660 million in funding for what the agency calls "pre-disaster mitigation," focusing on resiliency against flooding and the relocation of vulnerable communities. Last year, however, approximately 75% of FEMA's total preparedness grants went to the programs with counter-terrorism links, according to the GAO report.

The agency's Sept. 11-influenced spending priorities weren't adjusted all that much even after Hurricanes Florence and Michael caused over \$50 billion of damage in 2018 across the Carolinas and Florida. A review of FEMA grant requests made by the latter state for 2019 through 2020 shows that a large chunk of the nearly \$14 million has been sought for law enforcement communication, SWAT training, and bomb detection.

"The state uses this grant to prepare for all hazards, including terrorism, cybersecurity, hurricanes, floods, wildfires," said Samantha Bequer, spokeswoman for the Florida Division of Emergency Management. "Although [Hurricane Michael] was a natural disaster, many first responders relied upon Department of Homeland Security's grant-funded training, equipment and technology for response and recovery efforts."

Craig Fugate, who was FEMA administrator under President Obama, agreed that preparedness grants are flexible enough to allow local officials to build up search-and-rescue and emergency management capabilities that would be as helpful in a terrorist attack as a hurricane. And counter-terrorism spending can help with another critical problem: mass shootings. Fugate pointed to the 2015 hostage situation that took place in San Bernadino, California. “A lot of the equipment—everything from robotics, drones, vehicles to get in close, and the training and exercises beforehand—are things funded with Homeland Security money,” he said.

Still, security-focused grants aren’t the best way to make communities more resilient against storms and floods. The recent GAO report cited “long-standing capability gaps” caused in part by counter-terror requirements. And, of course, there have been far more disasters caused by extreme weather than terrorist attacks. This year alone the U.S. is facing record wildfires in California and a hurricane season on pace to be among the most active ever.

FEMA’s funding has also been caught up in the policy response to the coronavirus pandemic. The Trump administration recently ordered FEMA to divert \$44 billion from the agency’s disaster-relief fund to pay for federal unemployment benefits. The measure was a stopgap after Congress failed to enact another Covid-19 stimulus package.

Federal emergency managers maintain their readiness to help states and localities meet the moment, and President Trump declared national emergencies in Texas, Mississippi, Puerto Rico and Louisiana ahead of Hurricane Laura’s landfall. “I don’t think people should be worried about FEMA running out of money during the initial response,” Fugate said in an interview Wednesday evening on Bloomberg Television.

To outside observers, though, FEMA’s preparedness priorities are out of step with the need to defend against global warming. “We need to invest much more in the people and programs we rely upon for these efforts,” said Rob Moore, a senior policy analyst with expertise on preparedness at the Natural Resources Defense Council, an environmental group. “If we don’t, we’re going to stay stuck behind an ever steepening curve of climate-fueled disasters.”

Bloomberg Green

By Leslie Kaufman

August 27, 2020, 2:00 AM PDT

— *With assistance by Ari Natter*

[Managing Hurricane Risk in a Bond Portfolio.](#)

Below is a slide from a presentation by our good friend Tom Doe, who heads up Municipal Market Advisors (<http://www.mma-research.com>). Tom’s firm does in-depth quantitative and qualitative research on the muni market, and we show the slide with their permission.

[Continue reading.](#)

Herald Tribune

By John Mousseau and Patricia Healy

August 26, 2020

TAX - NEW YORK

[International Student Exchange, Inc. v. Assessors Office of Town of Islip](#)

Supreme Court, Appellate Division, Second Department, New York - July 15, 2020 - N.Y.S.3d - 185 A.D.3d 815 - 2020 WL 3980650 - 2020 N.Y. Slip Op. 03911

Nonprofit public benefit corporation brought an article 78 proceeding to annul determination of town board of assessment review that denied nonprofit's application for property tax exemption.

The Supreme Court granted petition, annulled board's determination, and directed town's assessor's office, board, and town to grant nonprofit a full property tax exemption for tax year. Defendants appealed.

The Supreme Court, Appellate Division held that:

- Nonprofit was organized exclusively for a tax exempt purpose, but
- Issue of fact existed as to whether nonprofit used its property exclusively for exempt educational purpose.

Nonprofit public benefit corporation that facilitated student exchange was organized exclusively for a tax exempt purpose for purposes of Real Property Tax Law, where nonprofit's Articles of Incorporation stated that it was not organized for the private gain of any single person, and even if the nonprofit benefited economically from its programs or from the rental of the property, its filed financial documents set forth that the benefit inured to the organization, not to its officers or employees personally.

Issue of fact existed as to whether nonprofit benefit corporation that facilitated exchange students used its property exclusively for exempt educational purpose, thus requiring that matter be remitted to trial court for determination of whether nonprofit was entitled to full or partial property tax exemption, on appeal from trial court's determination that nonprofit was entitled to full property tax exemption; no evidence indicated what portion of the building was actually used in furtherance of educational purpose, and nonprofit indicated on its application that it intended to lease portion of property.

[Fitch: California Wildfires, Blackouts Highlight Utility Operating Risk](#)

Fitch Ratings-Austin/New York/Chicago-27 August 2020: California wildfires and rolling power outages earlier this month do not have an immediate effect on the credit profiles of the state's investor-owned utilities (IOUs), public-owned utilities (POUs), community choice aggregators (CCAs) and renewable developers, Fitch Ratings says. The occurrence of these two events simultaneously, although unrelated, underscores the challenging utility operating environment in a state prone to natural disasters, which is incorporated in the ratings.

Due to increasingly destructive wildfires triggered by IOU equipment in 2017 and 2018, the three largest California IOUs initiated public safety power shutoffs (PSPS) designed to prevent catastrophic wildfires in 2019. In Fitch's view these outages, in concert with power interruptions

driven by heat-related, supply-demand and other issues, diminish customer satisfaction while increasing political risk. A potential decline in ratepayers in those areas where residents and businesses choose not to rebuild, coupled with increased wildfire-related and green economy costs, could pressure utility cash flows in the longer term, absent robust regulatory constructs or other offsetting factors, such as greening the transportation sector and buildings.

Blackouts and wildfires will encourage residential installation of solar-plus-battery storage as utility customers increasingly look for alternative energy sources, reducing demand for utility-provided energy and eroding revenues. Widespread adoption of residential storage would shift load patterns and may obscure the California Independent System Operator's (CAISO) ability to estimate appropriate reserve margins.

Some renewable projects are at risk of unreimbursed curtailment if CAISO directs them to derate for emergencies, such as wildfires, which has not occurred but could erode credit quality if it were to become a persistent issue. If there are increasing periods where power prices jump by many multiples above average pricing, some renewable projects may be able to capitalize on those opportunities and receive a short-term revenue boost.

A record of almost 1.4 million acres has burned across California since last week, leading to the declaration of a state of emergency. The current fires, which were caused by an unusually large number of lightning strikes related to intense thunderstorms and extreme heat, are not expected to expose utilities to third-party liabilities and financial harm. Under the doctrine of inverse condemnation, California utilities are held strictly liable if their equipment is determined to have sparked a wildfire.

The blackouts earlier this month, which occurred primarily in some IOU service areas, were initiated by CAISO, due to an unprecedented heat wave in the Western US and system challenges related to meeting electricity needs with existing resources. The power outages will be investigated by key regulatory agencies with the goal of delivering more reliable power as California transitions to a clean energy economy. The outages are unlike the service interruptions initiated last year by the three large IOUs to decrease wildfire risk. Fitch expects PSPS to be used by IOUs as a tool to prevent catastrophic wildfires during periods of high weather-related risks. CCAs are affected by CAISO blackouts and PSPS events as their energy supplies are delivered by the IOUs' transmission and distribution systems.

Wholesale electricity prices in California spiked due to the recent energy shortfall. IOUs meet supply needs through a mix of in-house generation and long-term purchase power contracts. When demand is high and IOU supply is insufficient, they may need to purchase higher cost power on the spot market to help meet demand, which could temporarily pressure cash flow until such costs are collected in rates.

Fitch-rated POUs did not experience blackouts earlier this month. The POUs own generation assets and, in some cases, high-voltage transmission lines that permit energy to be imported from other states. Generation assets and transmission capacity provided a physical and financial hedge against the capacity and energy shortages.

POUs had sufficient resources to serve their own loads when energy supply became scarce and market prices spiked. A number of POUs also sold energy into the wholesale market, augmenting revenue when prices rose. Nevertheless, risk exists that any potential solution will impose greater cost and regulatory requirements on the POUs, but there is no short-term credit impact of the blackouts on POUs.

Fortress Wins California Approval for Vegas Rail Reimbursement.

- **Company still has to sell record amount of muni debt for line**
- **California's finance staff had questions that went unanswered**

A company backed by Fortress Investment Group's private-equity funds got the go-ahead Wednesday from the California Infrastructure and Economic Development Bank to get reimbursed for the cost of a Las Vegas rail project from a future bond sale, even though it failed to answer questions from California's finance department.

The permission is a step forward for the venture that goes by the name of DesertXpress Enterprises in California and Nevada. It doesn't yet have the authorization to sell the estimated \$1.65 billion in debt, although at least one of the required approvals could occur in early 2021, according to a report by the authority that issues municipal debt for private borrowers.

The company that also operates under the name Brightline Trains has proposed building a 170-mile (274-kilometer), high-speed line to Las Vegas from a southern Californian desert town called Apple Valley. It already has approval to sell \$4.2 billion in municipal bonds for that initial phase, and has said it intends to market those unrated securities, the largest such high-yield deal ever, by the end of September.

The company is looking to extend that yet-to-be-built line from Apple Valley to existing commuter rail stations in Rancho Cucamonga and Palmdale, California, which would bring it closer to downtown Los Angeles.

Gayle Miller, a representative for the state's finance department on the board, said that while the first phase is a "priority project," the department's questions about right-of-way considerations received no response from the company. She also noted that the firm hasn't yet sold bonds for the initial track.

"We continue to believe that any financial transaction in this state deserves due diligence and at the very least questions answered in order to move ahead," Miller said before casting the sole vote against the reimbursement resolution.

Board member and California Treasurer Fiona Ma said that agreeing to allow the company to get paid back with bond proceeds doesn't commit the agency to sign off on the sale itself.

"It really just provides the flexibility" for the firm, Ma said before the vote.

"We have a tremendous amount of support in California," Ben Porritt, a spokesman for the firm, said by email after the meeting. "People are excited about the private sector investing in infrastructure and transportation and recognize the economic impact a project of this scope can bring to the region."

The company's first passenger rail in Florida, financed through tax-free bonds issued under the name Virgin Trains USA, has suspended service because of the pandemic. It's looking to boost ridership of the unprofitable line by adding stations.

Bloomberg Markets

By Romy Varghese

California Considers Bonds to Boost Economy as Buyers Crave Debt.

- **Legislative proposal would sell at least \$5 billion in debt**
- **Demand for California bonds outstrips supply amid low rates**

California could issue billions of dollars in debt under a legislative blueprint designed to jump start its economy ravaged by the coronavirus pandemic.

While the main plank of the stimulus plan is a proposal to give people and businesses an incentive to pay their income taxes years ahead of time, a securitization portion would have the state sell bonds backed by revenue from a 2017 gasoline tax increase, the state's cap and trade program for emissions of greenhouse gases, and fees the California Public Utilities Commission levies on broadband services.

The plan also calls for speeding up sales of general-obligation bonds that voters have already approved but have yet to occur. No size has been set but gas-revenue debt sales could total \$5 billion. Lawmakers have until Aug. 31 to pass the proposal.

Generally, issuing debt for infrastructure instead of paying cash during a downturn "is a smart idea" for states to free up resources and help the economy at the same time, said Josh Goodman, senior officer with the state fiscal health project at the Pew Charitable Trusts. California bond investors eager to shelter their income from taxes may snap up the new supply, given demand is outstripping bonds for sale. There's about \$1.9 billion less in available California securities than the amount likely to be reinvested from maturing debt, according to data compiled by Bloomberg.

"If the market is right and interest rates are low and there's a need to help stimulate the economy, now's not a bad time to be in the market pricing debt," said Howard Cure, head of municipal research at Evercore Wealth Management.

Unsold Bonds

Democratic leaders in both chambers see the proposal as a way to rejuvenate the economy, protect small businesses and provide services to people hard hit by the downturn, such as the unemployed, undocumented immigrants and working parents, without raising taxes.

The biggest pool to be bonded may be the revenue from gas taxes and vehicle fees that generate about \$5 billion annually. It is unclear yet how much the state could securitize from cap and trade or broadband revenues, California Deputy Treasurer Tim Schaefer said.

The state has the authority to issue about \$31.8 billion unsold bonds, some dating back to 1960, about 20% of the \$158.5 billion approved by voters. California has about \$72.3 billion in general-obligation debt outstanding.

Although Governor Gavin Newsom's office hasn't commented on the legislative proposal, the Democrat said during an unrelated news briefing Aug. 12 that "we have a lot of projects that are ready to go and permitted. It can happen. All we need is to move that money out a little bit faster."

Evercore's Cure said that based on the state's wealth and population, California could handle more

debt, but he cautioned that officials should ensure there's enough revenue to back it as they grapple with the effect of the public health crisis. The state is banking on federal aid that hasn't materialized yet to help close its two-year shortfall of \$54 billion.

"I think California and every state has to be somewhat careful about adding more fixed costs when they don't know the extent of damage to their budgets," he said. "So as long as they have specified revenues going to pay the debt and you're comfortable with that, that's fine. But just to make general obligation or appropriation debt in an era when they're running big operating deficits, you have to be careful about that."

Bloomberg Markets

By Romy Varghese and Laura Mahoney

August 25, 2020, 10:30 AM PDT

[Coronavirus Shutdown Stings New Jersey Mall's Bondholders.](#)

Mutual funds took hundreds of millions of dollars in paper losses this spring on the American Dream project despite market's rally

This summer's markets rally hasn't helped banks and investors who lent about \$2.7 billion to build the country's second-largest mall, near the Meadowlands Sports Complex in New Jersey.

The American Dream Mall has been shut since March, and mutual funds that bought municipal bonds backing its construction have since taken hundreds of millions of dollars in paper losses. The troubles highlight the growing disconnect between ailing segments of the U.S. economy and the surge on Wall Street.

Even with schools in New Jersey preparing to reopen, American Dream remains closed because of a state order aimed at reducing the spread of the new coronavirus. The longer the hybrid mall and amusement park goes without paying customers, the harder it will be for its owner, Triple Five Group, to repay the money it borrowed from banks and mutual funds in 2017.

[Continue reading.](#)

The Wall Street Journal

By Matt Wirz

Aug. 26, 2020 5:30 am ET

[MUB: National Munis Face Covid Pressures, But The Market Ignores Them](#)

Summary

- Municipal bonds continue to attract investor interest, even in hard-hit areas like New York, which was the center of the pandemic in March.

- The market appears to be pricing in robust federal support for the muni sector, but President Trump and the Republican-led Senate seem resistant to this idea.
- As yields decline, so has MUB's income stream. While the tax benefits of munis remain relevant, I see a limited total return in the months ahead.

[Continue reading.](#)

Seeking Alpha

Aug. 29, 2020

[For Muni Investors, COVID-19 Provides Lessons In Liquidity.](#)

Summary

- Over the years, individual investors have flocked to municipal bonds to meet safety, income and after-tax return goals. The recent coronavirus-driven liquidity crunch underscores that investors should also think carefully about how they gain exposure to the asset class.
- Not only have municipal bonds provided a higher historical risk-adjusted return than stocks even before taxes, but they have also zigged when equity markets zagged-serving as a buffer when it's needed most.
- But what investors need to know about municipal bonds doesn't begin and end with an attractive risk/return profile. Market liquidity also matters.

[Continue reading.](#)

Seeking Alpha

Aug. 27, 2020

[White House Estimate: \\$75 billion Raised by Opportunity Zone Funds Thru 2019.](#)

In a report released earlier this week, the White House Council of Economic Advisers estimated that \$75 billion of private...

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Opportunity Db

August 25, 2020

[Challenges for Smaller Opportunity Zone Developers, with Garth Everhart.](#)

What are some challenges that smaller Opportunity Zone project developers face? And are there

benefits to investing in a smaller...

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Opportunity Db

August 26, 2020

SEC Identifies LIBOR Preparedness as an Examination Priority.

On 18 June 2020 the Securities Exchange Commission's (SEC's) Office of Compliance Inspections and Examinations (OCIE) announced the details of an examination initiative specifically focused on London Interbank Offered Rate (LIBOR) preparedness.(1)

The OCIE has previously identified LIBOR preparedness of registrants (eg, SEC-registered investment advisers, broker-dealers, investment companies, municipal advisers, transfer agents and clearing agencies) as a key examination priority for 2020, but the latest announcement offers specific insights into what information examiners will be seeking from registrants.(2)

Background

The expected cessation of LIBOR after 2021 is expected to significantly impact financial markets and present a multitude of financial, legal, operational, conduct and reputation risks for certain market participants. Preparing for the transition away from LIBOR to alternative rates is viewed as essential by a number of regulators, including the SEC. The OCIE will be conducting examinations to facilitate an orderly transition.

Examination process

According to the OCIE's release, examiners will review whether and how a registrant has evaluated the potential impact of the LIBOR transition on the organisation's:

- business activities;
- operations;
- services; and
- customers, clients and/or investors (collectively, investors).

Examiners will review the plans that registrants have developed and steps they have taken to prepare for the LIBOR discontinuation, including with respect to operational readiness and disclosures. The OCIE has also identified the types of information and document that may be sought in these examinations, including:

- information regarding any individuals or groups (eg, internal committees, working groups or transition teams) assigned responsibility to oversee or manage the effects of the LIBOR transition on the registrant, including information regarding the frequency of any meetings on this topic and whether minutes are kept;
- the identity of any third parties the registrant has used or plans to use to assess the impact of the LIBOR transition on the firm or its investors;
- documentation or descriptions of any analysis performed to identify contracts or obligations held and/or issued by the registrant or its investors that may be affected by the LIBOR transition and

- any remediation plans thereof;
- information regarding any investors whose fee structure (eg, performance-based fees) or performance reporting (eg, use of LIBOR-linked benchmark) could potentially be affected by the LIBOR transition;
- any written assessments, strategic plans (including remediation plans, as applicable), roadmaps or timelines prepared by or for the registrant regarding preparation for the LIBOR transition, including the consideration of alternative reference rates;
- materials referencing the LIBOR transition provided to the registrant's board of directors, any committee thereof, any board member, the board or board member(s) of any investors, or the board, legislative body or member(s) thereof of any municipal entity or obligated person client, if applicable, or equivalent governing bodies or offices, if the registrant is not organised as a corporation;
- information regarding any third-party vendors the registrant uses that may be impacted by the LIBOR transition, including the services provided (eg, back office) and how the vendor may be impacted; and
- any implemented or planned changes to compliance procedures, controls or surveillance systems designed to monitor for LIBOR-linked instruments or contracts recommended or sold to clients.

What registrants should be doing now

The list of information that will be sought by SEC examiners is not exclusive and should underscore the urgency of having both experienced counsel on LIBOR matters and a well-designed transition roadmap. Ideally, firms should not wait until an exam is scheduled or a request for information is received to start preparing. Further, as a matter of best practice, firms should begin collecting information that would be responsive to the areas identified by the OCIE.

Endnotes

(1) See SEC, "[Examination Initiative: LIBOR Transition Preparedness](#)" (18 June 2020).

(2) See SEC, "[Examination Priorities for Fiscal Year 2020](#)" (7 January 2020).

Shearman & Sterling LLP - Donna M Parisi, Geoffrey B Goldman, Azam H Aziz, Jennifer Oosterbaan

[S&P: New York State Fiscal 2021 Revenues Fall Short, Increasing The Likelihood Of Expenditure Cuts](#)

Key Takeaways

- Downward revenue revisions after the first quarter of the fiscal year underscore the challenging economic environment the state is in and the likelihood of a prolonged recovery.
- Lack of additional revenue support will necessitate the need to act on planned expenditure cuts expected during the second half of the fiscal year.
- Future downward revenue revisions or diminishing federal support may upend the state's ability to achieve budgetary balance without significant reserve use.
- We continue to view the state's financial plan as reasonably achievable to maintain structural balance this year, but increasing budgetary action is required the second half of the fiscal year.

[Continue reading.](#)

27 Aug, 2020

Municipal Bond Funds Rebound After Covid-19 Collapse.

After collapsing in March, municipal bond funds have clawed their way back. For the year, returns are largely in the black, despite concerns about downgrades for the sector given the state of the economy.

Even as state and local governments grapple with big revenue declines in the wake of the Covid-19 pandemic, muni bonds have sprung higher as the Federal Reserve keeps interest rates low. Make no mistake: There will be consequences for bondholders.

Tom Kozlik of Hilltop Securities, a well-known muni analyst, notes that public finance downgrades outpaced upgrades after the 2008-2009 financial crisis all the way until 2014. Kozlik thinks the number of downgrades could peak as soon as next year, but they could still outnumber upgrades for some time to come.

[Continue reading.](#)

Barron's

By Leslie P. Norton

Aug. 28, 2020 5:26 pm ET

NABL: Disclosure Industry Working Group Publishes Paper on Timely Disclosures

The Disclosure Industry Working Group has released a paper entitled, General Continuing Disclosure Considerations for Municipal Securities Issuers. The considerations were developed to provide guidance to issuers on timely disclosure. The ongoing COVID-19 pandemic and its impact on all municipal governments and their respective economies highlights a need for accurate, timely, and responsive municipal disclosure.

The paper contains eight considerations including:

- Material Event Filings
- Know Your Annual Disclosure Filing Dates
- Making Annual Continuing Disclosure Filings
- Good Investor Relations
- Determining Whether and/or When to Make Voluntary Disclosure Filings
- Presenting COVID-19 Voluntary Disclosure Information
- EMMA Filings
- Post-Issuance Compliance for Tax Law Purposes

While the considerations contained in the paper are general in nature, different issuers of different credits may need to take into account other specific considerations while addressing disclosure both

generally and during the COVID-19 pandemic. Further, while the recommendations are actions that municipal issuers should consider, all issuers are encouraged to discuss COVID-19 disclosure with their entire financing team, including with their bond or disclosure counsel.

The organizations who signed onto the paper include:

- Bond Dealers of America (BDA)
- Government Finance Officers Association (GFOA)
- National Association of Bond Lawyers (NABL)
- National Association of Municipal Advisors (NAMA)
- National Association of State Auditors, Comptrollers and Treasurers (NASACT)
- National Association of State Treasurers (NAST)
- National Association of Health and Educational Facilities Finance Authorities (NAHEFFA)
- National Federation of Municipal Analysts (NFMA)

You can find the paper [here](#).

[NFMA Annual Conference: Call for Volunteers](#)

Fellow NFMA Members:

It's time to start planning the NFMA Annual Conference. This is obviously an unusual year as we don't know at this point if the 2021 conference - currently scheduled for May 11th to May 14th at Disney's Grand Floridian Resort in Orlando, Florida - will be in person or on line. But we are moving ahead with the planning for the conference and seeking support from the membership to lead panels.

Our ask is that members propose topics for which they would like to be a moderator. The expectation is that panels will have no more than three people on them (plus the moderator). You do not need to propose panelists now, just the topic, but it would be great to have an idea of who you'd have on it (e.g., obligor, attorney, investment banker, academic, other topic expert, government professional, market professional, etc.). Please be prepared to pivot to a webinar format should health and safety conditions make this necessary. The NFMA will work with all participants, speakers, and moderators to make sure everyone can participate in whichever format they are most comfortable.

Please send your suggestions to Mark, Neene, and Ron by September 15, 2020.

This is a great way to increase your involvement in the NFMA! Looking forward to receiving some great ideas....

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NFMA Secretary and Education Chair

Muni-Bond Buyers Side With Seinfeld: NYC Isn't 'Dead Forever'

- **In city's \$1 billion bond sale, 10-year bonds yield 1.45%**
- **Biggest city seen weathering latest crisis like those in past**

Jerry Seinfeld came to New York City's defense after a blogger wrote that the city is "Dead Forever." For now, the bond market agrees with the comedian.

There were plenty of mutual funds, insurance companies and other institutional investors willing to lend to the city when it sold \$1 billion of bonds on Wednesday. The 10-year bonds were priced to yield just 1.45%, far from a signal of imminent default. The yield was slightly higher than general obligation bonds rated A-, four levels below the city's current rating and the same as Philadelphia, according to data compiled by Bloomberg.

The city received about \$1.9 billion of orders, or twice the bonds offered for sale, from institutional investors and another \$212 million from individual investors.

"I have to explain to clients that the city isn't on the verge of bankruptcy," said Howard Cure, who has analyzed municipal bonds for more than 30 years and is head of municipal research at Evercore Wealth Management. "It's not the 1970s."

Which isn't to say New York City, the epicenter of the coronavirus pandemic in March, doesn't have serious problems.

Unemployment has swelled to 20%. Revenue in the city's \$88.2 billion budget is \$7.1 billion lower than projected in January. Evictions loom. Violent crime is on the rise, with murders up 30% in the first seven months of 2020 and shootings up 177%, according to the New York Police Department. More than 420,000 residents left the city between March 1 and May 1, the New York Times estimated, based on an analysis of data from cellular phone towers. The Metropolitan Transportation Authority, which runs the subways, buses, and commuter trains, is warning of draconian service cuts that would upend residents' daily lives.

But the dark headlines haven't affected investors, who are more concerned with how low bond yields have dropped than they are about the demise of the most populous U.S. city, said Cooper Howard, director of fixed-income strategy at the Schwab Center for Financial Research, the firm's independent research arm. The Federal Reserve's commitment to keep interest rates near zero and lend to states and local governments if necessary — coupled with a wave of muni debt payments this summer that were reinvested — has depressed yields to the lowest since the 1950s.

Howard, like other municipal analysts, is projecting credit-rating downgrades, but not defaults on state and local government debt. The muni market expects that Congress will likely pass an aid package for states and local governments, he said. And states and cities entered the recession in relatively strong shape, having seen tax collections swell during the long economic expansion.

Mayor Bill de Blasio balanced this year's budget using almost \$3 billion in reserves and \$3 billion of

cost-saving measures, including cutting police overtime and cutting July's police officer class. The mayor has threatened to lay off as many as 22,000 employees if the city and public employees unions can't find \$1 billion in savings, like changing work rules or modifying health benefits

New York City is counting on a federal relief package and is pushing for state legislation that would allow it to borrow as much as \$5 billion if relief isn't forthcoming. The biggest risk is the trajectory of the virus itself: Although the percentage of people testing positive for the virus in the city has plummeted to less than 1%, a recurring surge could lead to another round of shutdowns and spur more residents to leave the city.

Still, New York, the financial capital of the world, has a lot going for it. Wall Street's profits soared to \$10.7 billion in the first quarter, the most profitable quarter in more than a decade, as traders capitalized on volatility. Facebook Inc. and Amazon.com Inc. recently announced large leases in midtown Manhattan. The city's cultural institutions and universities won't disappear, neither will its attraction to strivers and tourists, alike.

"Energy, attitude and personality cannot be 'remoted' through even the best fiber optic lines," Seinfeld wrote in a New York Times op-ed. "That's the whole reason many of us moved to New York in the first place."

Bloomberg Markets

By Martin Z Braun

August 27, 2020, 8:00 AM PDT

[MSRB Disclosure Summary Report.](#)

Rating change disclosures citing COVID-19 hit their highest weekly count since early May.

[Read the MSRB's new disclosure summary report.](#)

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- [Public Sector COVID-19 Recovery Assessment Tool.](#)
 - [ARRC Updates Recommended Best Practices in Anticipation of ISDA's IBOR Fallback Protocol: McGuireWoods](#)
 - [Near Zero Muni-Bond Yields Signal Fed Loans to Remain a Rarity.](#)
 - [Implementing the CARES Act Coronavirus Relief Fund for State and Local Governments: GFOA Webinar](#)
 - [New Jersey Republican State Committee v. Murphy](#) – Supreme Court of New Jersey holds that the New Jersey COVID-19 Emergency Bond Act, under which the State may issue bonds for private sale or borrow funds from the federal government, is valid under the Appropriations Clause and Debt Limitations Clause of the state Constitution, with the limitation that borrowing is required to "meet an emergency" and may not be for programs unrelated to the emergency.
 - And finally, Why Ya' Gotta Go And Make It Personal? is brought to us this week by [New Jersey Republican State Committee v. Murphy](#), in which the Supreme Court of New Jersey ended its opinion with, "Statutes challenged on constitutional grounds can be declared void only if their repugnancy to the constitution is clear beyond reasonable doubt." Repugnancy? Seems a bit

dramatic, no? Why can't something just be, you know, unconstitutional? Do we really need to invoke a gag reflex?

EMINENT DOMAIN - CALIFORNIA

[Rutgard v. City of Los Angeles](#)

Court of Appeal, Second District, Division 2, California - July 30, 2020 - Cal.Rptr.3d - 2020 WL 4361069 - 20 Cal. Daily Op. Serv. 7657 - 2020 Daily Journal D.A.R. 7993

Former owner of historic property that charter city acquired in eminent domain proceedings filed petition for writ of mandate after city, having allegedly failed to timely reauthorize taking, failed to offer former owner right of first refusal to purchase property.

The Superior Court granted owner's petition. City appealed.

The Court of Appeal held that city failed to adopt resolution reauthorizing taking within 10 years of final adoption of resolution of necessity.

The Eminent Domain Law does not permit a public entity to fail to put property acquired through eminent domain to public use or to timely reauthorize its necessity for public use, then to adopt a new, "original" resolution of necessity at any time; allowing a public entity to do so would permit an end-run around the 10-year time limit for putting a property to public use or adopting a reauthorization resolution, in contravention of the legislative intent to prevent such gamesmanship and to prohibit public entities from holding condemned property indefinitely.

The term "adopt," in the statute setting forth a 10-year time limit, starting from the date of adoption of a resolution of necessity for a taking, within which a public entity seeking to retain a property previously acquired by eminent domain but not put to public use must adopt a resolution reauthorizing that use, refers to the date a resolution is finally adopted, not when it is initially adopted or when it becomes effective; the Legislature deliberately chose to look to the date of "adoption" rather than the "effective date" as a common point of reference throughout the Eminent Domain Law, and the date of final adoption of a resolution is more meaningful, as a definite action by a public entity, than an intermediate point in the enactment process with no effect in and of itself.

The statute in the Eminent Domain Law setting forth a 10-year time limit for a public entity that has acquired property by eminent domain to either put the property to public use or adopt a resolution reauthorizing its public use defines the date of final adoption a resolution by incorporating the local law governing the public entity; the time limit statute does not purport to define "adoption," and the statute and the broader Eminent Domain Law elsewhere look to local charters and ordinances governing the process by which a public entity "adopts" resolutions, which allows chartered public entities such as home rule cities to experiment with procedures for adopting resolutions.

Charter city failed to adopt resolution reauthorizing taking of historic property for public use within 10 years of final adoption of resolution of necessity for taking, and, thus, city had a ministerial duty to sell property and allow former property owner right of first refusal in purchasing it, where date of final adoption of resolution of necessity, under city charter, was date when resolution had passed city council and either been approved by mayor or, if not approved, passed second override vote of city council, and city adopted reauthorizing resolution more than 10 years after date of final adoption of resolution of necessity.

ZONING & PLANNING - CALIFORNIA

[Granny Purps, Inc. v. County of Santa Cruz](#)

Court of Appeal, Sixth District, California - August 5, 2020 - Cal.Rptr.3d - 2020 WL 4504904 - 20 Cal. Daily Op. Serv. 7971 - 2020 Daily Journal D.A.R. 8265

Medical marijuana dispensary brought action against county, seeking to recovery marijuana plants seized by the county for violating county's cultivation ordinance, alleging causes of action for conversion, trespass, and inverse condemnation.

The Superior Court sustained county's demurrer without leave to amend. Dispensary appealed.

The Court of Appeal held that:

- County cultivation ordinance did not render marijuana plants "contraband" subject to seizure;
- Revival of medical marijuana dispensary's corporate powers did not retroactively validate lawsuit filed during suspension for purposes of the statute of limitations under the Government Claims Act; and
- Allegations were insufficient to state an inverse condemnation claim.

Pursuant to its inherent police power, a local government can by zoning ordinance determine that a medical marijuana dispensary is not an allowed land use anywhere in the jurisdiction, and a local legislative body can restrict or disallow entirely the cultivation of medical cannabis.

County ordinance that imposed a limit on medical cannabis cultivation within the county did not render marijuana plants, which complied with state law, "contraband" subject to seizure for violation of the ordinance; local ordinances could not make it illegal to possess legal medical marijuana, even while the locality remained free to limit or prohibit commercial dispensing or cultivation.

Revival of medical marijuana dispensary's corporate powers did not retroactively validate lawsuit filed against county filed within period of its suspension to bring trespass claim regarding seizure of marijuana plants within statute of limitations for suits against a government entity pursuant to the Government Claims Act.

Medical marijuana dispensary's allegations regarding county's seizure of its marijuana plants in connection with enforcement of county ordinance prohibiting cultivation were insufficient to state an inverse condemnation claim, where none of the allegations indicated the marijuana was taken for public use or damaged in connection with a public work of improvement.

UTILITIES - NEBRASKA

[REO Enterprises, LLC v. Village of Dorchester](#)

Supreme Court of Nebraska - August 7, 2020 - N.W.2d - 306 Neb. 683 - 2020 WL 4555090

Landlord brought action challenging requiring tenants to obtain a landlord's written guarantee that the landlord would pay any unpaid utility charges for the rented property.

The District Court granted landlord's motion for summary judgment on equal protection claim, and village appealed.

The Supreme Court held that ordinance did not violate equal protection.

Under rational basis review, village ordinance which required tenants, when applying for utility services, to obtain a landlord's written guarantee that the landlord would pay any unpaid utility charges for the rented property did not violate equal protection; ensuring payment for utility services was a plausible policy reason for the classifications requiring landlords' guarantees for tenants but not for residential owners, who were tied to real estate located in village and against whom collection could be more easily pursued, village considered the inherent increased likelihood of a tenant's lack of creditworthiness, costs associated with locating residential landowner were less than locating a previous tenant, and guarantees allowed village to collect from persons directly tied to property.

BONDS - NEW JERSEY

[New Jersey Republican State Committee v. Murphy](#)

Supreme Court of New Jersey - August 12, 2020 - A.3d - 2020 WL 4669826

Political party's state committee and others brought action challenging constitutionality of New Jersey COVID-19 Emergency Bond Act, under which the State may issue bonds for private sale or borrow funds from the federal government.

Direct certification was granted.

The Supreme Court held that Act is constitutional, with the limitation that borrowing is required to "meet an emergency" and may not be for programs unrelated to the emergency.

The New Jersey COVID-19 Emergency Bond Act, under which the State may issue bonds for private sale or borrow funds from the federal government, is valid under the Appropriations Clause and Debt Limitations Clause of the state Constitution, with the limitation that borrowing is required to "meet an emergency" and may not be for programs unrelated to the emergency.

In borrowing funds pursuant to the New Jersey COVID-19 Emergency Bond Act, under which the State may issue bonds for private sale or borrow funds from the federal government, the Governor or the Treasurer must certify publicly the State's projected revenue and consequent shortfall as a result of the COVID-19 pandemic before each tranche of borrowing.

The fiscal clauses of the New Jersey Constitution allow the State both to borrow and to spend funds for the purpose of meeting an emergency caused by a disaster and do not pose a bar to the New Jersey COVID-19 Emergency Bond Act, under which the State may issue bonds for private sale or borrow funds from the federal government.

Statutes challenged on constitutional grounds can be declared void only if their repugnancy to the constitution is clear beyond reasonable doubt.

EMINENT DOMAIN - NEW YORK

[Lebov, LLC v. State](#)

Supreme Court, Appellate Division, Second Department, New York - July 22, 2020 - N.Y.S.3d - 185 A.D.3d 911 - 2020 WL 4197130 - 2020 N.Y. Slip Op. 04153

Condemnee's predecessor commenced claim seeking direct damages for value of land appropriated by State as well as consequential damages for diminution in value to the remainder of the property.

Following trial, the Court of Claims awarded condemnee \$232,000 in direct damages and lost site improvements but denied condemnee's claim for consequential damages. Condemnee appealed.

The Supreme Court, Appellate Division, held that:

- Court of Claims properly determined value of appropriated land in determining amount of direct damages owed to condemnee;
- Condemnee was not entitled to award of consequential damages for State's partial taking of landowner's real property; and
- Condemnee was not entitled to sanctions for spoliation of evidence by according an adverse inference with respect to the alleged destruction of draft appraisal reports prepared by the State's appraiser.

Court of Claims properly determined value of appropriated land in determining amount of direct damages owed to condemnee in condemnee's claim for damages for State's partial taking of his land, where amount of direct damages was within range of parties' expert testimony and was adequately explained, court considered comparable sales relied upon by parties' expert, and court did not adopt comparable sales analyzed by court in prior case.

Condemnee was not entitled to award of consequential damages for State's partial taking of landowner's real property, where condemnee failed to meet its burden of proof to establish indirect damages and to furnish basis upon which reasonable estimate of those damages could be made, condemnee did not present evidence that potential expansion was physically possible in light of existing zoning requirements or economically feasible, and condemnee was not entitled to award of consequential damages based upon partial taking reducing amount of parking on property.

Condemnee was not entitled to sanctions for spoliation of evidence by according an adverse inference with respect to the alleged destruction of draft appraisal reports prepared by the State's appraiser in condemnee's proceeding for damages following State's partial taking of condemnee's real property, where condemnee failed to present evidence that State's appraiser violated Uniform Standards of Professional Appraisal Practice by failing to maintain in his work file prior draft appraisal report that was transmitted to State, and condemnee failed to present evidence that appraiser created and intentionally destroyed prior drafts of appraisal report, which were relevant to condemnee's claim.

[BondView Releases COVID-19 Credit Ratings Tool to Help Investors Check If Their Municipal Bonds Will Survive The COVID Pandemic.](#)

NEW YORK, Aug. 18, 2020 /PRNewswire/ — BondView, a leading provider of bond and fund information, today launched their new COVID Impact Ratings to help investors assess the economic exposure of municipal bonds to the potential impact of the pandemic. BondView's COVID Impact Ratings are free during the COVID crisis and available now here: <https://cms.bondview.com/landing-page-ratings>.

BondView's COVID Impact Ratings help municipal bond investors and financial professionals stay abreast of fast moving COVID driven trends impacting their investments. The ratings are updated

daily and focus on five key factors that help identify COVID risk for each municipal bond. These are: 1) Sector of Issuance, 2) Material Events, 3) Geography, 4) Marketplace Perspective and 5) Bond Liquidity. Based on in-depth research and BondView's automated intelligent analyst platform, the ratings are easy to understand and available in both summary and detailed views.

The consequences of the COVID pandemic are likely to have a significant impact on parts of the municipal bond market. The nature and extent of this exposure may vary significantly between states, sectors and individual issuers. With over 1.5 million bonds in the municipal market, identifying and monitoring this impact is a major challenge for investors and professionals. Municipal bonds trade infrequently and credit ratings agencies have a large backlog of bonds that need to be re-rated. This has resulted in stale credit ratings that lag the economic realities of COVID. BondView's COVID Impact Ratings offer an up to date, low-cost, market based measure of which bonds may be most impacted and on what scale.

BondView's COVID Impact Ratings help investors identify municipal bonds that might be most impacted by the COVID fallout and assess the scale of this impact. In the institutional market, fund managers can use this to rebalance their portfolios or mitigate risks, dealers can identify trading opportunities and muni analysts can supplement their fundamental approach. For financial advisors and retail investors, typically lacking the scale and sophisticated tools of institutional players, BondView's ratings offer a simple low-cost way of identifying and monitoring their municipal bond risk.

Robert Kane, CEO of BondView said, "BondView's COVID Impact Ratings is like having a professional bond manager keep a watchful eye over your bonds. The key benefit of the product enables professional and individual investors to identify and monitor fast moving trends that could impact their investments."

More Information: Contact Jim Walker, Press Inquiries, BondView, 245636@email4pr.com, PH 866-261-9533, <https://cms.bondview.com/landing-page-ratings>.

[MSRB Weekly COVID-19-Related Continuing Disclosures.](#)

Weekly COVID-19-related continuing disclosures hit their second-highest weekly figure, driven in large part by 356 new quarterly and monthly financial information disclosures.

[Read this week's disclosure summary report.](#)

[Congressional Panel Urges Fed and Treasury to Take More Risk With Main Street Program.](#)

NEW YORK — A congressional panel overseeing the implementation of some coronavirus aid programs urged the Federal Reserve and Treasury to take more risk with taxpayer dollars and increase outreach efforts to deliver more aid to small and medium-sized businesses struggling because of the pandemic.

The bulk of the panel's recommendations centered around the \$600 billion Main Street Lending Program, which has seen modest use since launching in July, more than three months after it was

announced.

Some 522 lenders had registered with the program as of Aug. 10, though only 160 publicized they were accepting Main Street loan applications from new customers. The Fed had purchased \$472 million in Main Street loans as of Wednesday, more than double the amount from a week earlier.

Boston Fed president Eric Rosengren, whose regional bank runs the program, said during a hearing with the congressional panel earlier this month that he expects more banks and businesses will sign up if the economy worsens.

The congressional oversight panel suggested the Fed consider using more of its regional banks, not just the Boston Fed, to improve operation of the program and experiment with potential changes.

The panel also encouraged the Fed to look at other ways to make money available to a broader set of companies, for example through “asset-backed lending and second-lien lending” against hotels or other commercial real estate. That could potentially make the Fed a mortgagee to real estate investment trusts, private equity firms and other property investors.

The oversight committee plans to hold a panel in the coming weeks about the Municipal Liquidity Facility, which supports state and local governments. New York’s Metropolitan Transportation Authority (MTA) became the second issuer to tap the Fed’s municipal lending program this week when it sold \$450.7 million of debt to the facility, which is administered by the New York Fed.

By Reuters

Aug. 21, 2020

(Reporting by Jonnelle Marte and Howard Schneider; Editing by Chris Reese and Andrea Ricci)

[Near Zero Muni-Bond Yields Signal Fed Loans to Remain a Rarity.](#)

- **MTA, hard hit by shutdown, became second to borrow from Fed**
- **But Texas borrows over \$7 billion for yield of 0.23%**

Bond analysts don’t expect the phone lines at the Federal Reserve’s municipal-lending arm to start ringing off the hook.

While New York’s Metropolitan Transportation Authority Tuesday became the second to borrow from its \$500 billion lending program for state and local government agencies after the bank cut the penalties it charges, the program is likely to remain a last resort only for those hit hardest by the steep economic contraction.

Few have been as financial battered by the coronavirus as the MTA, the bus, subway and train agency whose revenue tumbled as New York earlier this year became an epicenter of the pandemic. That triggered concern among investors that left it paying relatively steep penalties to borrow in the public bond market, making the 1.92% charged by the Fed a better deal.

Yet most others are currently able to sell short-term debt at the lowest yields in decades as cash pours in to mutual funds and bond buyers anticipate that the Fed will keep interest rates low to spur a recovery.

Texas had little trouble selling more than \$7 billion of notes Wednesday despite the setback dealt to its economy, paying yields of just 0.23%, according to data compiled by Bloomberg. San Diego County, California paid just 0.16% this month.

Those low rates are in part the result of the Federal Reserve's first-ever intervention into the municipal market. Even with only two loans so far made, the bank's commitment to ensure that even the shakiest governments can raise funds gave investors confidence that the market wouldn't be roiled by the financial damage left by the pandemic.

Karel Citroen, head of the municipal credit research group at Conning, said the program would only make economic sense to municipal borrowers hovering near the precipice of having a junk-bond rating. Illinois, the only other to tap it since it was rolled out in April, is at the lowest investment-grade rank.

"If you think about the larger issuers there are not that many," he said. "If you think about market access in general I think that's still good."

That's in part because of a steady flow of money into mutual funds. Since May, state and local debt funds have received an average of \$2 billion in new cash each week, according to the Investment Company Institute's figures.

Philadelphia plans to issue short-term notes to steel its budget from a potential second wave of the virus. But the city is confident it will be able to borrow in the open market at rates below what the Fed would charge.

"We're not considering it from a borrowing perspective," said Philadelphia Treasurer Christian Dunbar said. "We can get much more advantageous pricing in the market place by a significant amount. Maybe even 200 basis points."

Bloomberg Markets

By Fola Akinnibi

August 19, 2020, 11:21 AM PDT

[Brian Chappatta on Fed's Muni Market Move \(Podcast\)](#)

Bloomberg Opinion columnist Brian Chappatta presents a column explaining why the Federal Reserve's decision to reduce borrowing costs by 50 basis points in its Municipal Liquidity Facility is more than it seems, given the failure of Congressional leadership to come up with an aid package for state and local governments.

[Listen to Podcast.](#)

Bloomberg Opinion

August 19, 2020 — 7:39 AM PDT

[Public Sector COVID-19 Recovery Assessment Tool.](#)

The Baker Tilly Public Sector COVID-19 Recovery Assessment tool can help state and local government, utility and school district leaders assess the current impact of the coronavirus crisis on your entity and community, understand your level of preparedness for recovery in a possibly permanently altered environment and identify potential risks your entity may need to mitigate.

[Click here](#) to learn more and to access the tool.

[Local Governments' Fiscal Resilience to be Tested Long After COVID-19.](#)

All local governments throughout the United States are facing some serious fiscal and other challenges due to COVID-19, ultimately leading to an economic recession.

These challenges are primarily due to impaired revenue sources, like sales taxes, and liquidity pressures brought by revenue expenditure mismatches, which has led to serious budgetary shortfalls and reduction in services for not only the current year but years to come. In turn, these underlying revenue impairment issues are putting a downward pressure on the credit ratings for many local governments and potentially restricting or limiting their ability to access the capital markets.

In this article, we will take a closer look at how local governments' financial preparedness will be tested in the upcoming years.

[Continue reading.](#)

municipalbonds.com

by Jayden Sangha

Aug 20, 2020

[Moody's Updates its Methodology for Rating US Municipal Joint Action Agencies \(JAAs\).](#)

New York, August 19, 2020 — Moody's Investors Service has published an updated methodology for rating US municipal joint action agencies (JAAs), replacing the version from August 29, 2019.

In this update, Moody's has made changes to the scorecard for US municipal JAA take-or-pay projects, including converting the Competitiveness factor into a notching factor and rebalancing scorecard weights across the remaining factors. In the scorecard for all-requirement agencies, Moody's has modified one factor and one sub-factor to provide more clarity on how it scores Community Choice Aggregators (CCAs). In both scorecards, Moody's has more explicitly incorporated the risks associated with environmental regulation, expanded the scoring categories down to Ca, and also made some other minor modifications. Moody's has additionally made editorial changes to enhance readability. There were no substantive changes made to the methodology and there is no impact on current outstanding ratings as a result.

This press release is not intended to provide a summary of the methodology. For a full explanation, please consult "US Municipal Joint Action Agencies Methodology" now available on www.moodys.com and accessible at: http://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_1207102.

[Implementing the CARES Act Coronavirus Relief Fund for State and Local Governments: GFOA Webinar](#)

August 27, 2020 | 2 p.m.-4 p.m. ET

The \$2 trillion CARES Act of 2020 enhanced several federal funding resources for state and local governments, including the Education stabilization fund, the federal transit administration apportionments, and assistance through FEMA. Title V of the CARES Act appropriated \$150 billion to states and local governments with populations over 500,000 to spend on COVID-19 related expenditures—a newly established fund called the [Coronavirus Relief Fund \(CRF\)](#). In addition, several states have distributed some CRF funds to local governments under the 500,000 threshold. Since the distribution of the funds in late April, the U.S. Treasury has developed guidance and FAQs to clarify expense eligibility, required reporting, and records retention. This webinar will detail the development of the CRF guidance, FAQs, and highlight three case studies on the use of CRF funds by a state, county, and city.

[Click here](#) to learn more and to register.

[Accounting and Financial Reporting for Leases - Session 2: GFOA Webinar](#)

August 28, 2020

The second of two webinars, this session will focus on the accounting and financial reporting for variations to lease contracts under Governmental Accounting Standards Board (GASB) Statement No. 87, Leases, which is effective for periods beginning after June 15, 2021. Those who successfully complete this seminar should be able to calculate the lease assets and liabilities, and prepare the required journal entries to record the following, from the point of view of lessee and lessor governments: - Reassessment of the lease term and remeasurement of the assets and liabilities - Contracts with multiple components - Contract combinations - Lease modifications and terminations - Subleases and leaseback transactions - Leases within the financial reporting entity - Leases between related parties.

[Click here](#) to learn more and to register.

[HUD Issues Guidance for Coronavirus Relief Funds.](#)

Department working with states and local units of governments to aid vulnerable populations amid outbreak

WASHINGTON - U.S. Department of Housing and Urban Development (HUD) Secretary Ben Carson

today provided guidance and additional flexibility to states and units of local government who are utilizing their existing federal disaster recovery funds to support low- and moderate-income persons and vulnerable populations for disasters occurring in 2015, 2016, 2017, 2018, and 2019 during the coronavirus outbreak. The Federal Register notice [published on August 17, 2020](#) grants extensions and clarifies submission deadlines for Community Development Block Grant disaster recovery (CDBG-DR) grantees.

“Helping Americans recover from the coronavirus pandemic is a top priority,” said Secretary Carson. “Today’s guidance underscores the Trump Administration’s commitment to offering countless flexibilities and accommodations so that states and localities can best respond to the needs of their communities.”

Key new flexibilities available to CDBG-DR Grantees are:

- Provided a one-year extension of its previously established expenditure deadline for CDBG-DR funds under certain public laws in response to a 2015, 2016, or 2017 disaster.
- Provided with the option to request an additional expenditure extension beyond the one-year extension, for a maximum of two years.
- Provided submission extensions to CDBG-DR grantees for their certifications, implementation plan and capacity assessment, and action plan in response to a 2018 or 2019 disaster. Also includes a new provision that allows grantees to request additional submission extensions.

For more information on HUD’s CDBG-DR program, please visit Hud.gov.

Public Housing Authorities across the Nation have jumped into action to help assist their tenants and their communities during this unprecedented time. Read more about their stories featured in HUD’s *Neighbors Helping Neighbors* campaign, [here](#).

[Fitch Ratings Updates U.S. Housing Finance Agency Loan Program Rating Criteria.](#)

Related Fitch Ratings Content: [U.S. Housing Finance Agency Loan Program Rating Criteria](#)

Fitch Ratings-New York-19 August 2020: Fitch Ratings has published an updated criteria report titled “U.S. Housing Finance Agency (HFA) Loan Program Rating Criteria.” The report replaces the existing criteria dated June 27, 2019.

The criteria report sets out broad attributes for each key rating driver that is part of Fitch’s general methodology for assigning ratings for HFA affordable housing loan securitization programs. The three appendices more fully define the key attributes and provide indicative metrics and stress levels for the following HFA loan programs: (1) single-family loan programs; (2) pooled multifamily loan programs; and (3) mortgage backed security (MBS) pass-through programs.

The updates to the criteria include the use of additional stress scenario analysis with revised assumptions to allow for a timely response to unforeseen macroeconomic or industry developments including catastrophic events and pandemics. Only affected key rating assumptions will be adjusted while all other elements of the criteria, including what are the key rating drivers and the mechanisms for how the criteria is applied, will remain unchanged.

The updates to the criteria also clarify Fitch’s analytical approach to evaluating loan loss

assumptions for second lien loans that are included in Fitch-rated single family loan programs. The criteria also provide more explicit methodology for Fitch's evaluation of projects with Low Income Housing Tax Credit (LIHTC) equity in the debt service coverage benchmarking approach for subsidized versus unsubsidized pooled multifamily transactions.

The unforeseen circumstances stress scenario analysis in the criteria report replaces the stresses outlined in "Fitch Ratings: USPF Housing Defines Coronavirus Scenarios for Loan Program Models" dated April 30, 2020.

No changes to the ratings of existing transactions are anticipated as a result of the application of the consolidated rating criteria.

The full report is available at www.fitchratings.com.

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[S&P U.S. Not-For-Profit Health Care System Median Financial Ratios -- 2019 vs. 2018](#)

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Health care systems generally follow median trends exhibited across the acute care sector, however with benefits from increased economic, business, and geographic dispersion that can lower volatility, the trends can sometimes be more moderate. This has led to a generally stable rating distribution overall compared with the distribution in August 2019 (see chart 1). However, a longer three-year view shows incremental shifts away from the 'AA' category and increases in the 'BBB' category.

While these financial medians do not yet reflect financial stress from the COVID-19 pandemic, we are already seeing a negative shift in the outlook distribution, which we believe could unfavorably influence the future rating distribution and fiscal 2020 medians. The June 30 health care system outlook distribution is significantly less favorable this year compared to the distribution published last year with 17% of health care systems carrying a negative rating outlook compared with just 5% last year (see chart 2). The number of positive outlooks has been relatively modest over the years,

but has also been declining. While we have seen a rise in negative outlooks assigned to health care systems, the percent of negative outlooks is still lower when compared with our stand-alone hospitals.

The medians for all health care systems in 2019 remained generally stable overall compared with 2018 (see table 1). Notable exceptions include a four-year decline in operating EBIDA margin, although solid improvement of nonoperating revenue helped cushion debt service coverage. Additionally, unrestricted reserves relative to contingent liabilities continues a multi-year trend of improvement accelerated by recently low interest rates incentivizing long term public fixed rate financings. The defined benefit pension plan funding ratio dipped slightly due to declining discount rates. Rating trends by category (see table 2) and rating level (see tables 3A and 3B) are similar and especially consistent at the 'A' and 'AA' rating levels and categories. We have excluded medians on the speculative grade systems due to the small sample size of two.

S&P Global Ratings has ratings outstanding on 153 health care systems of which 146 (95%) are included in these median ratios. The number of rated health care systems has been fairly stable (we rated 151 systems last year), although revenue growth has been healthy as systems continue to actively participate in mergers and acquisitions.

[Continue reading.](#)

[FAF Reappoints Robert Scott and Alan Skelton to Leadership Roles on the Governmental Accounting Standards Advisory Council.](#)

Norwalk, CT—August 18, 2020 — The Board of Trustees of the Financial Accounting Foundation (FAF) today announced the reappointment of Robert Scott and Alan Skelton as chair and vice chair, respectively, of the Governmental Accounting Standards Advisory Council (GASAC). The reappointments are for a one-year term beginning on January 1, 2021.

The GASAC is responsible for advising the Governmental Accounting Standards Board (GASB) on technical issues, project priorities, and other matters that affect standard setting for accounting and financial reporting by state and local governments. Members of the GASAC represent a cross-section of the GASB's state and local government stakeholders, including users, preparers, and auditors of financial information. GASAC members are selected for their professional expertise and the depth and breadth of experience they bring to the Council.

The GASB is the independent, private-sector organization that sets accounting standards for state and local governments in the United States. The FAF oversees the activities of the GASB and its sister accounting standard setter, the Financial Accounting Standards Board (FASB).

"We are very pleased that Robert and Alan have agreed to continue their strong leadership of the GASAC for another year," said Kathleen Casey, chair of the FAF Board of Trustees. "They combine strategic insight with on-the-ground perspective about accounting issues facing state and local governments, and they have proven to be capable leaders and advisors to the GASB."

Mr. Scott has been the Director of Finance and Administration for the city of Brookfield, Wisconsin since 1999. Prior to joining the city of Brookfield, he served in similar financial management positions for Milwaukee Area Technical College and the cities of Franklin and Cedarburg, Wisconsin. Before entering the public sector, he was employed as an audit manager with the accounting firm of

Deloitte & Touche. He joined the GASAC in 2011 as a representative of the Government Finance Officers Association and has served as chair since 2015.

Mr. Skelton serves as the State Accounting Officer for the state of Georgia and was initially appointed to the position by Governor Nathan Deal in July 2012. He was reappointed by Governor Brian Kemp in January 2019. He provides accounting leadership for the state of Georgia, which includes oversight of statewide financial reporting, issuing accounting policy and interpretation of GAAP standards, and the implementation of business process improvements. Before his current appointment, he was Deputy State Accounting Officer for three years and had more than a decade of experience in public accounting roles.

[S&P: Checkup On Not-For-Profit Health Care SBPA-Backed VRDOs In The COVID-19 Era](#)

Key Takeaways

- The U.S. public finance health care sector currently accounts for about \$7 billion or 10% of the \$69.8 billion VRDOs backed by SBPAs that we rate.
- Our sector outlooks for all public finance sectors are now negative, and, as of July 31, we had negative rating outlooks on 26% of the stand-alone not-for-profit health care providers and 17% of the not-for-profit health care systems we rate.
Not-for-profit health care providers in the 'AA' rating category continue to have access to the SBPA market, though pricing has increased somewhat and tenors have shortened.
- Although unlikely, remarketing failures and draws on SBPA providers could increase if bondholders elect to tender their bonds due to impact of the pandemic and investors' concerns about obligors' overall credit quality and the potential loss of put options if SBPAs terminate without notice.

[Continue reading.](#)

24 Aug, 2020

[S&P U.S. Not-For-Profit Health Care Small Stand-Alone Hospital Median Financial Ratios -- 2019 vs. 2018](#)

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Small hospitals (defined as a subset of stand-alone hospitals and representing those hospitals with \$150 million or less total operating revenue) typically have stronger financial metrics compared with similarly rated stand-alone hospitals, in part to compensate for increased risk and volatility associated with modestly sized organizations. The added risk is reflected in a rating distribution that skews toward the lower end of the rating spectrum, with 41% of the small hospitals rated in the speculative grade categories compared with just 13% of all stand-alone hospitals (see chart 1). The outlook distribution, with almost half of the small hospitals carrying a negative outlook (see chart 2), also reflects these risks.

Historically, the outlook distribution for small hospitals and stand-alone hospitals has been similar,

however a significantly higher percentage of small hospitals carry negative outlooks at June 30 compared with stand-alone hospitals. This is partially due to the multi-credit action we took in mid-April that affected many small hospitals (see “Outlooks Revised On Certain U.S. Not-For-Profit Health Care Organizations Due To Potential COVID-19 Impact,” published April 21, 2020, on RatingsDirect). We expect that the financial repercussions associated with the pandemic, which have largely triggered unfavorable rating and outlook actions throughout the sector this year, will be evident in the medians based on fiscal 2020 results published in 2021.

The relatively limited sample size of small hospitals and the movement of credits from one rating category to the other can affect medians from year to year. Between 2019 and 2018 there has been some improvement within the ‘A’ category on many financial metrics, while the ‘BBB’ and speculative grade category medians are more mixed (see table 1). This is consistent with rising volatility as credits move down the rating scale.

In general, small hospitals face unique risks that differentiate them from their larger stand-alone counterparts. Typical risks associated with small hospitals include weaker enterprise profiles, inclusive of demographics and economic characteristics, more-limited physician staffs that can have higher turnover and recruitment difficulty, and smaller clinical volume that can create vulnerability to changes in clinical practice such as inpatient-to-outpatient shifts. With total operating revenues of less than \$150 million, small hospitals also can have fewer opportunities to offset revenue pressures or reduce costs during periods of operating stress. As a result, in order to offset these inherent risks, small hospitals generally need to have stronger financial metrics than their larger stand-alone counterparts to achieve comparable ratings (see table 2). This traditionally includes healthier balance sheets with higher unrestricted reserves and lower leverage. We view this balance sheet strength as a key offset to the volatility inherent in the business profiles of small hospitals.

[Continue reading.](#)

19 Aug, 2020 | 18:43

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Health care systems generally follow median trends exhibited across the acute care sector, however with benefits from increased economic, business, and geographic dispersion that can lower volatility, the trends can sometimes be more moderate. This has led to a generally stable rating distribution overall compared with the distribution in August 2019 (see chart 1). However, a longer three-year view shows incremental shifts away from the ‘AA’ category and increases in the ‘BBB’ category.

While these financial medians do not yet reflect financial stress from the COVID-19 pandemic, we are already seeing a negative shift in the outlook distribution, which we believe could unfavorably influence the future rating distribution and fiscal 2020 medians. The June 30 health care system outlook distribution is significantly less favorable this year compared to the distribution published last year with 17% of health care systems carrying a negative rating outlook compared with just 5% last year (see chart 2). The number of positive outlooks has been relatively modest over the years, but has also been declining. While we have seen a rise in negative outlooks assigned to health care

systems, the percent of negative outlooks is still lower when compared with our stand-alone hospitals.

The medians for all health care systems in 2019 remained generally stable overall compared with 2018 (see table 1). Notable exceptions include a four-year decline in operating EBIDA margin, although solid improvement of nonoperating revenue helped cushion debt service coverage. Additionally, unrestricted reserves relative to contingent liabilities continues a multi-year trend of improvement accelerated by recently low interest rates incentivizing long term public fixed rate financings. The defined benefit pension plan funding ratio dipped slightly due to declining discount rates. Rating trends by category (see table 2) and rating level (see tables 3A and 3B) are similar and especially consistent at the 'A' and 'AA' rating levels and categories. We have excluded medians on the speculative grade systems due to the small sample size of two.

S&P Global Ratings has ratings outstanding on 153 health care systems of which 146 (95%) are included in these median ratios. The number of rated health care systems has been fairly stable (we rated 151 systems last year), although revenue growth has been healthy as systems continue to actively participate in mergers and acquisitions.

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19 Aug, 2020 | 18:41

[S&P U.S. Not-For-Profit Health Care Stand-Alone Hospital Median Financial Ratios -- 2019 vs. 2018](#)

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The rating distribution for stand-alone hospitals remains generally stable overall compared with the distribution in August 2019 (see chart 1). However, a longer multi-year view shows incremental shifts away from the 'A' and 'BBB' categories and into speculative grade. We expect future shifts based on the high number of non-stable outlooks.

While the financial medians do not yet reflect financial stress from the COVID-19 pandemic, the June 30 outlook distribution is significantly less favorable compared to the distribution published last year (see chart 2) and with outlooks on health care systems. Currently 27% of stand-alone hospitals carry a negative rating outlook compared with just 16% last year. This is partially due to a mid-April action that revised 42 outlooks to negative from stable or to stable from positive (see "Outlooks Revised On Certain U.S. Not-For-Profit Health Care Organizations Due To Potential COVID-19 Impact," published April 21, 2020, on RatingsDirect) based on their speculative grade ratings and limited balance sheet flexibility (less than 100 days' cash on hand).

Based on fiscal 2019 data, stand-alone hospitals rated by S&P Global Ratings exhibited slightly improved debt service coverage and a lower debt burden in every rating category, due in part to rising revenue but also reflecting a favorable interest rate environment that yielded refinancing savings and generally affordable access to capital (see table 1). Balance sheet metrics showed generally widespread improvement in the 'AA' and 'A' rating levels but more mixed metrics in the 'BBB' and speculative grade categories.

Medians at the individual rating levels remained remarkably stable year over year (see tables 2A and 2B). At most rating levels, defined benefit pension plan funding weakened primarily due to declining

discount rates. We expect that the financial repercussions associated with the pandemic, which have contributed to the trend of unfavorable rating and outlook actions throughout the sector this year, will be evident in the medians based on fiscal 2020 results published in 2021.

S&P Global Ratings has outstanding rating on approximately 265 stand-alone hospitals, of which 249 (94%) are included in these median ratios. The number of stand-alone hospitals we rate declined from 279 last year, which we believe reflects ongoing mergers and acquisitions.

[Continue reading.](#)

S&P U.S. Not-For-Profit Health Care Children's Hospital Median Financial Ratios -- 2019 vs. 2018

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Based on fiscal 2019 data, children's hospitals rated by S&P Global Ratings exhibited healthy credit characteristics based on generally favorable enterprise profiles that typically lead to robust balance sheets, often supported by strong fundraising programs. As a result, a larger percent are rated in the higher rating categories relative to the entire universe of ratings and one children's hospital is rated 'AA+', which is the highest rating assigned to any U.S. not-for-profit acute health care provider.

While these medians do not yet reflect financial stress from the COVID-19 pandemic, children's hospitals are not immune to other industry challenges. Although the June 30 rating distribution is comparable (see chart 1), 5% of children's hospitals carry a negative outlook at June 30 (see chart 2) compared with none last year. We expect that the financial repercussions associated with the pandemic, which have largely contributed to a trend of unfavorable rating and outlook actions throughout the sector this year, will be evident in the medians based on fiscal 2020 results published in 2021.

Most children's hospitals did not treat a significant number of COVID-19 patients. However, the hospitals were still subject to mandatory shutdown of non-emergent and non-essential care and associated revenue and expense pressure. In addition, the recession may trigger further revenue stress with rising Medicaid volumes due to higher unemployment rates and potentially lower Medicaid rates as states consider reimbursement cuts to address their own budget shortfalls. We view these trends as unfavorable since Medicaid is traditionally a weak payer.

While our relatively small sample size of rated children's hospitals could affect the median ratios year to year (including the movement of credits from one rating category to another), the 2019 medians are generally comparable to 2018 medians with some weakness evident in the operating EBIDA margin and mixed results between categories relative to unrestricted reserve ratios (see table 1). In addition, by many financial measures children's hospitals continue to compare favorably to stand-alone counterparts with similar ratings, particularly in the 'AA' category (see table 2). Because of the small sample size, we do not calculate financial medians at the individual rating levels and have excluded a single 'BBB+' provider from the medians.

[Continue reading.](#)

[**S&P U.S. Not-For-Profit Acute Health Care Speculative Grade Median Financial Ratios -- 2019 vs. 2018**](#)

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We define speculative grade ratings as those rated 'BB+' and below. Within speculative grade, and consistent with the rating distribution last year, a majority, or almost half, of the health care organizations are rated 'BB+' (see chart 1). However, there has been a material unfavorable shift in the outlook distribution with just 13% of speculative grade credits carrying a stable outlook compared with almost two-thirds last year. At June 30, a vast majority of speculative grade ratings carry a negative outlook, which represents a material rise from about one-third last year (see chart 2). This partially represents fundamentally weaker credit fundamentals that lead to more rating and outlook changes. However, the high number of negative outlooks was also influenced by our multi-credit action that unfavorably revised outlooks on many speculative grade credits and those with less than 100 days' cash on hand due to likely pandemic related challenges (see "Outlooks Revised On Certain U.S. Not-For-Profit Health Care Organizations Due To Potential COVID-19 Impact," published April 21, 2020, on RatingsDirect). We believe that the financial repercussions associated with the pandemic will be evident in the medians based on fiscal 2020 results published in 2021.

We expect to see continued unfavorable rating and outlook revisions for the remainder of this year and into next year as pandemic related pressures accelerate underlying credit weakness. However, the 2019 medians show that the speculative grade credits as a group have generally strengthened financial metrics overall, which could help cushion financial profiles during the current challenging environment (see table 1). Between 2017 and 2019, debt service coverage, debt burden, operating margin, unrestricted reserves relative to debt, and the defined benefit pension plan funding status all improved. There is less consistency relative to days' cash on hand, which remained generally flat in 2019 relative to 2017 after a spike in 2018.

Certain 'BB+' speculative grade financial medians, such as margins and coverage ratios, compare favorably to the 'BBB-' stand-alone hospital medians (see table 2). However 'BBB-' rated credits have meaningfully higher unrestricted reserves relative to both operating expenses and long term debt, which provides significant cushion to an organization that might be experiencing operating pressure. In addition, credits rated 'BB+' may still be establishing a longer track record of improvement prior to moving to investment grade or may have weaker enterprise profiles that preclude an upgrade to investment grade despite solid financial performance.

[Continue reading.](#)

[**Imposed Fee and Fine Use by Local Governments: GFOA Report**](#)

A local government's revenue system needs to treat people fairly to maintain the public's trust. **GFOA's [Code of Ethics](#) requires that finance officers support equitable provision of services and call out unfair discrimination.** But some local governments use and rely on revenue from imposed fees and fines that make socioeconomic and racial inequities worse.

Fines and imposed fees should not be used as revenue raising or cost-recovery tools. Using them this way can worsen problems that governments services are meant to solve. For example, unpaid fees can hurt a citizen's credit score, which makes it harder for that person to find housing,

get a job, or apply for credit. In another example, studies have found that local governments can end up spending more on collecting court fees than they raise in revenues, given the cost of jail time for nonpayment.

GFOA has released a new research report that provides tools for local government finance officers to use in evaluating their own existing policies, along with guidance and policy templates for drafting new policies. Trust is a government's most valuable asset, and finance officers play a big role in safeguarding this by promoting transparency and accountability. Finance officers also need to ensure equity and fairness.

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Deserted College Dorms Sow Trouble for \$14 Billion in Muni Bonds.

- **Online classes to pressure dorms financed in muni market**
- **S&P may downgrade 16 privatized student housing projects**

Less than a third of the rooms in a new \$90 million dorm set to open this month at the California College of the Arts in San Francisco are taken. An opulent apartment tower financed by \$228 million in municipal bonds at Florida International University, with a rooftop pool and gym, hasn't yet met tenant projections.

It's a scene playing out on campuses across the U.S. as families skip the usual college move-in frenzy, leaving thousands of dorm rooms empty. That will cascade into the more than \$14 billion of municipal bonds sold for student housing, particularly securities sold by private companies relying on rental and leasing revenue to pay bondholders. It's one of the first places where investors who bet on higher education can expect trouble because of the pandemic.

Colleges for years have been turning to private companies for student housing to shed costs and lure students with state-of-the-art facilities. The companies borrowed the money for construction from municipal bond investors, with a promise to repay with rent and lease revenue. But with schools switching to virtual learning or limiting the number of students who can live on campus, the bonds that are often already risky are facing a major threat.

"This is where we could see more credit stress first, and the reason is because of the bond securitization," said Jessica Wood, a higher education analyst at S&P Global Ratings. "Student housing projects are structured very lean."

S&P warned it may have to lower its credit rating on 16 privatized student housing projects. Municipal Market Analytics, an independent research firm, said more student housing projects are likely to default in addition to four already this year. One of the defaults includes a municipal-bond financed luxury dorm at the University of Oklahoma that was struggling before Covid-19.

The National Campus and Community Development Corp., a nonprofit that finances dorms, sold the nearly \$90 million in junk-rated bonds for the California College of the Arts dorm in 2019. Rooms with two beds and a mini fridge were slated to cost about \$1,400 per month, a price marketed as an affordable option for students in a city with notoriously high real estate prices, according to bond documents. But because of Covid-19, the school has had to limit one student to a room. The dorm was only 29% pre-leased at the end of July, according to a regulatory filing.

Prices on thinly traded bonds sold for the dorm that come due in 2039 had plunged almost 15% in a year by mid-August, according to data compiled by Bloomberg.

A nonprofit that borrowed \$132 million for a five-story dorm at the University of Massachusetts Dartmouth — one of the 16 projects cited by S&P for potential downgrade — said that capitalized interest will cover debt payments in 2020. At one point in April, Provident Resources Group said in filings for its dorm properties that it received over 300 inquiries from investors.

At the UMass Dartmouth campus, only students who have to travel from far away for required on-campus instruction or need on-campus services are allowed to live in residence halls, according to a university update on Aug. 10.

In some cases, the colleges are helping to support the bond-financed projects. At a Collegiate Housing Foundation property at the University of California at Irvine, the company agreed not to charge students cancellation fees or rent if they terminate their housing in exchange for the university leasing beds there to support the project, according to a securities filing.

“Undoubtedly, many of our projects are facing difficulties as universities adopt policies to proceed with instruction partially or entirely on line and/or to limit occupancy in residence halls for social distancing purposes,” William Givhan, president of the Collegiate Housing Foundation, which owns 35 student housing facilities across the U.S., said in an email.

In a Miami suburb, the developer of the Florida International University dorm had pre-leased about 77% of the apartments earlier this month, while it was expecting more than 90%.

Brian Pearl, principal at Global City Development, said he expects the project to meet its debt service covenants this year, adding that construction was completed on time. He said he expects the pre-leasing figure to reach the mid-80% range at least. The bonds, which rarely trade, have risen in price after falling in June.

The coronavirus recession could make the luxury space a tougher sell to students. Still, Pearl said he expects that students will be drawn to the dorm experience where they can make friends.

“Having the opportunity to do that, I think, is very important,” he said.

Bloomberg Markets

By Amanda Albright and Danielle Moran

August 21, 2020, 6:00 AM PDT

— With assistance by Emmy Lucas

[Muni Bonds Sold by Phantom Agency Draw Texas Town's Scrutiny.](#)

- **Wisconsin authority sold \$24 million of bonds for Hutto**
- **Debt financed commercial and residential development projects**

City officials in a fast-growing suburb of Austin, Texas, hired a law firm to review two municipal-bond deals sold through a Wisconsin agency to help finance residential and commercial development.

Hutto, Texas, population 30,000, hired bond counsel Norton Rose Fulbright LLP to examine whether the deals, issued in late 2018 and early 2019 through the Madison, Wisconsin-based Public Finance Authority are valid under state law and can be refinanced. In selling \$24 million bonds through the PFA, the city and developers bypassed a Texas Attorney General's review of the bonds.

Norton Rose asked the Attorney General's Public Finance Division whether it had any concerns with the structure of the PFA deals, according to a July 24 letter, obtained through a public records request.

"If everybody out there is going through the AG, why would you go outside the AG?" said city council member Mike Snyder, who was elected in 2019 after the PFA bonds were issued. "It could completely be above board and that's great."

The Public Finance Authority, started by the Wisconsin Counties Association with approval by state lawmakers in 2010, has issued \$11.6 billion municipal bonds mostly for speculative projects, such as the American Dream mall and entertainment complex in New Jersey, cancer treatment centers and senior living facilities. The agency, which has no employees and farms out work to a financial advisory firm in California, has come under scrutiny from some public officials who say it can allow borrowers to skirt their oversight.

Law firm Orrick Herrington & Sutcliffe LLP helped draft the PFA's enabling legislation and has served as bond counsel on \$3.5 billion of PFA bond issues, including the Hutto deals, more than any other law firm, according to data compiled by Bloomberg.

The PFA, which charges fees for issuing debt, is responsible for a high percentage of defaults in the normally safe \$3.9 trillion municipal market. In the last three years, 10% of payment defaults were borrowers through the PFA, much higher than any other issuer, according to Municipal Market Analytics. The Hutto bonds haven't defaulted.

The bonds Hutto's public development districts issued through the PFA are payable from assessments on property owners within the development, known as Co-Op and Cross Creek. The authority loaned the proceeds of the bonds to a local development corporation, which in turn paid developers for building infrastructure such as sewers, streets and parks as part of the overall development.

The developers are now in the process of selling the improvements to the city, structured as an installment sales contract. The structure was intended to "address the lack of clear statutory authority" to levy assessments to pay for underwriters, lawyers, financial advisers on the deal as well as capitalized interest since the bonds weren't sold by a Texas issuer, according to Norton Rose's July 24 letter.

Paul Braden, head of Norton Rose's public finance practice, wasn't available to comment. Kayleigh Date, a spokeswoman for the Texas Attorney General, said the office couldn't comment on potential or ongoing matters.

The Public Finance Authority relied on Orrick's opinion that the bonds were valid under Texas law, said Andy Phillips, an attorney for the PFA. Norton Rose has served as bond counsel for PFA deals both inside and outside Texas and is aware of what oversight is required under Texas law, he said. PFA is authorized to issue municipal bonds in all states under Wisconsin statutes, and relies on bond counsel, underwriters and sophisticated investors to determine how much risk they want to take, Phillips said.

Orrick attorneys weren't available to comment, said Adi Weisman, a spokeswoman.

Hutto used the PFA because the city's attorneys and financial advisers recommended it to city council, said Odis Jones, the city's former city manager, who currently runs Missouri City, Texas.

"I think they were concerned about credit risk exposure" to the city, Jones said. "They decided this stuff is kind of new, we're not going to take any risk."

Preston Hollow Capital, a direct lender to municipalities, purchased the \$6.6 million of Cross Creek bonds, according to offering document for the securities. Preston Hollow sold the bonds July 1. The firm still holds \$17.4 million of debt issued for the Co-Op development, said Greg May, Preston Hollow's managing director of corporate development.

Bloomberg Markets

By Martin Z Braun

August 19, 2020, 6:40 AM PDT

— *With assistance by Natalia Lenkiewicz*

[Fortress Eyes More Debt for Las Vegas Rail Still to Be Built.](#)

- **Company hasn't yet sold record \$4.2 billion in bonds for line**
- **Second phase to move closer to Los Angeles from desert town**

A company backed by Fortress Investment Group's private-equity funds wants to sell \$1.65 billion in tax-exempt bonds for a second phase of its proposed passenger train to Las Vegas, even though it has yet to break ground or secure financing on the first leg, according to a report from a California bond agency.

The company, which goes by the name of DesertXpress Enterprises in California and Nevada, has proposed building a 170-mile (274-kilometer), high-speed line to Las Vegas from a southern Californian desert town called Apple Valley. It already has approval to sell \$4.2 billion in municipal bonds for that initial phase, and has said it intends to market those unrated securities, the largest such high-yield deal ever, by the end of September.

Now the company is saying it wants to extend that yet-to-be-built line from Apple Valley to an existing commuter rail station in Rancho Cucamonga, about 40 miles from downtown Los Angeles — and wants the bond authorization to make that happen. At least one of the required approvals could occur in early 2021, according to a report prepared by the staff of the California Infrastructure and Economic Development Bank that issues municipal debt for private borrowers.

At a meeting on Wednesday, the agency's board is scheduled to consider a request from DesertXpress to permit the company to be reimbursed for the second phase costs with the proceeds of a future bond issuance should that be approved. Agreeing to the reimbursement wouldn't commit the board to sign off on the bond authorization.

"The sooner the project is complete, the sooner it will generate revenue. To complete the project as quickly as possible, DesertXpress must begin the design, development, and construction of Phase II in advance of IBank's future tax-exempt conduit revenue bond financing," the staff report said.

Ben Porritt, a spokesman for the company that now goes by the name Brightline Trains LLC, said it doesn't have an application before the U.S. Department of Transportation or the California Debt Limit Allocation Committee, whose approval would be needed as well for the bond authorization.

The company is also looking into connecting its rail to Palmdale, California, which has a commuter rail line too. The board of that rail agency, Metrolink, is scheduled to vote later Friday on an agreement exploring the possibility of linking both Palmdale and Rancho Cucamonga to the private line.

The reimbursement resolution Wednesday "is the first step in a long process as we continue to explore connections to Rancho Cucamonga and Palmdale," Porritt said.

The company's first passenger rail in Florida, financed through tax-free bonds issued under the name Virgin Trains USA, has suspended service because of the pandemic. It's looking to boost ridership of the unprofitable line by adding stations.

Bloomberg Markets

By Romy Varghese

August 21, 2020, 8:19 AM PDT

[Wall Street Firms Growing Cautious on Muni Bonds After Big Rally.](#)

- **UBS says 'deteriorating' fundamentals not priced in some bonds**
- **BlackRock says it is adopting a more cautious stance**

Some big Wall Street firms say municipal-bond yields have fallen so steeply that investors don't appear to be compensated for the risks that are piling up.

With Congress failing to come through with the hundreds of billions of dollars that states and cities are seeking to contend with a deepening financial crisis, and prices of even the riskiest securities rebounding sharply since March, UBS AG analysts said they don't think the market is adequately pricing in the risk for some borrowers hit hardest by the recession. BlackRock Inc., the world's biggest asset manager, expressed similar concerns about valuations last week, when it said it was adopting a more cautious stance toward the \$3.9 trillion market.

UBS analysts said in a note to clients that they "don't believe that deteriorating credit fundamentals are fully priced in for weaker borrowers," leading the firm to focus on higher-rated securities. But AllianceBernstein, the money manager, said that benchmark muni yields have also sunk so much that Treasuries may be a better bet ahead of the fall, when the seasonal increase in demand caused by a wave of debt payments subsides.

"We've had a strong run, a consistent run for about three and a half months," Kathleen McNamara, senior municipal-bond strategist at UBS's wealth management arm, said in an interview. "The technicals are set to weaken in September following a very strong August."

The yields on municipal bonds have tumbled to the lowest since the early 1950s, with top-rated 10-year securities paying 0.6%, even as the deep economic contraction slashes government tax collections and the revenue of airports, public transportation systems, stadiums and others that have

borrowed in the market.

The price run up has been fueled in part by the Federal Reserve's interest rate cuts and commitment to lend to governments if needed, a step that arrested March's selloff by improving investors' confidence. Cash has also been flowing into mutual funds just as bondholders receive debt payments that they typically seek to reinvest, increasing demand for new debt issues.

Those factors have blunted concerns about the impacts of the coronavirus pandemic, which has left states facing budget shortfalls estimated at about \$555 billion through 2022. Municipal market analysts expected Congress to come through with hundreds of billions of dollars in aid for states and local governments, only to see lawmakers adjourn without reaching agreement on another economic stimulus measure. Even so, yields have been little changed.

"We were waiting for Washington to agree on a stimulus package and that hasn't happened," McNamara said.

"What's surprising is that it's delayed and the fact that the muni market hasn't reacted negatively as of yet on a price basis," she said. "At this stage, if there are a couple of catalysts it wouldn't be a surprise the market would back up a little bit."

Bloomberg Markets

By Shruti Singh

August 17, 2020, 11:14 AM PDT

[Junk-Muni Boom Sets Up Historic Distress for Billions of Debt.](#)

- **Pandemic hitting Elvis's Graceland, luxury hotel in Washington**
- **The stress emerging is 'really just starting,' analyst says**

Businesses that flooded the municipal-bond market with debt sold through government agencies are helping drag the industry into its biggest wave of financial distress in nearly a decade.

The risky corporate ventures aren't what one typically associates with the \$3.9 trillion haven backed largely by states and cities, which are at little risk of defaulting even during economic calamities like the one that's gripped the nation for the past five months.

But companies eligible for federal subsidies issued tens of billions of dollars of tax-exempt debt in recent years, seizing on a surge of cash into the junk-bond market as investors chased bigger returns.

Now, with the economy rocked by the biggest collapse since World War II, a small but growing number are struggling to repay what they borrowed, threatening to roil that corner of the muni market and add to the corporate bankruptcies piling up across America. Among those in trouble, there's a biofuel factory in Maine, the Mandarin Oriental hotel near the banks of the Potomac River in Washington, D.C., and Graceland, the Elvis Presley shrine hit by less tourists due to the coronavirus.

This year, more than 50 municipal-bond issues worth \$5 billion have defaulted, the most since 2011, according to Municipal Market Analytics, an independent research firm. Nearly two dozen more

have drawn on reserve funds since the start of the year to cover debt payments when revenue fell short, a potential sign of more stress to come, according to data compiled by Bloomberg.

“They’re really just starting,” said Lisa Washburn, chief credit officer at Municipal Market Analytics, which tracks municipal-bond defaults. “It was just more than the deals could handle.”

The increased distress belies the relative calm in even the riskiest segment of the municipal market, where investors have continued to pile in despite the downturn set off by the coronavirus. While the first waves of shutdowns set off a steep selloff in March, high-yield municipal bonds have since fully rebounded, tracking the rally across markets as the Federal Reserve eased monetary policy aggressively.

That has caused yields in the state and local debt market to slide to the lowest since the early 1950s, maintaining the low borrowing costs that fueled a record wave of junk-bond deals — many of which are now facing their first major test.

Sales of high-yield debt by state and local government agencies — for projects like nursing homes, charter schools and real estate development — surged by 31% in 2019 to nearly \$17 billion, the most since at least 2012, according to Bank of America Corp. More than \$10 billion was sold only to big institutional buyers able to handle the risk, according to data compiled by Bloomberg.

The flood of easy money bankrolling speculative projects already meant that some distress was inevitable, but the pandemic is presenting an added challenge, said Bill Black, a senior portfolio manager at City National Rochdale.

“There’s certainly more to come,” he said, though he added that he expects it to be contained enough that the performance of the broader high-yield market won’t be imperiled.

Much of the distress tracked by Bloomberg since the pandemic’s spread to the U.S. has come from assisted-living centers and continuing-care retirement communities, both of which are dealing with both the public health and financial challenges of Covid-19.

But the stress has expanded to other sectors, too. A novel sector of the health-care industry focused on cancer has struggled from patients putting off treatments because of the pandemic. So-called proton-therapy centers have sold about \$1.5 billion of municipal debt since 2014, about \$900 million of which is now considered distressed, according to data compiled by Bloomberg. Among them is one in Maryland that sold debt in 2018 and last month had to draw down a reserve fund to pay bondholders.

The pandemic has stung some speculative projects already struggling to get up and running. Columbia Pulp I, which has borrowed about \$200 million since 2017 for a waste-to-pulp plant that has struggled with delays, suspended operations in March due to Covid-19 and is negotiating on a forbearance plan as pulp prices decline.

The hit to tourism and shutdowns of mass gatherings have also taken a toll. In Memphis, Tennessee, there’s been fewer tourists showing up at Graceland, the museum in Elvis Presley’s former home that borrowed in 2017 for an expansion. The agency that sold the debt had to tap reserves when debt payments were due in July and the securities were cut to junk this month by S&P Global Ratings.

In Riverside County, California, a horse and soccer complex called SilverLakes that raised money in the municipal market three times since 2015 was already struggling before the pandemic, with revenue just 30% of projections when it sold securities in 2018.

Balboa Management Group, the developer of the complex, in July skipped a debt payment, and future payments to investors will be deferred under an agreement with creditors lasting until 2021, according to a securities filing. Richard J. Brandes, who formed Balboa and provided a personal guaranty on the bonds, did not respond to requests for comment.

Other big projects are being closely watched by investors. The still-closed American Dream mall and entertainment complex in New Jersey, financed with \$1.1 billion in debt, has seen bond prices sink to about 87 cents on the dollar in early July amid doubts about whether it will draw crowds in the wake of the pandemic.

Washburn, the analyst with Municipal Market Analytics, said she's expecting the stress to continue to pile up.

"Going into 2021, you'll probably see even more pressure on more safe sector credits," she said.

Bloomberg Markets

By Amanda Albright

August 17, 2020, 7:00 AM PDT

— *With assistance by Natalia Lenkiewicz, Trevor Rowe, Olivia Whalen, and Danielle Moran*

[When Will Tax Revenues Rebound? It Depends on the Tax.](#)

Some taxes are more impaired by the pandemic recession than others, and each jurisdiction is impacted differently, but many will still suffer revenue slumps into next year and even beyond.

Without claiming to own a crystal ball, my multi-decade experience in public finance and investment analysis gives me some insights that can hopefully help state and local government policymakers, budgeters, managers and union leaders as they plan ahead for the economy's transition from pandemic recession to an elongated economic and fiscal recovery.

It doesn't take a crystal ball to see that even if the economy grows by 6 percent in 2021 from this winter's bottom-out point, as the most optimistic Wall Street economists forecast, many states and localities will remain underwater, struggling or unable to maintain full-scale public services in the face of continuing revenue shortfalls.

Let's first clear the air about the stock market and its limited forecasting value for public budgeting. The major stock indexes are back up to pre-pandemic levels, but that is not a useful predictor for governmental tax revenues. The lost earnings of 2021 will have only a fractional impact on the long-run value of shares in big businesses; blue-chip investors are already looking out toward 2022 and beyond. Where the business-sector pain will continue to be felt most acutely is in the lower tier of smaller public companies and the even smaller privately owned businesses.

[Continue reading.](#)

GOVERNING.COM

GIRARD MILLER, FINANCE COLUMNIST | AUGUST 18, 2020

S&P: California's Cash Position Remains Strong Despite Budgetary Deficit

Key Takeaways

- California's cash position is expected to remain strong in fiscal 2021, despite budgetary balance drawdowns in fiscal years 2020 and 2021.
- The state has projected large and increasing out-year budget gaps, which will deplete reserves by fiscal 2022, absent future budgetary action.
- Besides drawing down reserves, the fiscal 2021 budget includes significant reductions in K-12 school aid and university funding, among other measures. School district aid reductions would be accomplished by deferring cash payments in certain months to the following fiscal year.

[Continue reading.](#)

20 Aug, 2020

TAX - WASHINGTON

PeaceHealth St. Joseph Medical Center v. Department of Revenue

Supreme Court of Washington - August 6, 2020 - P.3d - 2020 WL 4516799

Department of Revenue appealed a decision of the Board of Tax Appeals granting taxpayers, which were non-profit medical center operators, a refund of business and occupation taxes paid on compensation received from out-of-state subsidized health care programs.

The Superior Court reversed. Taxpayers appealed. The Court of Appeals affirmed. Taxpayers petitioned for review, which was granted.

The Supreme Court held that:

- Statute establishing a business and occupation tax deduction for public and nonprofit hospitals for "compensation for health care services covered under...medical assistance, children's health, or other program under [statutory chapter governing Medicaid and Children's Health Insurance Programs (CHIP) programs]" applies only to compensation received from in-state Medicaid and CHIP programs, not to compensation received from all states' Medicaid and CHIP programs, and
- Such statute did not violate dormant commerce clause pursuant to government function exemption.

Pursuant to government function exemption, state statute limiting business and occupation tax deduction available to public and nonprofit hospitals for Medicaid and Children's Health Insurance Programs (CHIP) compensation to only in-state, rather than out-of-state, compensation did not violate dormant commerce clause; deduction supported a quintessentially public function by helping to subsidize government's provision of essential health care services to state's citizens by facilitating expansion of government's overall purchasing power for such services.

TAX - VERMONT

Martinez v. Town of Hartford

Supreme Court of Vermont - August 7, 2020 - A.3d - 2020 WL 4557061 - 2020 VT 70

Taxpayer, proceeding pro se, appealed from decision of Property Valuation and Review Division (PVR) hearing officer setting the fair market value of his single-family dwelling at \$509,900, equalized to a value of \$492,300, for purposes of town's property tax grand list.

The Supreme Court held that:

- Although the sale price of a property in a contemporaneous arms-length transaction is strong presumptive evidence of fair market value, for purposes of Vermont's property tax statute, it is not solely determinative and may be overcome, in rare cases, by other evidence of value, and
- In the present case, the hearing officer did not err by relying on comparable sale evidence in concluding that the sale price did not accurately reflect fair market value.

Although the sale price of real property in a contemporaneous arms-length transaction is strong presumptive evidence of fair market value, for purposes of Vermont's property tax statute, it is not solely determinative and may be overcome, in rare cases, by other evidence of value; statute expressly and without qualification allows factfinder to consider other factors beyond the recent, arms-length sale price, and, while case law emphasizes that such sale establishes a strong presumption as to the fair market value of the property, Supreme Court has never held that existence of a bona fide sale price conclusively establishes fair market value or precludes hearing officer from considering competing evidence of fair market value.

Hearing officer's appraisal of taxpayer's single-family dwelling at \$509,900, equalized to a value of \$492,300, for purposes of town's property tax grand list, was rationally derived from the findings and evidence, even though taxpayer had recently purchased the home for \$350,000; while it was undisputed that sale was bona fide, other evidence showed that sale price did not represent property's fair market value, including town's unchallenged comprehensive market analysis report which valued taxpayer's property at \$510,000 based on nine recent sales of comparable properties in the same planned unit development whose adjusted prices ranged from \$501,400 to \$515,000, and under these circumstances, hearing officer did not abuse his discretion by affording greater weight to independent market data than to sale price in determining fair market value.

SIFMA Seeks to Vacate Muni Advisor BD Exemption: Cadwalader

SIFMA [filed suit](#) seeking to vacate a recently adopted SEC temporary exemption for municipal advisors from broker-dealer registration. The exemption (which was previously covered here) permits municipal advisors to make limited solicitations to certain banks and similar entities to invest in "direct placements" of municipal issuers without being subjected to broker-dealer registration.

SIFMA stated that existing market data do not support the purported need for the exemption, which harms investors and other market competitors by "eliminating investor protections and critical reporting requirements." SIFMA President and CEO Kenneth Bentsen Jr. asserted that "through the [exemption], the SEC allows municipal advisors to engage in broker-dealer activity without the attendant legal and regulatory requirements that apply when a broker-dealer is engaged."

The SIFMA petition - filed for review in the D.C. Circuit Court of Appeals - has yet to be made

public.

Cadwalader Wickersham & Taft LLP - Nihal S. Patel

August 19 2020

[Potential Legislative Improvements to Opportunity Zones, with Emily Lavery.](#)

Why are Opportunity Zones more important now than ever before, and what legislative changes are being considered to improve the...

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August 19, 2020

[LIBOR Transition: Business Loans SOFR Summer Wrap Up - McGuireWoods](#)

It's been a busy summer in the land of LIBOR transition preparation. As part of the ARRC's ongoing efforts to prepare the cash product markets for the transition to SOFR and away from LIBOR as a benchmark interest rate, it posted ten separate releases between Memorial Day and August 7, 2020, in addition to hosting six "SOFR Summer Series" panel discussions on various SOFR topics (which were recorded and can be accessed [here](#)). This blogpost focuses on aspects of the ARRC's releases relating to business loans.

Read on for more details, but here are a few major takeaways: (1) don't expect any COVID related delays in the LIBOR sunset schedule - work on implementing hardwired LIBOR fallback language this fall and plan stop using LIBOR by mid-2021; (2) the ARRC now recommends simple SOFR in arrears as the best available fallback rate alternative for most business loans (at least until a term SOFR in advance market develops); and (3) feedback from the business loan market reflects a preference for following ISDA's lead on LIBOR to SOFR transition issues whenever practicable to facilitate consistency between swaps and business loans (e.g., spread adjustments and certain conventions).

ARRC Best Practices for Completing Transition from LIBOR

On May 27, 2020, the ARRC released its "[Best Practices for Completing Transition From LIBOR](#)," which set the table for its later releases over the summer. The key recommendations for business loans:

- To the extent not already utilized, all new business loans should include ARRC-recommended (or substantially similar) **hardwired** USD LIBOR fallback language (rather than relying on the "amendment approach" which has been more widely accepted to date) as soon as possible, but in no event later than September 30, 2020.
- Third-party technology and operations vendors relevant to business loans (including those with booking, trading, valuation, settlement, and accounting systems used for loans) should complete all necessary enhancements to support SOFR (including but not limited to simple, compounding in arrears, and term SOFR) by September 30, 2020.

- No business loans using USD LIBOR and maturing after 2021 should be originated after June 30, 2021.
- For business loans specifying that one or more parties will select a replacement rate for USD LIBOR at their discretion, the determining parties should disclose to relevant parties the replacement rate and any related spread adjustment methodology that they anticipate selecting to relevant parties at least 6 months prior to the date that a replacement rate would become effective.

The release also set forth recommendations for Floating Rate Notes, Consumer Loans, Securitizations and Derivatives. Click through above and check in with this blog for further detail on the ARRC's best practices recommendations for those products.

SOFR Spread Adjustments Revisited

In a June 30 release, the ARRC elaborated on its prior recommendation for a spread adjustment methodology in cash products, based on market participant feedback from its supplemental consultation on spread adjustment methodology. Recall that the ARRC had initially recommended a spread adjustment methodology based on a historical median over a five-year lookback period calculating the difference between USD LIBOR and SOFR, which matches the methodology recommended by the International Swaps and Derivatives Association (ISDA) for derivatives, with a 1-year transition period to this methodology for consumer products.

<<https://www.liborblog.com/2020/04/arrc-announce-recommendation-of-a-spread-adjustment-methodology-for-cash-products/>>.

After soliciting and receiving additional market feedback on the interaction of this methodology with ISDA's methodology and timing, the ARRC clarified in a [June 30 release](#) that:

- for cash products (other than consumer products), the ARRC would recommend that the value of USD LIBOR spread adjustment match the value of ISDA's spread adjustment spread adjustments (rather than merely using the same adjustment methodology to calculate a different spread adjustment for each potential fallback rate), while reserving on treatment for consumer products; and
- for all cash products, in the event of a pre-cessation trigger, the ARRC's recommended 5-year historical median spread adjustments will be determined at the same time as the ISDA's spread adjustments (which will be at the time of any announcement that LIBOR will or has ceased or will or has become no longer representative).

In short, the ARRC continues to respond to feedback from market participants that cash products should be closely aligned with the swaps and derivatives market in the transition from LIBOR to SOFR.

Updated Hardwired Fallback Language: This Time We Mean It

The ARRC also released updated recommended "Hardwired" fallback language for syndicated loans on June 30. Recall that in April 2019, the ARRC released both "Amendment" fallback language (adopting a streamlined but flexible amendment process to incorporate a to-be-determined substitute benchmark rate for LIBOR) and "Hardwired" fallback language (contemplating Compounded SOFR in Advance as the default substitute benchmark rate) for syndicated loans. The syndicated loan market responded by almost uniform adoption of some version (in some cases modified) of the "Amendment" language, with little uptake of the "Hardwired" approach.

In an effort to help foster adoption of a "Hardwired" approach beginning in Q4 2020 as

recommended in its May 2020 “Best Practices” release, the June 30 ARRC release modifies its recommended “Hardwired” amendment language to account for market feedback and easier market adoption. “To the extent market participants continue to enter into LIBOR-based contracts, the ARRC recommends and endorses the fallback language and related guidance herein and believes the cash markets will benefit by adopting a more consistent, transparent and resilient approach to contractual fallback arrangements for new LIBOR products.” It is a lengthy release containing both updated form contract language and an explanatory guide. A few highlights:

- *Available Tenors*: Refines the references to and transition between LIBOR tenors (forward looking periods (e.g., 30/60/90 days) of locked rates) and potential SOFR tenors (periods of interest accrual and interest payment periods).
- *Benchmark Replacement Triggers*: Clarifies that the “No Longer Representative” prong of the benchmark replacement trigger will only be triggered when “all Available Tenors” of LIBOR are deemed unrepresentative of market conditions. This will prevent an unintended early benchmark transition trigger if only certain LIBOR tenors become unreliable (e.g., as we approach the formal LIBOR cessation date, longer LIBOR tenors may become unrepresentative while shorter LIBOR tenors remain viable), allowing administrative agents to “turn off” those LIBOR tenors that are deemed no longer representative.
- *Benchmark Replacement Waterfall*: Changes the “waterfall” of benchmark replacement rates (originally drafted as (1) forward looking term SOFR (plus a spread adjustment) (which does not currently exist and may not exist), then (2) compounded SOFR (either in advance or in arrears) (plus a spread adjustment), then (3) as selected by the Administrative Agent and Borrower (plus a spread adjustment)) **by replacing** compounded SOFR in arrears (step 2) with daily simple SOFR. The ARRC rationale for the change: the use of compounded SOFR in advance does not match the needs of business loans to accommodate frequent unscheduled balance changes (e.g., prepayments), and although compounded SOFR in arrears better matches the ISDA calculation convention, daily simple SOFR can be more easily implemented on bank systems now and historically only varies from compounded SOFR in arrears values by a few basis points. The ARRC release contains detailed explanations on when market participants might prefer to use daily compounded SOFR in arrears or compounded SOFR in advance, so it should be reviewed for further detail on the differences in these calculations.
- *Spread Adjustments*: Implements the revised ARRC approach to spread adjustments released on June 30 and summarized above, and defaults to available ISDA spread adjustments if ARRC approved spread adjustments are not available.

The revised language contains other modifications and should be reviewed in detail with the guidance that follows it in the June 30 release.

Down to Details: SOFR “In Arrears” Conventions for Syndicated Business Loans

In the June 30 ARRC release updating the “Hardwired” fallback language, the definition of “Daily Simple SOFR” provides that the administrative agent shall establish conventions for that rate in accordance with ARRC recommended conventions. On July 22, the ARRC released its initial guidance on conventions for “in arrears” structures ([Daily Simple SOFR and Daily Compounded SOFR](#)). To remind, these rate structures allow for interest accruals to be calculated daily, but they are not set in advance and not fixed during each interest period (both of which are true for forward-looking term LIBOR rates). The recommended ARRC conventions for “In Arrears” rate structures described in the July 22 release address both new loans that are originated using SOFR and legacy loans that “fall back” from LIBOR to SOFR upon LIBOR cessation or LIBOR being declared to be unrepresentative. The ARRC emphasized in its release that these convention recommendations are voluntary and may not be applicable to all segments of the business loan markets. Some highlights:

- *Compounding*: The release compares simple interest and compound interest, and describes different calculation approaches for compounding in arrears.
- *Lookback / Lockout / Payment Delay*: The release recommends using the business day “lookback” approach with no observation shift for SOFR loans. A five day “lookback” convention (different days can be selected by market participants) for a June 1 loan with a 30 day interest period, for example, would apply the May 25 SOFR rate to the June 1 balance, and so on throughout the interest period, so that by June 23, the administrative agent will know the daily rates through the end of the 30 day interest period. This would enable the administrative agent to determine the rate of interest for the interest period before the period ends and the payment is due, so that the administrative agent has time to invoice the borrower and the borrower has time to pay the interest on time. The ARRC rejected an observation shift for compounded SOFR in arrears (which would weight the rate by the daycount weight of the “lookback” day in the compounding formula) for creating unnecessary complexity relative to the benefit gained in reduced hedging basis relative to a standard SOFR OIS contract.
- *Holiday and Weekend Conventions*: For Compound Interest, interest would be compounded on business days, and the preceding business day’s rate would be applied over weekends or holidays, weighted by the number of calendar days until the next business day. For Simple Interest, the preceding business day’s rate would be applied over weekends or holidays, weighted by the number of calendar days until the next business day. For payment dates, the release recommends a convention similar to that applicable to LIBOR today: if a SOFR loan is repaid to a UK lending office on a US Business Day that is not a UK Business Day, it would remain in the swift/clearing account of the UK lending office until the following UK Business Day when the lending office processes the payment. A borrowing notice for a USD borrowing sent to a UK Bank on any day other than a UK Business Day would be processed on the next succeeding UK Business Day.
- *Daycount*: actual / 360 (standard for US money markets).
- *Modified Following Business Day Convention*: payments dates that fall on a non-Business Day would be adjusted to the next succeeding business day, unless that business day falls in the next succeeding calendar month, in which case the interest payment date would be the preceding business day.
- *Rounding*: interest-rate calculations rounded (not truncated) to 5 decimal points; dollar amounts rounded to 2 decimal points (for example in an invoice or ledger reports), but recommends that calculations not be rounded internally.
- *Floors*: interest rate floors would be calculated daily and not at the end of an interest period because loans accrue interest daily and loan funds strike a daily net asset value based on this daily accrued interest.
Distribution of Interest: Daily accrued interest calculated on each lender’s share of principal that day, which is same convention currently used for LIBOR loans.
- *SOFR Index*: The release points out that the ARRC published SOFR Index is less useful for business loans than other cash products, such as floating rate notes, due to (1) use of an observation shift (as noted above, not recommended for business loans), (2) the possibility of frequent intra-period prepayments for business loans and (3) the possibility for interest rate floors in business loans, which are not compatible with the SOFR Index.
- *Compensation for Losses*: The release recognizes that typical “breakage” language found in LIBOR based loan agreements may not be applicable to Daily Simple SOFR or Daily Compounded SOFR, but that market participants may wish to include language that compensates lenders for funding losses due to intra-period prepayments.

Wrapping up the SOFR Summer with the SOFR Starter Kit

The ARRC wrapped up its busy “SOFR Summer” with the release of its “[SOFR Starter Kit](#)” on August 7. This release links to three factsheets covering (1) the History and Background of USD LIBOR, the

ARRC and SOFR, (2) Key Facts about SOFR and (3) SOFR Next Steps. These convenient fact sheets consolidate current best practices and timelines for transitioning from LIBOR to SOFR, and link through to more detailed materials previously published by the ARRC and maintained on its website.

By Donald A. Ensing, Susan Rodriguez, Jennifer J. Kafcas & Barlow T. Mann on August 21, 2020

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[ARRC Updates Recommended Best Practices in Anticipation of ISDA's IBOR Fallback Protocol: McGuireWoods](#)

On August 19, 2020, the ARRC updated its recommended Best Practices for the LIBOR transition in anticipation of the imminent publication of ISDA's IBOR Fallback Protocol (the "Protocol") (which we discussed in our earlier blog post, available [here](#)).

These updates follow the July 22, 2020 letter from ISDA (the "Letter") (available [here](#)), in which ISDA confirmed that market participants will be able to sign up to the Protocol "in escrow". This will consist of a two-week pre-publication period in which firms can sign up in order to adhere to the Protocol as promptly as possible. It is expected that this escrow period will begin soon, though no hard date has yet been set.

In light of the Letter, the ARRC's Best Practices have been updated to include a specific recommendation to "[d]ealers and other firms with significant derivatives exposures" to sign up to the Protocol during the escrow period to promote adoption as quickly as possible. The Best Practices have also been updated to recommend that other market participants adhere to the Protocol "within the 3 to 4 month period after it is published and before the amendments to embed the fallbacks in legacy transactions take effect."

As such, it is important that market participants, especially those with significant derivatives exposures, consider adhering to the Protocol "in escrow" in order to navigate the transition of their legacy derivatives as smoothly and efficiently as possible. Please contact any of the authors of this article or your regular McGuireWoods contact if you have questions about, or would like assistance with, the LIBOR transition.

By Jennifer J. Kafcas, Donald A. Ensing, Susan Rodriguez, Lauren J. Blaber & Harry Poland on August 24, 2020

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[Mounting Debt Threatens to Derail New York Transit System.](#)

Subway, bus and rail systems could be starved of funds, budget watchdogs warn

New York's Metropolitan Transportation Authority needs to control its rising debt or it risks a drastic deterioration of service, budget watchdogs say.

The nation's largest transit agency already has a debt load surpassing \$45 billion, mostly to pay for

new buses, trains and infrastructure. But it is now considering borrowing billions of dollars just to keep its system—including New York City’s subway—running during the new coronavirus pandemic.

“A true red line has to be drawn on how much debt is too much debt for the MTA,” said Rachael Fauss, a senior research analyst at watchdog group Reinvent Albany.

[Continue reading.](#)

The Wall Street Journal

By Paul Berger

Updated Aug. 20, 2020 11:49 am ET

[New York's MTA Taps The Fed Funding Facility: Kazatsky \(Radio\)](#)

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses skinny stimulus, the MTA tapping the Fed facility, and junk munis. Hosted by Paul Sweeney and Vonnie Quinn.

[Play Episode](#)

Bloomberg Radio

August 21, 2020 — 10:11 AM PDT

[NY’s MTA Rejects Bank Bids for Cash Notes as Fed Loan Likely.](#)

- **Fed created program to backstop some local government loans**
- **Central bank lowered borrowing costs earlier in August**

New York’s Metropolitan Transportation Authority rejected all the bids from Wall Street banks to purchase \$465 million of short-term notes Tuesday, setting the stage for the struggling transit agency to borrow the cash from the Federal Reserve’s new municipal lending program.

The transit agency, bleeding cash because ridership is down amid the pandemic, rejected all the bids from banks including Citigroup Inc., Jefferies, and Barclays Plc, according to a notice by Grant Street, which runs an auction platform for municipal sales. The Fed had previously agreed to buy the debt that the MTA did not award to other bidders, according to documents released as part of the sale.

Aaron Donovan, spokesman at the MTA, did not have an immediate comment on the sale.

The central bank created the program earlier this year after the economic collapse from the pandemic rocked state and local government budgets and sent the \$3.9 trillion municipal bond market into a tailspin. The Fed’s decision to act as lender of last resort arrested the steep sell-off in March by reassuring investors that the market wouldn’t be rocked by another liquidity crisis.

Since then, though, it's only been used once, by Illinois, as municipal-bond yields have stayed low and cash continues to flood into the market. The MTA's offering was seen as a test of whether the Fed's decision on Aug. 11 to lower prices on the loans would increase use of the \$500 billion program.

The New York MTA, the largest U.S. transit system and among the agencies hardest hit financially by the coronavirus shutdowns, said it's facing a \$16.2 billion deficit related to the pandemic, according to documents associated with the debt sale.

It was seeking to borrow the \$465 million through cash-flow notes due in three years. Yet the weighted average true interest cost on bids submitted by the banks totaled about 2.79%, according to Grant Street. Investors have signaled nervousness about the MTA's finances. Yields on an MTA bond-anticipation note maturing in 2023 have fallen to 2.24% after increasing as high as 7.5% during the market's sell-off.

The transit agency's transportation revenue bonds are rated A2 by Moody's Investors Service, A+ by Fitch Ratings, BBB+ by S&P Global Ratings, and AA+ by Kroll Bond Rating Agency, according to its website.

The Fed's term sheet for the Municipal Liquidity Facility says it will determine pricing for split ratings by calculating an average rating. Using the pricing laid out in the term sheet, that could put the potential interest-rate spread on the MTA's debt at about 200 basis points above an overnight index swap with a comparable maturity.

Bloomberg Business

By Amanda Albright and Danielle Moran

August 18, 2020, 9:38 AM PDT Updated on August 18, 2020, 10:32 AM PDT

[New York's MTA Is Saved Less by Fed and More by Kroll.](#)

The largest U.S. public transit system locked in much cheaper borrowing costs with the central bank thanks to one credit rating.

New York's Metropolitan Transportation Authority became the second municipal-bond issuer to tap the Federal Reserve's \$500 billion emergency lending facility for state and local governments, locking in cheaper borrowing costs than if it had stuck with Wall Street.

But before crediting Fed Chair Jerome Powell and his colleagues for providing the MTA with more affordable funding, the state, city and subway riders alike might want to thank Kroll Bond Rating Agency.

Bloomberg News's Amanda Albright and Danielle Moran reported that the Fed's Municipal Liquidity Facility charged a true interest cost of 1.92% to buy the MTA's \$450.7 million of notes, a savings of more than 85 basis points relative to its attempted auction earlier in the public market. Given the pricing scale from the central bank, which was tightened last week by 50 basis points, the MTA's rate implies it was given a composite rating of A+. That grade requires a 190-basis-point yield spread to overnight index swaps, which are near zero.

According to the Fed's term sheet, the facility determines pricing for split ratings by calculating an average among grades from "major nationally recognized statistical rating organizations." And "for purposes of the MLF, 'major NRSRO' means S&P Global Ratings, Moody's Investor Service, Inc., Fitch Ratings, Inc., and Kroll Bond Rating Agency, Inc."

To put it plainly, including Kroll as one of the four accepted credit-rating companies ended up saving the MTA millions of dollars. While the agency's transportation revenue bonds are rated BBB+ by S&P, A2 by Moody's and A+ by Fitch, Kroll assigns them its second-highest grade: AA+. (For context, this is the same rating S&P gives the United States.) Without Kroll's lift, the MTA would most likely have had to pay 10 to 25 basis points more to borrow from the Fed.

Lower Hurdle

The Fed cut muni interest rates by 50 basis points across credit ratings

The MTA is the largest U.S. transit system and has been ravaged by the coronavirus shutdowns. It's now confronting a \$16.2 billion deficit related to the pandemic as New Yorkers largely stay away from public transportation. Even after the successful deal with the Fed, MTA Chief Executive Officer Patrick Foye reiterated the need for \$12 billion of federal funding in an emailed statement to Bloomberg News. One key feature of the agency is it can't legally go bankrupt, as I wrote in June, meaning that one way or another, either the federal, state or city government (or all three) will have to pay up. It's a chief reason Michael Rinaldi, Fitch's lead analyst on the MTA, stood by its comparatively higher rating relative to S&P and Moody's.

Kroll, for its part, has the MTA's AA+ rating on review for downgrade. On the positive side, "management has a strong track record of balancing its operating budget over changing economic cycles and unforeseen events as well as managing complex capital programs designed to improve and expand the system," analysts wrote in July. Still, "the Covid-19 crisis presents unprecedented challenges to the MTA's fiscal operations."

There's no denying that a AA+ rating seems high for the MTA, given its projected budget gap. But I'm not going to say one grade is right and the other is wrong — they're opinions, after all. I just come back to what Jim Nadler, president of Kroll, told me several years ago about "the curse of a new rating agency."

"No one is going to add a fourth rating that is lower," he said in 2014. "You'll never see the ones that we turn away or gave lower ratings to." Years later, it was still struggling to gain widespread traction in the \$3.9 trillion muni market.

For the MTA's sake, it was a good thing Kroll's analysis came up with a higher rating than its rivals. Without a clear indication that federal funding is on the way, the agency could resort to using the Fed's facility again. According to the term sheet, the central bank can buy notes up to "20% of the gross revenue as reported in the audited financial statements" for fiscal year 2019. The MTA's website said it took in about \$16.7 billion last year, implying it could borrow roughly \$3.3 billion from the Municipal Liquidity Facility in total if necessary.

MTA officials will hope federal aid comes through before it needs to borrow again. Meanwhile, the Fed's pricing scale is still probably too steep for any other issuers aside from Illinois, which tapped the facility in June. Still, the MTA has shown the Fed's muni backstop works in cases of extreme stress. In this instance, with an assist from Kroll.

Bloomberg Markets

By Brian Chappatta

August 19, 2020, 3:00 AM PDT

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

[New York's MTA Becomes Second to Tap Fed as Banks Demand Higher Yields.](#)

- **Move comes after Fed cut premium on loans by 50 basis points**
- **Joins Illinois as only ones to tap \$500 billion facility**

The Federal Reserve bought \$451 million of notes sold by New York's Metropolitan Transportation Authority, making the beleaguered transit agency the second to borrow from the central bank's \$500 billion lending program for states and cities.

The Fed charged a true interest cost of 1.92%, "resulting in savings of over 85 basis points compared to the public market levels," according to an emailed statement from MTA spokesperson Tim Minton.

The transit agency, bleeding cash because ridership is down amid the pandemic, turned to the Fed after rejecting the higher bids from Wall Street banks Tuesday, according to a notice by Grant Street, which runs an auction platform for municipal sales. The Fed had previously agreed to buy the debt that the MTA did not award to other bidders, according to documents released as part of the sale.

Dan Solender, a partner at Lord, Abnett & Co., said the Fed is ensuring that issuers like the MTA hit hardest by the virus-induced recession can have access to "reasonable rates" when they borrow.

"This is a positive for the MTA and for the market," he said. "This shows the benefit of what they're providing, which continues to be a reason why the muni market has performed so well."

The central bank created the program earlier this year after the economic collapse from the pandemic rocked state and local government budgets and sent the \$3.9 trillion municipal bond market into a tailspin. The Fed's decision to act as lender of last resort arrested the steep selloff in March by reassuring investors that the market wouldn't be rocked by another liquidity crisis and government agencies would still be able to raise funds.

Since then, though, it has only been used one other time, by Illinois, according to central bank data as of last week. That's because the Fed is charging steep penalties at a time when most can borrow at the lowest rates in decades, thanks in part to the confidence created by its move to act as a lender of last resort.

The MTA's offering was seen as a test of whether the Fed's decision on Aug. 11 to lower prices on the loans would increase use of the program.

"This financing underscores again the MTA's need for \$12 billion of Federal funding to offset projected revenue losses through 2021," MTA Chief Executive Officer Patrick Foye said in an emailed statement on Tuesday.

The New York MTA, the largest U.S. transit system and among the agencies most affected by the

coronavirus shutdowns, said it's facing a \$16.2 billion deficit related to the pandemic, according to documents associated with the debt sale.

It was seeking to borrow through cash-flow notes due in three years. Yet the weighted average true interest cost on bids submitted by the banks totaled about 2.79%, according to Grant Street. That's far more than the market's 3-year benchmark yield of about 0.12%, showing the level of risk investors are pricing into the securities.

The Fed's pricing was based on an average rating of A1 and A+, MTA spokesman Aaron Donovan said in an email.

The transit agency's transportation revenue bonds are rated A2 by Moody's Investors Service, A+ by Fitch Ratings, BBB+ by S&P Global Ratings, and AA+ by Kroll Bond Rating Agency, according to its website.

Bloomberg Markets

By Amanda Albright and Danielle Moran

August 18, 2020, 11:51 AM PDT Updated on August 18, 2020, 2:24 PM PDT

[New York Transit Agency Turns to Fed for \\$450 Million Borrowing.](#)

(Reuters) – New York's financially beleaguered Metropolitan Transportation Authority (MTA) said it sold \$450.7 million of debt to the New York Federal Reserve's Municipal Liquidity Facility (MLF) on Tuesday in a move that substantially lowered its borrowing costs.

The MTA is only the second muni bond market issuer to tap into the Fed's program, one of around a dozen emergency credit facilities launched by the central bank this year to help ease the blow from the coronavirus pandemic. The deal came a week after the Fed eased some credit terms for the MLF.

The mass transit agency, which has been hit hard by a sharp drop in ridership on its buses, subways and trains amid the pandemic, said it sold the bond anticipation notes at a true interest cost of 1.92%, saving more than 85 basis points.

The MTA said it initially offered the three-year notes in competitive bidding on Tuesday in the U.S. municipal market, receiving 20 bids from 10 banks, with an average clearing true interest cost of 2.79%.

So far, the Fed has reported that only Illinois, the lowest-rated U.S. state, had tapped the MLF for a \$1.2 billion cashflow issue in June.

After complaints that MLF borrowing costs were too high, the Fed announced last week that it would lower the interest rate spread charged on loans issued by the facility by half a percentage point for each credit rating category.

The \$500 billion short-term borrowing program was announced in April as a way for states and local governments to access cash as their revenue fell due to the pandemic. In June, it was expanded to include mass transit agencies.

Reuters

August 18, 2020

(Reporting by Karen Pierog in Chicago and Jonnelle Marte in New York; Editing by Will Dunham)

- [Reminder: BLX/Orrick 2020 Post-Issuance Compliance Educational Webinar Series Begins 8/19](#)
 - [SIFMA Files Suit Seeking to Vacate SEC's Temporary Conditional Exemption for Municipal Advisors.](#)
 - [MTA Is Poised to Test Whether Fed Loans Beat Wall Street.](#)
 - [Almeida v. BOKF, NA](#) - In action against Indenture Trustee arising from fraudulent conduit financings, District Court generally upholds Indenture Trustee's right to disclaim nearly all responsibility for policing borrower's compliance with its obligations, but does hold that bondholders stated a claim that Indenture Trustee's failure to post notice of material events and to avoid conflicts of interest plausibly stated a claim for gross negligence.
 - And finally, Courtship And Mating Of The Common Pleading is brought to us this week by [Mountain Water Company v. Montana Department of Revenue](#), in which the Supreme Court of Montana began its opinion by stating, "This is the most recent in the multitude of appeals and petitions spawned by the City's latest attempt to take Mountain Water's water distribution system for public use by eminent domain." Oh, so *that's* where pleadings come from. They swim upstream and a daddy pleading and a mommy pleading who love each other very much have a special hug...? Wait, I'm confused. Apparently I missed the lawyer version of The Talk.
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PUBLIC UTILITIES - CALIFORNIA

[Wilde v. City of Dunsmuir](#)

Supreme Court of California - August 3, 2020 - P.3d - 2020 WL 4432754 - 20 Cal. Daily Op. Serv. 7720

City resident filed petition for writ of mandate, seeking to require placement of referendum on ballot.

The Superior Court denied petition. Resident appealed. The Court of Appeal reversed and remanded with directions, and appeal was taken.

The Supreme Court held that:

- Taxation exemption from State Constitution's referendum process applies to measures setting municipal water rates;
- Constitutional articles added by Proposition 218, stating that initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, fee, or charge, did not control whether municipal water rates were subject to challenge by referendum;
- Charges used to fund city's provision of water, like other utility fees used to fund essential government services, are exempt from referendum under State Constitution's taxation exemption; and
- City resolution imposing water rates qualified as a "tax" measure within the meaning of taxation exception to the referendum power in State Constitution; disapproving *Bock v. City Council*, 109 Cal.App.3d 52, 167 Cal.Rptr. 43.

Although California Constitution grants voters the power of referendum, which allows them to approve or reject laws enacted by their elected representatives before the laws take effect, the Constitution exempts certain categories of legislation, including statutes providing for tax levies or appropriations for usual current expenses of the government, and this exemption applies to measures setting municipal water rates.

Constitutional articles added by Proposition 218, stating that initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, fee, or charge, did not control whether municipal water rates were subject to challenge by referendum; definitional provisions of constitutional articles added by Proposition 218 began with the phrase “as used in this article” and did not purport to apply to other provisions of law, nor did the articles contain any other indication of intent to alter or amend the meaning of “tax” as used in any other constitutional provision, including the referendum provision, which predated articles by several decades, and in the absence of such an indication, appellate court would presume that no alteration or amendment was intended, and although appellate courts had duty to harmonize constitutional provisions where possible, this duty did not compel appellate court to graft the tax terminology of constitutional articles onto the referendum provision when the voters had not chosen to do so.

Charges used to fund city’s provision of water, like other utility fees used to fund essential government services, are exempt from referendum under State Constitution’s taxation exemption; city depends on water charges to provide water to residents and to maintain the infrastructure necessary to do so, and even the temporary suspension of rate-setting resolution runs risk of undermining city’s ability to finance its water utility and manage its fiscal affairs, and the result would be to impair city’s ability to carry out one of its most basic and essential functions.

City resolution imposing water rates qualified as a “tax” measure within the meaning of taxation exception to the referendum power in State Constitution; disapproving *Bock v. City Council*, 109 Cal.App.3d 52, 167 Cal.Rptr. 43. Cal.

EMINENT DOMAIN - MONTANA

[Mountain Water Company v. Montana Department of Revenue](#)

Supreme Court of Montana - August 4, 2020 - P.3d - 2020 WL 4462830 - 2020 MT 194

Following condemnation of its water distribution system and initial claim for property tax refund private water company brought second claim for property tax refund regarding taxes paid while property was subject to condemnation proceedings.

The District Court granted summary judgment for city on unjust enrichment grounds. Water company appealed, and city and county cross-appealed.

The Supreme Court held that:

- Equitable doctrine of unjust enrichment could not preclude claim for property tax proration and related relief in light of statutory provision;
- Remedy of property tax protest, declaratory judgment, and general property tax refund is unavailable for enforcement of a condemnee’s right to property tax proration; and
- Settlement agreement constituted a knowing and intelligent contractual waiver of company’s right to property tax proration and reimbursement from the city.

Equitable doctrine of unjust enrichment could not preclude private water company’s claim for

property tax proration and related relief, after city initiated condemnation action to take company's water distribution system, in light of statute specifically commanding that the "condemnor must be assessed the condemnor's pro rata share of taxes for the land being taken" as of the earlier of date of summons or possession and that the "condemnor must be assessed for all taxes accruing" thereafter prior to transfer of record title.

Remedy of property tax protest, declaratory judgment, and general property tax refund is inapplicable and unavailable as a matter of law for enforcement of a condemnee's right to property tax proration.

Water company settlement agreement with city regarding condemnation of water company's water distribution system constituted a knowing and intelligent contractual waiver of its right to property tax proration and reimbursement from the city; settlement agreement clearly indicated that the manifest mutual intent and effect of the agreement was for water company to waive any claim for property tax reimbursement or relief from or against the city while at the same time preserving the right to seek a general property tax refund, and stipulated final judgment in condemnation expressly incorporated the terms of the settlement agreement by reference.

ANNEXATION - OHIO

[State ex rel. Xenia v. Greene County Board of Commissioners](#)

Supreme Court of Ohio - June 25, 2020 - N.E.3d - 2020 WL 3456716 - 2020 -Ohio- 3423

City that sought type-2 annexation of township's land, whereby residents of the annexed land were to become residents of both city and township, brought action requesting a writ of mandamus compelling county to approve city's annexation petition.

The Second District Court of Appeals denied county's motion for summary judgment, granted city's motion for summary judgment, and issued the writ. County appealed.

The Supreme Court held that:

- Writ of mandamus was proper vehicle to compel county to approve city's petition;
- Contiguity condition set forth in type-2 annexation statute established the sole contiguity requirement;
- City's petition satisfied the contiguity requirement;
- City's petition satisfied condition that annexation not create an unincorporated area that was completely surrounded by the annexed territory; and
- City's petition satisfied condition that city agree to correct road-maintenance problems.

Writ of mandamus was proper vehicle to compel county to grant city's petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township; annexation statute's subsection setting forth the conditions for granting such a petition did not contain the sort of open-ended language that governed traditional annexation, which entailed a factual determination concerning the general good of the annexed territory, but instead the subsection afforded the county no discretion if the petition satisfied all of the subsection's conditions, and county's performance of its duties under the statute did not, on its own, foreclose the possibility that the county could be compelled to grant the petition in a mandamus action.

Contiguity condition set forth in type-2 annexation statute established the sole contiguity requirement for such annexation, whereby residents of the annexed land became residents of both

city and township, as relevant to the statute's condition that a petition for type-2 annexation meet all of the requirements set forth in statute governing the filing of annexation petitions, which contained its own contiguity requirement; unlike the filing statute, the type-2 annexation statute's contiguity condition defined the minimum degree of touching necessary in a type-2 setting, and application of contiguity principles crafted outside the type-2 setting would have rendered the specific limitations embodied in the type-2 annexation statute's contiguity condition meaningless.

City's petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute's condition that the territory proposed for annexation have a boundary contiguous with the municipal corporation of at least 5% of the territory's perimeter; the city calculated a shared boundary of 5.31%, while the county, which opposed annexation, calculated a boundary of 5.03%, and the effect that city's future plans might have had on the percentage did not impact the determination of whether the city's petition satisfied the contiguity condition.

City's petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute's condition that the annexation not create an unincorporated area of a township that was completely surrounded by the territory proposed for annexation; although the proposed annexation would create two township islands, the condition did not forbid township islands created by the coupling of pre- and post-annexation boundaries, and here the territory proposed for annexation would form merely one side of a triangular-shaped island and one side of a quadrilateral-shaped island.

City's petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute's condition that the city agree to assume maintenance of a street or highway that would be divided or segmented by a boundary line between the city and township; city stated in its petition that it would correct road maintenance problems, city was not required to present to the township an agreement concerning road-maintenance issues, and contention that city would fail to correct problems in light of its alleged past failures to do so was speculative and did not create a fact issue as to whether city in fact agreed in its petition to correct road-maintenance problems.

INDENTURE TRUSTEES - OKLAHOMA

[Almeida v. BOKF, NA](#)

United States District Court, N.D. Oklahoma - July 8, 2020 - Slip Copy - 2020 WL 3846731

From July 2014 through September 2015, Borrower LLC engineered a series of conduit financing transactions that generated roughly \$62 million from investors. Borrower LLC touted the offerings as vehicles to finance the development of senior living facilities. According to the plaintiff bondholders, the offerings were also vehicles for a fraud that bilked investors out of millions.

Borrower LLC's alleged fraud, the plaintiffs claim, would not have been possible without the aid, or at least the negligence, of BOKF, the bank serving as Indenture Trustee on the offerings. The plaintiffs assert that BOKF's role in the bond offerings entailed a duty to look out for investors, but the bank ignored that duty in favor of its own interests.

Although BOKF, by way of the Indentures, agreed to accept the issuers' interests in the Loan Agreements, the bank disclaimed nearly all responsibility for policing the Borrower LLCs' compliance with its obligations.

BOKF, arguing that the plaintiffs' allegations failed to state a claim, moved to dismiss. BOKF argued generally that the plaintiffs' tort claims fail as a matter of law because they are based on common law duties that BOKF, as an indenture trustee, did not owe. BOKF argued that, because it had no responsibility under the Indentures to verify the Borrower LLCs' representations in the Official Statements or to otherwise police their conduct, BOKF could not be held liable in tort.

The Court found that this overstated the case. While it is true that the pre-default duties of an indenture trustee are generally limited to those imposed under the indenture, an indenture trustee's power to disclaim responsibility does have limits. Exculpatory clauses cannot relieve one from liability for fraud, willful injury, gross negligence or violation of the law. Moreover, courts have found indenture trustees to have two kinds of pre-default duties beyond those found in their trust indentures. First, courts have held that indenture trustees have a duty not to profit at the expense of bondholders. Second, indenture trustees must perform "basic, nondiscretionary, ministerial functions" with "due care." Even though BOKF disclaimed any duty to police the conduct of the Borrower LLCs, the plaintiffs might be able to state a claim if BOKF's alleged misconduct was willful, perpetrated a fraud, or breached an extra-contractual duty.

The Court found, in short, that BOKF was not responsible for the promises Borrower LLC made to investors and it had no duty to investigate the Borrower LLCs' compliance with their contractual obligations. Accordingly, even assuming that Oklahoma would recognize a claim for aiding and abetting fraud, such a claim would only be viable upon allegations (1) that BOKF had actual knowledge that Borrower LLC was defrauding investors by commingling and misappropriating funds, and (2) that BOKF, by its silence, intended to aid in the fraud. The Court concluded that plaintiffs' complaint failed to plead actual knowledge of the underlying fraud.

The Court found that - as with aiding and abetting common law fraud - the question of whether a cause of action for aiding and abetting breach of a fiduciary duty exists in Oklahoma is unresolved. Even were Oklahoma to recognize a claim for aiding and abetting a breach of a fiduciary duty, any such claim would require an allegation that the defendant had knowledge of the primary actor's wrongful conduct and no such knowledge was alleged.

As to Plaintiffs' allegation of negligence, the Court found that BOKF had expressly disclaimed any duty to monitor the Borrower LLCs management practices and use of bond proceeds. "The plaintiffs try to work around this fact by casting the alleged acts and omissions as breaches of BOKF's extra-contractual duty to carry out ministerial tasks with due care, but this argument is wafer thin. The Court cannot interpret 'ministerial tasks' to include duties that, by virtue of the Indentures, did not exist. Reading the ministerial-tasks exception so broadly would swallow whole the general rule that an indenture trustee's pre-default duties are exclusively governed by the terms of the trust indenture."

The Court found that the remaining alleged negligent acts *did* implicate extra-contractual duties: 1) BOKF's alleged failure, pursuant to the Continuing Disclosure Agreement ("CDA"), to require the Borrower LLCs to submit certain information and financial statements to EMMA; and 2) the alleged conflicts of interest, in which the bank did owe a duty not to seek a personal benefit at the expense of bond holders; and 3) BOKF's alleged failure to post notice of material events.

Having concluded that the plaintiffs' allegations implicated BOKF's pre-default duties to avoid conflicts and complete ministerial tasks with due care, the question became what standard of care applied to those duties.

The Court noted that an indenture trustee's pre-default duties are not fiduciary in nature and that a trustee may contractually limit liability for its own negligence if the limitation is explicitly and

unambiguously provided for in the agreement. “This unambiguously precludes the imposition of liability on a theory of mere negligence. As a result, the plaintiffs must allege gross negligence, which Oklahoma defines as an ‘intentional failure to perform [a] manifest duty in reckless disregard of consequences.’”

The Court found that the plaintiffs’ allegations regarding BOKF’s alleged failure to post notice of material events and to avoid conflicts of interest plausibly stated a claim for gross negligence under this standard.

As to the plaintiffs’ claim for breach of fiduciary duty, the Court held that the plaintiffs must clearly allege (1) an Event of Default, (2) BOKF’s actual knowledge of the default, if other than a failure to make payment, and (3) BOKF’s subsequent failure to prudently exercise its powers to protect the interests of bondholders. As they failed to do so, they failed to state a claim for breach of fiduciary duty.

PERMITS - VERMONT

[Green Mountain Fireworks, LLC v. Town of Colchester](#)

Supreme Court of Vermont - August 7, 2020 - A.3d - 2020 WL 4556800 - 2020 VT 64

Operators of fireworks stores brought actions challenging town’s dismissal of their application for permit to sell fireworks and seeking declaration that they were permitted to sell fireworks even without municipal permit.

The Superior Court dismissed the actions, and operators appealed.

The Supreme Court held that:

- Zoning permits were insufficient to satisfy municipal permit requirement of fireworks sale statute, and
- Statute governing sale of fireworks prohibits the sale of fireworks to purchasers who do not have a permit for a “supervised public display.”

Zoning permits were insufficient to satisfy municipal permit requirement of statute prohibiting the offer of fireworks for sale absent “permit by both the U.S. Bureau of Alcohol, Tobacco, and Firearms and the municipality in which the person offers for sale and stores the fireworks.”

Statute governing sale of fireworks prohibits the sale of fireworks to purchasers who do not have a permit for a “supervised public display,” as statute as a whole was directed at regulating the permitting of public fireworks displays, and history of the statute revealed that the Legislature intended to allow only the sale of display fireworks, not fireworks generally.

[No Federal Relief Leaves States, Cities Facing Big Deficits.](#)

State and local government officials across the U.S. have been on edge for months about how to keep basic services running while covering rising costs related to the coronavirus outbreak as tax revenue plummeted.

It's now clear that anxiety will last a lot longer. Congressional talks over another coronavirus relief package have failed, with no immediate prospects for a restart.

The negotiation meltdown raises the prospect of more layoffs and furloughs of government workers and cuts to health care, social services, infrastructure and other core programs. Lack of money to boost school safety measures also will make it harder for districts to send kids back to the classroom.

On Monday, governors, lawmakers, mayors, teachers and others said they were going to keep pushing members of Congress to revive talks on another rescue package.

"Congress and the White House made a commitment to the governors that there would be a second round of relief for states — we are going to hold their feet to the fire until they uphold that commitment," New Hampshire Gov. Chris Sununu, a Republican, said in a statement.

How soon that might happen is anyone's guess. Congress has gone home, and President Donald Trump over the weekend took executive action to address what had been a key part of the negotiations. He extended an extra benefit for the jobless but cut it by a third — to \$400 a week — and told states they would have to pick up 25% of the cost.

New Jersey Gov. Phil Murphy, a Democrat, urged Congress to restart negotiations, boost the jobless benefit back to \$600 and immediately provide more aid to state and local governments.

"Let's be clear about something: States are going broke and millions of Americans are unemployed, yet the solution called for states to create a new program we cannot afford and don't know how to administer because of this uncertainty," he said.

Stay-at-home orders in the spring, business shutdowns and tight restrictions on businesses that have reopened are slamming state and local government revenue. In a June report, Moody's Analytics found that states would need an additional \$312 billion to balance their budgets over the next two years while local governments would need close to \$200 billion.

Many states already are staring at ledgers of red ink. Texas is projecting a \$4.6 billion deficit. In Pennsylvania, it's \$6 billion. In Washington, the deficit is expected to be nearly \$9 billion through 2023. California's budget includes more than \$11 billion in cuts to colleges and universities, the court system, housing programs and state worker salaries.

The pandemic's fallout also has trickled down to towns and cities, many of which are considering layoffs of police, firefighters and other essential workers. The association representing municipal governments in California said 90 percent of the state's 482 cities will have to cut staff or services.

Grass Valley, a town of about 13,000 east of Sacramento in the Sierra foothills, has laid off four employees and frozen seven unfilled positions — including in the police and fire departments.

"It is heartbreaking to have to cut services and lay off staff that are so integral to making Grass Valley a wonderful, vibrant place to live," Councilwoman Jan Arbuckle said in a statement. "This could be avoided if we had strong federal support."

Officials say the \$150 billion for state and other governments in a congressional aid bill passed in late March is not enough to keep them afloat and came with too many restrictions. Many governors have pressed Congress to allow them to use it to help balance their budgets.

The U.S. House of Representatives, where Democrats hold the majority, passed a coronavirus relief

bill in May worth more than \$3 trillion, with close to one-third of that going to state and local governments. In the Senate, which Republicans control, some senators didn't want a new round of aid at all, in part because they were concerned about the ballooning federal deficit.

Without Congress stepping in, the budget situation is growing worse in many places, especially with a surge in COVID-19 cases throughout the country leading to another round of restrictions.

In Arlington, Texas, Mayor Jeff Williams expects a \$20 million shortfall in the fiscal year that begins Oct. 1, which is about 4 percent of the annual budget. For the year after that, the budget gap is expected to be between \$30 million and \$50 million.

"We'll be cutting every department," Williams said.

He has been one of the leaders of the U.S. Conference of Mayors' push for more federal help, arguing that big cuts to city governments would only deepen the recession.

Another mayor involved in that effort, Dayton, Ohio's Nan Whaley, already has approved employee buyouts and furloughs, and canceled some infrastructure projects to get through the year. Cuts to the police department — a major expense for most local governments — are likely, she said.

"The irony is that the person who will defund the police is Donald Trump," Whaley said.

Richard Sheets, deputy director of the Missouri Municipal League, said local governments there need to be allowed more time to use the federal aid they've received so far. Currently, it all must be spent this year.

North Carolina's 550 local governments anticipate a combined \$600 million cumulative drop in revenue for the coming fiscal year, according to estimates from the state's League of Municipalities.

Rick Schuettler, executive director of the Pennsylvania Municipal League, said many of his 116 member governments have not received any federal aid so far. That will translate into cuts to police, fire, parks and basic services.

"If you think the impact on local government isn't going to affect the overall economy, it is," he said.

Among the biggest needs is more money to make schools safe so teachers and students can get back in the classroom. In many districts across the country, learning will be done remotely when classes resume for the new year.

Several groups have been pushing for at least \$100 billion more to help schools deal with the pandemic.

Cheryl Bost, a teacher and president of the Maryland State Education Association, said schools need money to buy protective gear and cleaning supplies, test students and staff, and upgrade air ventilation systems.

"School systems can't achieve these necessary standards with reduced funding," she said.

By The Associated Press

Aug. 10, 2020

Associated Press writers Scott Bauer in Madison, Wis.; Adam Beam and Don Thompson in Sacramento, California; Mike Catalini in Trenton, N.J.; David Eggert in Lansing, Michigan; Rachel La

Corte in Olympia, Wash.; Marc Levy in Harrisburg, Pa.; David A. Lieb in Jefferson City, Missouri; Holly Ramer in Hopkinton, N.H.; Gary Robertson in Raleigh, North Carolina; and Paul Weber in Austin, Texas, contributed to this report.

State-Aid Disagreement Proves Big Hurdle for Coronavirus Talks.

Democrats seek \$915 billion in anticipation of long slump, while Republicans say a fraction of that is needed now

WASHINGTON—How much aid to give state and local governments has emerged as one of the widest chasms between negotiators in stalled coronavirus relief talks, with Democrats pressing for more than \$900 billion to fill several years' worth of budget holes and Republicans seeking a more modest patch.

Top Democrats and Trump administration officials ended formal negotiations last week with no agreement on another bill, even as programs providing aid for small businesses and expanded unemployment payments created in the spring have expired. The stalemate persisted through the week, with both the Senate and House now scheduled to be out of Washington through the rest of August, and White House and Democratic negotiators have rejected overtures to come back to the table.

While Republicans and Democrats harbor disagreements on a host of issues in the relief negotiations, the difference between the two parties is perhaps the greatest on aid for state and local governments. Facing both increased costs for responding to the pandemic and a decreased tax revenue caused by the recession, state and local governments have already started making a number of spending reductions, including cutting more than one million jobs from March through July.

House Speaker Nancy Pelosi (D., Calif.) said Thursday that heavy state and local aid was needed to keep schools and local services running, and to avoid more layoffs.

“Without an infusion, they will be furloughing or firing people,” she said. “They will go on unemployment insurance. So what are we saving there?”

Senate Majority Leader Mitch McConnell (R., Ky.) has derided the Democrats' plan as a “trillion-dollar slush fund” for state and local governments and said their negotiating stance amounts to political gamesmanship.

The two sides started far apart and have moved only slightly to close the gap.

In their initial \$1 trillion overall proposal for the next bill, Republicans included no new funding for state and local governments, though they did grant those entities more flexibility in using money leftover from the \$150 billion Congress approved for them in March. But during meetings with Mrs. Pelosi and Senate Minority Leader Chuck Schumer (D., N.Y.) last week, Treasury Secretary Steven Mnuchin and White House chief of staff Mark Meadows offered \$150 billion in more funding.

The Democratic negotiators rejected that offer, insisting that the bill include at least \$915 billion for states and municipalities.

The split between Democrats and Republicans over how much aid states and cities need is explained

in part by how long they think aid will be needed.

Democrats argue that double-digit unemployment and the risks of a second wave of outbreaks will put pressure on state and municipal finances for years to come. Their proposal would cover expected shortfalls over three fiscal years, well into 2022, when the Congressional Budget Office estimates the jobless rate will still be twice as high as it was in February before the pandemic began.

“There was an understanding that we should do it all in the beginning, that was what the economists were telling us: Don’t do it little by little,” said Rep. Don Beyer (D., Va.), vice chairman of the Joint Economic Committee.

Republicans, by contrast, have held firm in their view that the economy will rebound strongly by the end of the year as a vaccine becomes available, social-distancing measures abate and businesses are able to rehire workers laid off earlier this year.

Mr. Mnuchin said in a Fox Business Network interview this week that the additional \$150 billion Republicans have offered, along with the easing of restrictions on earlier funds, is “more than enough money for the majority of the states.” He said Congress could approve more aid later if a narrower bill fell short, an approach Democrats have so far rejected.

Economists have estimated the need is somewhere in the middle of Democratic and Republican proposals. Moody’s Analytics said the state and local budget shortfalls, including lost revenues and increased health-care costs, would total \$500 billion over fiscal years 2020, 2021 and 2022, with the biggest hit coming during the current fiscal year that began July 1. If the economic situation deteriorates, that number could rise to \$750 billion, they said.

Finding a compromise on the issue will likely come down to deciding how long the money should last. Rep. Tom Reed (R., N.Y.), a leader of the bipartisan Problem Solvers Caucus, supports offering \$500 billion to state and local governments—but doesn’t want the aid to last beyond the immediate future.

“When you start getting into two-, three-year type of windows to get assistance through today’s package—for two or three years down the road—that is opening Pandora’s box,” he said.

Rep. Dean Phillips (D., Minn.), who faces re-election in a competitive district this fall, said that Democrats should narrow the time-frame for the state and local aid to move toward reaching an agreement.

“Many of us believe that speed is so important we should be focused on getting us through at least the next sixth months and then reassess,” he said. “The length of the time is one way to trim the expense.”

Some Republicans have been wary of providing any new aid to state and local governments, calling it a bailout. While some states entered the pandemic with fiscal challenges, the looming shortfalls are driven primarily by the virus and are likely to hit every state to varying degrees, economists say. Most U.S. cities expect they will face even deeper financial troubles in the coming year than they did earlier in the coronavirus crisis.

“There is not a situation where states misspent or misallocated or got themselves into this situation,” Federal Reserve Bank of San Francisco President Mary Daly said on a call with reporters Wednesday, adding that states will need more assistance. “It’s a pandemic. It’s a shock not of their making.”

The Wall Street Journal

By Andrew Duehren and Kate Davidson

Updated Aug. 14, 2020 10:36 am ET

[Muni Defaults Surge, but Yields Don't Follow.](#)

Even with coronavirus losses weighing on state and city coffers, investors are piling back into municipal debt

The coronavirus has dealt a harsh blow to state and local government finances. But the municipal bond market rolls on.

Yields there have hit their lowest level since 1982, reflecting a significant increase in bond prices, despite the largest run of municipal-bond defaults in nearly a decade.

The rally has been driven by dynamics new and old, ranging from the extraordinary efforts of the Federal Reserve to backstop the U.S. economy to the continued aversion of many voters to new municipal issuance. That resistance might result in borrowers missing out on one of the great issuance opportunities on record, at a time when many are being crushed by the falloff in taxes, fees and other revenues.

[Continue reading.](#)

The Wall Street Journal

By Sebastian Pellejero

Aug. 14, 2020 8:21 am ET

[Most U.S. Cities Expect Next Fiscal Year to Get Worse, Survey Finds.](#)

Economic damage from the coronavirus pandemic raises likelihood of more municipal layoffs and service cuts

Most U.S. cities say continuing economic damage from the coronavirus pandemic will leave them in worse financial shape in the coming year than they were earlier in the crisis, raising the odds of deeper municipal layoffs and service reductions, according to a new survey.

Nearly 90% of the 485 cities polled by the advocacy group National League of Cities said they will have a harder time meeting the needs of their communities in fiscal 2021 than in the prior fiscal year, the highest share since the depths of the 2007-09 recession. In 2019, just 24% of finance officers reported that their city was less able to meet fiscal needs, compared with the previous year.

For many cities, the 2021 fiscal year began in July, though some cities start the fiscal year in January or October.

The survey found that all major sources of local tax revenue slowed in fiscal 2020, including an 11% year-over-year decline in sales tax receipts and a 3.4% drop in income tax revenue.

Municipal budget officials on average anticipate that general fund revenues for fiscal year 2021 will come in 13% below 2020 levels, the survey said. General funds typically account for more than half of all city spending and are fueled largely by property and sales taxes, along with income taxes in some cases.

Cities that depend more heavily on sales tax are most likely to suffer financially during both 2020 and 2021, the survey found. Sales taxes are more sensitive to economic shifts than property taxes, which the report said typically reflect property values from 18 months to several years prior.

State and local governments reduced spending at a 5.6% annual rate in the second quarter to offset plunging tax revenues, as the pandemic spurred a shutdown of much of the economy.

Many cities “skimmed from the top” through moves such as hiring freezes or furloughs, said Christiana McFarland, the National League of Cities research director and co-author of a report on the survey. Personnel costs account for a large share of city expenses, so additional budget cuts will likely mean laying off more government workers, she said.

“If the workforce is cut,” she said, “it will have negative consequences on services as well.” Those could include trash pickup, code enforcement, public safety, and parks and recreation, she said.

Ms. McFarland said the survey findings likely understate the seriousness of the concerns, because city officials responded in June, when there was greater hope for a speedier recovery from the pandemic and for substantial federal aid to local governments. “Now, those clearly are either stalled or looking pretty grim for the fall,” she said.

Efforts in Congress to craft a fresh economic relief package have hit a wall, and aid for state and local governments is a key sticking point. Democrats are seeking \$950 billion, while Republicans have offered \$150 billion.

“Government investment in the economy is exactly what is needed during downturns, meaning that the future economic health of our nation relies on fiscally strong cities, towns and villages, along with state and federal investments,” the National League of Cities report says. “Without them, the road to recovery and reopening will be long and tenuous.”

The Wall Street Journal

By Scott Calvert

Aug. 13, 2020 6:00 am ET

[MTA Is Poised to Test Whether Fed Loans Beat Wall Street.](#)

- **Fed cut rates on \$500 billion government loan facility**
- **With market yields lower, Illinois is so far the only borrower**

The municipal-bond market will soon get a test of whether the Federal Reserve’s decision to lower the price of its loans will draw governments to its virtually unused \$500 billion lending program.

New York's Metropolitan Transportation Authority, among the agencies hardest hit financially by the coronavirus shutdowns, is planning to auction off \$465 million of three-year notes on Aug. 18, according to bond offering documents released late Tuesday. The transit agency will accept bids from Wall Street banks — and then decide whether it will get a better deal if it borrows from the Fed instead.

That may be the first gauge of whether the central bank's announcement on Tuesday to cut the interest rates on its short-term loans by 50 basis points will spur more borrowing from it. The Fed has been criticized for the strict terms on its loans to states and cities, which can borrow at far lower rates in the open market.

Because of that, the Fed's first foray into the market has had little direct impact. It has extended only one loan, to Illinois, since it was announced in April, according to the central bank's most recent disclosures.

Yet the mere prospect of the Fed stepping in to act as lender of last resort arrested the steep selloff in March by reassuring investors that the market wouldn't be rocked by another liquidity crisis. Interest rates have since plunged to virtually zero for the highest-rated governments, benefiting those that are looking to raise cash to cover deficits or to find savings by refinancing existing debt. One-year municipal-bond debt yields 0.07% as of Wednesday morning, down from as high as 2.83% in March.

The MTA will sell transportation revenue bond-anticipation notes that will mature in 2023. The transit agency's transportation revenue bonds are rated A2 by Moody's Investors Service, A+ by Fitch Ratings, BBB+ by S&P Global Ratings, and AA+ by Kroll Bond Rating Agency, according to its website.

The Fed's term sheet for the Municipal Liquidity Facility says it will determine pricing for split ratings by calculating an average rating. Using the pricing laid out in the term sheet, that could put the potential interest-rate spread on the MTA's debt at about 200 basis points above an overnight index swap with a comparable maturity. The MTA must also pay an origination fee.

Given those terms, it's likely the MTA would come out ahead by tapping the Fed. An MTA bond-anticipation note maturing in 2023 traded at an average yield of 2.72% on Aug. 11.

Bloomberg Markets

By Amanda Albright

August 12, 2020, 8:02 AM PDT

[Morgan Stanley Wealth Sees Risks in Credit on U.S. Stimulus Woes.](#)

The standoff in Washington over the flow of stimulus money to state and local municipal governments is adding more risk to U.S. credit markets, according to Morgan Stanley Wealth Management.

State and local government budgets have been severely damaged by the Covid-19 pandemic due to lost tax revenue and rapidly rising expenses, and that may have ramifications for investors, Morgan Stanley Wealth Management strategists Scott Helfstein and Monica Guerra wrote in a note Tuesday.

“Though municipal budgets are strained, muni bond yields have reached historic lows due to constructive seasonals and risk-off sentiment,” the strategists wrote. “Failure to secure aid for state and local governments presents downside risk for bonds of low credit quality at a time when investors are willing to move down the credit curve.”

A \$600 enhanced weekly benefit for unemployment insurance expired at the end of July, and negotiations between Congress and the Trump Administration haven’t progressed much. President Trump announced an executive order that would offer \$400 a week in jobless benefits, with states covering 25% of the cost, as one of several moves that he may lack the authority to make unilaterally.

Another area flagged by Morgan Stanley Wealth was in student loans, where deferral of principal and interest payments was automatically extended to Dec. 31 for some federal loans.

“Those with private loans get no reprieve from payment due on principal and interest,” the strategists said. “Thus, we believe that securities backed by private student loans with speculative grade credit quality and tranches with few enhancements may experience pressure.”

Bloomberg Markets

By Joanna Ossinger

August 12, 2020, 8:58 AM PDT

— *With assistance by Christopher Maloney*

[Stimulus Talks Are Stuck in \\$1 Trillion Ditch Over Aid to States.](#)

- **Democrats warn cities and states face severe cuts to services**
- **GOP argues money would go to bail out poorly-managed states**

Sign up here for our daily coronavirus newsletter on what you need to know, and subscribe to our Covid-19 podcast for the latest news and analysis.

There’s little chance of agreement on a new federal coronavirus relief plan without a compromise on the roughly \$1 trillion in aid to beleaguered state and local government that Democrats demand and the White House opposes.

Democrats have offered to cut their original stimulus proposal totaling \$3.5 trillion by roughly one third, but insist on keeping help for states, cities and other municipalities. President Donald Trump’s negotiators, in addition to rejecting the Democrats’ topline number, have offered to put in no more than \$150 billion for local assistance.

Negotiations are at a standstill heading into two weeks in which the Democratic Party then the Republican Party hold their respective presidential nominating conventions.

Senate Majority Leader Mitch McConnell said Thursday the Senate is in recess and will not hold votes until Sept. 8 — although senators, like members of the House, can be called back on 24 hours notice if a stimulus deal has been made.

“I’m still hoping we’ll have some kind of bipartisan agreement here, some time in the coming

weeks," McConnell said as he left the Senate floor.

The chasm between the two sides, and potential for the impasse to stretch well into September, has governors and mayors from both parties on the edge.

"This is not about 'bailing out' red states or blue states for pension problems or to make up for previous policy failures of other states — this is about delivering rapid relief for states so the governors can manage and provide flexibility for their residents," New Hampshire's Republican Governor Chris Sununu tweeted this week.

"If we do not get federal help we have very difficult, no-win choices to make on the cut on local services, particularly our police and fire services," Dayton, Ohio, Mayor Nan Whaley, a Democrat, said on a recent conference call organized by the U.S. Conference of Mayors.

Although there are other areas of disagreement — among them, McConnell's plan to shield employers from liability for Covid-19 infections, and House Speaker Nancy Pelosi's drive to bolster the U.S. Postal Service — the question of state aid may be the biggest stumbling block.

Senate Republicans included no aid for local governments in their initial proposal for the next stimulus bill released at the end of July. It did include \$105 billion for schools, which are mostly funded by states and cities, and \$16 billion in grants to states for coronavirus testing, contact tracing and surveillance.

Unspent Money

The Republican plan also would give states and municipalities more flexibility on how to use unspent portions of the \$150 billion provided in the virus relief bill passed in March.

The GOP language would block any of the money going to state pension funds. Republicans insist that generous deals struck over the years by Democratic mayors and governors with public employee unions have caused their fiscal woes, and don't intend to plug what in some cases are huge funding holes.

"Democrats think they smell an opening they have wanted for years, to make Uncle Sam bail out decades of mismanagement and broken policies in places like New York, New Jersey and California," McConnell said this week, citing three solidly Democratic states.

In negotiations last week, Treasury Secretary Steven Mnuchin offered an additional \$150 billion for state and local aid.

Pelosi rejected that as insufficient. She said that she and Senate Democratic Leader Chuck Schumer are willing to meet Republicans at some "middle ground," but that, "it's no use sitting in a room and let them tell us that states should go bankrupt."

\$915 Billion

The Democratic plan passed by the House in May would provide \$915 billion in state and local aid. More than half would go to states and Washington D.C, with the first portion awarded within 30 days of enactment and the rest no later than May 3.

Local governments would get \$375 billion. Of that, \$131.25 billion would be for cities that have a population greater than 50,000 or are the principal city of a metropolitan statistical area; \$56.25 billion for local governments other than counties or parishes; and \$187.5 billion for counties based

on population. There is also \$20 billion for U.S. territories and \$20 billion for tribal governments.

The National Governors Association has made a plea for \$500 billion in unrestricted aid just for states. The organization in a statement Thursday said that a failure by Congress to take action “would lead to massive cuts to the very services that are sustaining millions of Americans during the pandemic and recession, and that are necessary for a rapid and sustainable recovery.”

To that point, a Moody’s Analytics report released June 25 said without more assistance, state and local governments will be forced to make budget cuts that could shave as much as 3 percentage points from the pace of economic growth and result in the loss of about 4 million jobs.

Pittsburgh’s Democratic mayor, Bill Peduto, said during the mayor’s conference call that his city is facing a shortfall this year of about \$100 million with few ways to make it up.

“The vast majority of our funding goes to public safety services,” Peduto said. “Across-the-board cuts throughout every department would be mandatory. It is very difficult to raise taxes on people who are losing their jobs.”

Bloomberg Politics

By Billy House

August 14, 2020, 1:00 AM PDT

— *With assistance by Skylar Woodhouse, Daniel Flatley, Laura Litvan, and Erik Wasson*

[For Cities, Path to Financial Recovery Could Be a Long One.](#)

“It takes years for cities to recover lost revenue,” said one of the authors of a new report that surveys the financial affairs of nearly 500 cities across the U.S.

The National League of Cities released its latest annual survey of city fiscal conditions on Thursday. Unsurprisingly, it presents a bleak picture of how municipal budgets are faring in the coronavirus era, with revenues collapsing and finance officers pessimistic about the year ahead.

But along with the headline findings are reminders of how long it took for cities to bounce back from the Great Recession. It was a lengthy slog. The [NLC report](#) shows that revenues it tracks took about 12 years to recover to where they were in 2007, before that prior downturn.

“If the Great Recession provides a lesson, it is that it takes years for cities to recover lost revenue,” said Michael Pagano, director of the Government Finance Research Center at the University of Illinois at Chicago, and a co-author of the report.

[Continue reading.](#)

Route Fifty

By Bill Lucia

AUGUST 13, 2020

[NLC City Fiscal Conditions 2020 Report.](#)

In its 35th year, the City Fiscal Conditions report continues to provide insight into the fiscal health of cities, towns and villages from across the nation. The findings in this year's report reveals that America's cities are experiencing the fiscal consequences of this pandemic-downturn at an unprecedented speed - and like recent recessions, it will take years for municipal budgets recover from the impact of COVID-19.

By diving deeper into the survey results from 485 cities from across the country, we can see just how the coronavirus pandemic has affected the lives of residents and why direct funding is critical to the financial health of our nation.

[Download Report.](#)

[The Recession Is About To Slam Cities.](#)

The coronavirus recession will erode city budgets in many insidious ways. It will slash the casino revenues that Detroit relies on. It will squeeze the state aid that is a lifeblood to Rochester and Buffalo in upstate New York. It will cut the sales tax revenue in New Orleans and Baton Rouge, Louisiana, where a healthy government depends on people buying things.

The crisis has arrived faster than the damage from the Great Recession ever did. And it will cut deep in the fiscal year ahead, with many communities likely to lose 10% or more of the revenue they would have seen without the pandemic, according to a new analysis. That's enough for residents to experience short-staffed libraries, strained parks departments and fewer road projects. The hardest-hit cities like Rochester and Buffalo could face 20% losses.

"The Great Recession was a story of long, drawn-out fiscal pain — this is sharper," said Howard Chernick, a professor emeritus of economics at Hunter College and the Graduate Center at the City University of New York, who worked on the new analysis estimating revenue shortfalls for 150 major cities across the nation.

These numbers give a sense of the possible economic pain for cities if Congress and the White House fail to agree on a new relief package that includes aid to state and local governments. It also rebuts some of the prevailing, largely Republican arguments that have stalled those negotiations: that federal help will bail out only blue cities and those that have mismanaged their finances.

Many cities facing steep losses are in states represented by Republican senators, like Florida or Louisiana. And the analysis found little relationship between whether a place was fiscally healthy before the pandemic and the most dire projections of revenue shortfalls.

What matters more in this pandemic moment is how a city generates money: Those highly dependent on tourism, on direct state aid or on volatile sales taxes will hurt the most. Cities like Boston, which rely heavily on property taxes that offer the most stable revenue, are in the strongest position — for now.

The estimates, to be published in the National Tax Journal by Chernick, David Copeland at Georgia State University and Andrew Reschovsky at the University of Wisconsin, are based on the mix of

local revenue sources, the importance of state aid and the composition of jobs and wages in each city. The researchers predict average revenue shortfalls in the 2021 fiscal year of about 5.5% in a less severe scenario, or 9% in a more severe one.

These projections cover not just municipal budgets but also every local government entity that spends money on services to residents in a given city, including counties and sewer or school districts (those budgets are adjusted for the share of residents who live within city borders). As the pandemic has worsened in many parts of the country this summer, the researchers now believe their severe forecasts are more likely.

Cities heavily dependent on sales taxes felt the implosion of the economy more immediately than cities that count on income or property taxes. Revenue from income taxes will lag behind unemployment; property taxes are set a year or two in advance. Consumer spending, particularly by the biggest spenders, dropped sharply early in the pandemic. And it is expected to fall now for millions of workers whose added \$600 federal unemployment benefits expired at the end of July.

Broad shifts in how Americans eat during the pandemic have affected tax receipts as well: Restaurant meals are taxed, but in most states the groceries people cook at home are not.

In Colorado Springs, which relies heavily on sales taxes, those revenues plummeted in late March and April. But they crept back in May and, to everyone's surprise, the city saw slightly more in sales tax revenues in June than it did in June of last year. Mayor John Suthers attributes that to the resilience of the local military and defense sectors — and to all the online shopping residents have been doing.

Thanks to a 2018 court ruling, states can now collect sales taxes on purchases through Amazon or other online retailers, regardless of whether those retailers have a physical presence locally. That's a silver lining.

"Without the Supreme Court's intervention, in the last three years this would have been a whole different ballgame for us," Suthers said.

Orlando, Florida, is projected to suffer about as much as Colorado Springs in these estimates. But with the county responsible for many services, the Orlando municipal government will be spared the worst of the pain. Orlando City Hall's revenues rely heavily on property taxes, which were already set to grow next year. And, like Colorado Springs, the Orlando area has long benefited from population growth and a construction boom — the other side of broad demographic shifts toward the Sun Belt that have left Northeastern cities like Rochester more vulnerable.

"Maybe Orlando isn't in the same dire situation as other places," said Chris McCullion, the city's chief financial officer. But he, too, is calling for direct federal aid, as is Suthers, a Republican mayor. "This is really, really important for the long-term health of cities and states," McCullion said.

At risk is not just services for local residents in any given city, but the possibility that disparities will widen between cities that can weather this crisis and those that can't, if they are largely left on their own.

"One legacy of the Great Recession was exposing and increasing inequities between communities," said Amanda Kass, associate director of the Government Finance Research Center at the University of Illinois at Chicago. Now those disparities could grow even wider.

The New York Times

Fed to Lower Rates for Cities, States Seeking Short-Term Loans.

Interest-rate spread on tax-exempt notes will be reduced by 0.5 percentage point

The Federal Reserve said Tuesday it would reduce the rates it charges cities and states seeking short-term loans from an emergency lending program that has seen little takeup so far.

Changes to the program must be agreed upon by the Treasury Department, which has approved \$35 billion to cover losses on up to \$500 billion in loans extended by the Fed.

Municipal bond strategists and some Democratic lawmakers have expressed disappointment in recent weeks over the degree to which the Fed positioned the program as a backstop, though Fed officials say the mere announcement of the program in April helped reduce borrowing costs significantly for highly rated municipal issuers.

With Tuesday's changes, the Fed will reduce by 0.5 percentage point the interest-rate spread on tax-exempt notes, and it will also reduce the amount by which rates for taxable notes are adjusted relative to tax-exempt notes.

The Fed is walking a careful line in a series of lending programs it has created to backstop credit markets. It announced the programs in late March and early April when many markets weren't functioning well, but the announcement of those programs has encouraged private investors to lend, reducing demand for Fed loans.

That is raising difficult questions for the Fed and Treasury over how aggressively to use money approved by Congress to encourage additional lending. In June, the Fed tweaked its corporate-debt lending program to actively purchase bonds from nearly 800 eligible firms even if they haven't sought Fed help.

The Fed has repeatedly broadened the number of local governments eligible for the lending program to allow more than 300 municipal issuers. So far, the Fed has purchased only one such note. The state of Illinois sold \$1.2 billion of debt to the central bank in June at a rate more than 1 percentage point below the rate at which it was previously able to access markets in May.

Both the municipal program and a separate Fed program to jump start corporate debt issuance have seen very little takeup. But critics have said the lack of demand for municipal debt is a problem because local governments are already responding to the downturn with layoffs and cutbacks in services that could be avoided if borrowing from the Fed's program were cheaper.

More than 50 House Democrats called on Fed Chairman Jerome Powell in a letter last week to buy municipal debt of up to five years, from the current limit of three years, and to reduce rates to near zero.

"At present, the harsh terms and penalty rates for the [program] make it functionally unusable for the vast majority of the state and local governments that are technically eligible, which severely undermines the program's intent to help states and cities struggling from unprecedented financial hardship," the letter said.

Chicago Fed President Charles Evans said last week he was sympathetic to that criticism but suggested the Treasury, not the Fed, needed to also be convinced of the need for any changes.

“I do take the point—I’ve heard it from others—that it is not a very attractive setting, so something that is a lower interest rate would be more welcome,” he said. Such lending programs require a partnership with the Treasury, “and I think sometimes there are differences of perspective there,” Mr. Evans said.

For the highest-rated municipal borrowers, yields have returned to their pre-pandemic levels and are now near all-time lows. But yields on lower-rated securities are still somewhat higher than before the pandemic.

Fed officials have said that demand for emergency credit from the central bank could hinge on how much aid Congress provides states in any future economic-relief legislation.

Talks over another round of fiscal help have broken down, and a dispute over how much relief is needed for cities and states is at the center of the impasse. House Democrats approved legislation in May to provide \$1 trillion in aid, but Senate Republicans last month didn’t include any such relief in their proposal.

“There is a tension that’s brewing where the fiscal follow-through is not really coming to fruition, so there needs to be more thinking about how they can use the authority they have,” said Skanda Amarnath, research director at Employ America, a liberal advocacy group. “They’re caught in a hard place.”

Earlier measures have approved more than \$200 billion, primarily to address costs related to the coronavirus pandemic, but cities and states face larger budget shortfalls because the virus has led to big revenue declines on everything from sales tax receipts to public transit fees.

“Getting liquidity is helpful, but it doesn’t solve their bigger problem, which is they have a fiscal hole,” Dallas Fed President Robert Kaplan said in an interview last month.

“They need grants, and if they don’t get some fiscal relief, they’re going to need to cut back at a time when they’re at the forefront of trying to get schools reopened and...spend more on a whole range of services in their states and in their communities to help fight the virus.”

The Wall Street Journal

By Nick Timiraos

Updated Aug. 11, 2020 6:28 pm ET

[Fed Announces Reduced Borrowing Costs for Municipal Issuers.](#)

- **Fed is lowering spread on tax-exempt bonds by 50 basis points**
- **Terms of the emergency Fed lending program had been criticized**

The Federal Reserve said Tuesday it would reduce borrowing costs in its Municipal Liquidity Facility, an emergency lending program for state and local government issuers launched in response to the coronavirus pandemic.

“The revised pricing reduces the interest-rate spread on tax-exempt notes for each credit rating category by 50 basis points and reduces the amount by which the interest rate for taxable notes is adjusted relative to tax-exempt notes,” the Fed said in a statement. “Today’s changes will ensure the MLF continues to provide an effective backstop to assist U.S. states and local governments as they weather the pandemic.”

The program was announced in April but has only made a single loan so far, despite the dire fiscal situation facing state and local governments due to lost tax revenues and increased expenditures amid the pandemic. The state of Illinois said in June that it would draw \$1.2 billion from the Fed facility at an interest rate of 3.82%.

Barclays Plc municipal strategist Mikhail Foux said the change is a “step in the right direction” but added the central bank should cut rates further if it wants to foster the usage of the facility. “The rates still need to be adjusted,” Foux said.

Too Pricey

Tuesday’s adjustment follows criticism of the program on the grounds that the cost of borrowing was prohibitive. House Democrats led by Washington Representative Pramila Jayapal and Wisconsin Representative Mark Pocan sent Fed Chair Jerome Powell a letter on Aug. 5 requesting that the pricing be reduced to encourage more borrowing.

State and local debt recorded a massive selloff in March but has since recovered after the Fed announced the program. Yields on one-year AAA-rated municipal debt have plunged to 0.06%.

There’s one big borrower that may be able to soon take advantage of the lower borrowing costs. New York’s Metropolitan Transportation Authority, facing a plunge in ridership and massive shortfall, may sell debt to the Federal Reserve as part of an upcoming bond-anticipation note sale, according to a Moody’s Investors Service report.

Bloomberg Markets

By Matthew Boesler and Amanda Albright

August 11, 2020, 2:01 PM PDT Updated on August 11, 2020, 2:53 PM PDT

[Federal Reserve Reduces Borrowing Costs for States, Municipalities.](#)

The Federal Reserve announced Tuesday that it is reducing borrowing costs by half of a percentage point for state and local governments that use its municipal liquidity facility.

Municipalities that want to borrow from the Fed will now need to pay between 1.0 and 5.4 percentage points above benchmark interest rates for loans of up to three years.

So far, the only state and local government that has used the facility is Illinois. The financially troubled state sold \$1.2 billion of debt to the Fed in June.

“Today’s changes will ensure the [municipal liquidity facility] continues to provide an effective backstop to assist U.S. states and local governments as they weather the pandemic,” the Fed said in its statement.

The Fed's move comes just as technical factors that have supported the market—notably, a wave of cash from investors reinvesting the principal of matured bonds—are expected to start waning. Supply is expected to pick up in coming weeks as well.

As a refresher, the Fed announced in April it would set up a special purpose vehicle to buy up to \$500 billion in municipal debt as part of its coronavirus relief efforts.

When it introduced the facility, the central bank said it would charge a “penalty rate” or spread over benchmark interest rates—unlike its corporate bond facilities.

Top-rated tax-exempt municipal debt often yields less than Treasuries, since Treasuries are taxable. For example, 10-year AAA-rated municipal bonds yielded 0.60% on Tuesday, while 10-year Treasuries closed with yields of 0.64%.

So the current costs of the Fed facility remain substantially higher than market rates. Three-year AAA-rated municipal bonds yielded 0.09% on Tuesday, according to Bloomberg data. The implied interest rate for a AAA-rated muni using the Fed's facilities—using benchmark interest rates in derivatives markets and the new pricing schedule—would be about 1.24%.

The Fed also reduced the size of the interest-rate adjustment for taxable municipal debt compared to tax-exempt debt.

Because of the onerous terms and high costs of the Fed's muni facility, strategists such as Citigroup's Vikram Rai have been calling for the central bank to provide more support. The iShares National Muni Bond Exchange-Traded Fund (MUB) is up 2.8% so far this year, while the iShares iBoxx \$ Investment Grade Corporate Bond ETF (LQD) is up 7.5%. (To compare, the S&P 500 is up 3.2% year to date.)

Still, considering the concerns about what the pandemic may do to state and local government budgets, the municipal bond market has posted decent returns this year. In a note from mid-July, Tom Kozlik, head of municipal strategy and credit at Hilltop Securities, attributed that performance to a widespread expectation that the Fed would eventually step in to expand its aid to muni markets.

“There has been extensive Federal Reserve support of other markets to date, and we do not think the support for municipals...comes close to what has been provided in those other cases,” he wrote. “More could and should be done by the U.S. Federal Reserve now to prepare for a municipal market dislocation from liquidity concerns or anxiety over credit. Investors could be assuming that because there is room for the Fed to act in support of the municipal market, that it could act, and make up ground in comparison to the support for other markets.”

Barron's

By Alexandra Scaggs

Aug. 11, 2020 6:45 pm ET

[S&P U.S. Not-For-Profit Acute Health Care Mid-Year Sector View: Recovery Continues, Likely Uneven For The Rest Of The Year](#)

Key Takeaways

- Ongoing, but slow recovery for hospitals and health care systems as COVID-19 surges may continue into fall;
- Revenues and expenses will likely be under longer-term pressure while reserves may tread in place, at best, or possibly decline;
- The credit quality gap may widen and the stronger credits will likely be better positioned when COVID-19 subsides;
COVID-19 will exacerbate existing pressures on the industry, and could further accelerate the pace of change.

[Continue reading.](#)

13 Aug, 2020

Fitch US NFP Hospitals' Stable Rating Outlook Unchanged, Sector Outlook Negative.

Fitch Ratings-New York-13 August 2020: The Rating Outlook for US not-for-profit (NFP) hospitals and healthcare systems is expected to be Stable for the remainder of the year, Fitch Ratings says. We maintained our Stable Rating Outlook for the sector but revised the Sector Outlook to Negative in March as the pandemic began to disrupt operations for healthcare providers. Reviews of NFP hospital and healthcare system issuers from March 15 through July 31 have resulted in downward rating actions, 10% of which were downgrades, and 3% were affirmations with an Outlook revision to Negative from Stable or Stable from Positive.

[Continue reading.](#)

Facing Pandemic Squeeze, Universities Hit Bond Markets for Cheap Cash

Universities, waiting to see how hard the coronavirus pandemic will hit overseas enrollments and government grants, have gone on a borrowing spree in the bond markets this year that outpaces a rise in companies' bond sales.

The COVID-19 crisis is threatening to redefine higher education around the world, with students sent home and classes moved online. But the economic fallout will also hit universities' finances as tuition fees, especially from overseas students, is likely to fall while funding from governments could also be hit.

Yet that has not stopped investors from lending to universities at record-low rates. And the institutions have rushed to capitalise on the availability of cheap funding.

Bond issuance by universities is only a tiny part of the global bond market, but sales by universities worldwide are more than double full-year 2019 levels at \$11.4 billion in the year to date, Dealogic data shows.

In comparison, global debt issuance by companies is at around 75% of 2019 volumes, based on Dealogic data.

Graphic: Global bond sales by universities and colleges in 2020

<https://fingfx.thomsonreuters.com/gfx/mkt/oakpemplzmp/1zD41-global-bond-sales-by-universities-and-colleges-in-2020.png>

“We’re seeing a lot of what we call pull-forward issuance,” as universities brace for another lockdown in autumn, said Fitch analyst Emily Wadwhani, who specialises in higher education finance.

Among those to issue was the AAA-rated University of Virginia, which raised \$600 million in July to fund projects such as new dormitories. It paid a 2.256% yield, the lowest ever for a 30-year “taxable” university issue.

Taxable corporate debt attracts a broader investor pool than municipal bonds, another source of funding for U.S. universities.

“The market was incredibly advantageous. We have both (current and future) capital needs, but we also thought that given the opportunity to go into the market, we could advance fund,” J.J. Davis, chief operating officer at the University of Virginia, said.

“At these rates, why wouldn’t you?”

While U.S. universities accounted for 24 deals in the year-to-date, based on Dealogic data, institutions from Canada, Brazil, Singapore and Australia also sold bonds.

The market in publicly disclosed university bonds is about \$50 billion-plus, according to Dealogic.

Of this, \$36.3 billion is from U.S. universities, which typically get a lower level of state support compared with European peers.

Existing university issues, especially from top-tier names such as Oxford and MIT, have shared in this year’s broader bond market rally. Yields on the S&P Municipal Bond Higher Education Index have fallen to 2.7%, near record lows.

‘HAVES AND HAVE-NOTS’

The coronavirus crisis may widen the gap between top-tier universities and lesser-known ones. This year’s borrowers mostly comprise top-rated names such as Virginia, Harvard and Stanford.

“The market is starting to distinguish between the haves and the have-nots,” said Cooper Howard, fixed income strategy director at Charles Schwab, which manages \$3.25 trillion of assets.

Credit rating agency Moody’s said in March in a report on U.S. higher education that the outlook for the U.S. education sector was changing to negative from stable.

“For fiscal 2021, universities face unprecedented enrollment uncertainty, risks to multiple revenue streams, and potential material erosion in their balance sheets.”

Even university issuers with high credit ratings have had to show investors how they will tackle the pandemic hit.

“(Issuers) have done a ton of work around stress-scenario analysis,” a U.S. banker involved in some of the deals said.

He said 30-40 universities with lower credit ratings were waiting for clarity on admissions and

tuition fees before issuing debt.

British universities, already facing an added Brexit complication, have been absent from fundraising via the bond market this year, though they often favour hard-to-track private placements.

Dialogue around bond financing fell away amid spring uncertainty, said Fraser Dixon, JPMorgan's head of UK and Ireland debt capital markets, who arranged Oxford's debut bond deal in 2017.

Financial pressures are increasing. A report from the University and College Union - the union for university staff in Britain - predicted British universities will lose 2.5 billion pounds next year in tuition fees alone.

And in the United States, student enrolments will decline by 5-20% this year, Fitch predicted.

"It's certainly difficult to judge what the university experience might look like in the future," JPM's Dixon said.

By Reuters

Aug. 11, 2020

(Reporting by Yoruk Bahceli; editing by Sujata Rao and Jane Merriman)

[University of California Receives \\$2.65B from State Treasury Sale of Bonds.](#)

The University of California system received \$2.65 billion from a California state sale of revenue bonds which will help finance projects across UC campuses.

Revenue bonds are a type of municipal bond, which function like loans and are sold to fund projects. Revenue from the project is used to repay the investors who bought the bonds.

California State Treasurer Fiona Ma sold revenue bonds to third-party investors to help the UC fund or refinance different projects, according to a press release from the California Treasury. About \$1.15 billion will be spent on campus projects and another \$1.5 billion will be used for "working capital," according to the press release. Working capital includes funding for the UC regents' financial assets and capital needs like equipment, according to a UC Office of the President financial policy document.

The UC will use the money from these bonds to fund more than 50 construction projects at all 10 UC campuses and the UC Agriculture and Natural Resources Research and Extension Center, which include maintenance and seismic upgrades for new buildings, UC spokesperson Sarah McBride said in an emailed statement.

Some money from the bond designated for construction projects will go toward earthquake safety improvements for Franz Hall, McBride added. The UC rated Franz Hall as a Level V risk, according to a 2016 document from the UC regents, meaning it posed a "serious" risk to life in the event of an earthquake.

Dana Cuff, a professor of architecture, urban planning and urban design at the School of the Arts and Architecture and Luskin School of Public Affairs, said using the bonds for seismic work on Franz Hall is a wise investment.

“Doing seismic work is always money well spent,” Cuff said. “We just had an earthquake (11) days ago, and there’s no indication that the so-called ‘big one’ is any less likely than before.”

The United States Geological Survey recorded a 4.2 magnitude earthquake originating in the San Fernando Valley on July 30.

The 1971 Sylmar earthquake in the San Fernando Valley was a turning point for many seismic standards, Cuff said. Therefore, buildings constructed before then are sometimes not up to standard, she added.

Cuff said the John Wooden Center may also require seismic upgrades. Since there are three or four pieces of the building that were constructed at different times, they would all need different types of seismic improvements, she said.

Usually, a campus architect is responsible for ensuring the safety of campus buildings but after the previous campus architect, Jeff Averill, passed away in 2017, and UCLA has not filled the role, Cuff said.

Without a campus architect, no one is specifically designated with the responsibility of ensuring that UCLA’s buildings are safe, even if UCLA Capital Programs may be keeping an eye on the campus’ buildings, Cuff said.

There are still a number of on-campus improvements that need to be made, said Sachi Cooper, the Undergraduate Student Association Council Facilities Commissioner, in an emailed statement.

FAC is working to fund a redesign of the UCLA Center for Accessible Education to improve accessibility and increase space for programming, Cooper said. They are also working on establishing safe parking and temporary housing for students experiencing homelessness, she said.

Cooper added FAC also advocates for more lights around campus, increased transportation from the residential buildings and campus to Westwood and greater accessibility on campus as a whole because of infrastructural problems like broken elevators and a lack of ramps.

Since many students and faculty won’t return to campus during the upcoming school year, now is an opportune time to do as many facilities improvements as possible, Cuff said.

“We already have so many hits against us as a campus with COVID-19 and our new attention to antiracist policies,” Cuff said. “We should be doing everything we can to make student, staff and faculty experience not only safer, but better.”

The Daily Bruin

By Alexis Duke and Vivian Xu

Aug. 10, 2020 2:54 p.m.

[Fortress Debt Sale for Vegas Train Sees Bond Market Skeptics.](#)

- **Nuveen’s Miller says focus should be on inaugural line first**
- **Brightline has October deadline to attract municipal investors**

During the municipal-debt market's pre-pandemic boom days, investors poured almost \$2 billion into America's first new privately financed intercity passenger rail in a century, allowing Fortress Investment Group to expand its unprofitable line to Orlando.

Now Fortress is back, seeking \$4.2 billion more to build a new railroad to Las Vegas from a desert town near Victorville, California, about 90 miles (145 kilometers) outside Los Angeles. But even the investor who bought about 80% of the previous deal said the company should focus on improving its inaugural train before trying to market the largest ever offering of unrated muni bonds as Covid-19 sidelines travelers.

"Before we even go down that path, let's get more detail and more accomplishment in Florida," said John Miller, head of municipal investments at Nuveen LLC, which holds about \$1.4 billion of the bonds sold for the project under the name of Virgin Trains USA. "And if that were to occur successfully, I think the whole marketplace would then be a lot more excited about Victorville to Vegas."

The massive offering will test the appetite for risky municipal securities in a market where investors are desperate for fatter returns amid historically low interest rates. And it comes as local governments face great economic uncertainty from the pandemic, as well as challenges for the train company as it navigates a contested breakup with Richard Branson's Virgin brand and tries to boost ridership.

"There's a lot of negatives," said Dan Solender, head of municipal debt at Lord, Abbett & Co., which runs a \$3.2 billion high-yield fund among its total \$29.5 billion in municipals under management. "You don't know if there's really a demand for this type of thing. The history in Florida is not very good right now for how that's going."

Last year, 1 million passengers rode the Florida railroad, half the number estimated. In addition, the system was supposed to earn \$37 of total revenue per passenger in 2019; instead, it was an average of about \$22.

The company, which is now calling itself Brightline Trains LLC, is planning three more stations along the existing line besides building the extension to Orlando's airport. It's in talks with Walt Disney Parks and Resorts to put a stop at the Orlando attraction as well, and with Miami-Dade County for a new commuter rail service, according to regulatory filings. But its service has been suspended indefinitely since March 25 because of the pandemic.

The Las Vegas line, compared with the Florida one, requires much more buy-in from investors — and more of them. For the roughly \$5 billion project, \$3.25 billion in bonds will be issued through a California agency and \$950 million from a Nevada one, according to company statements. Fortress's contribution to the venture is about \$600 million, or about 12% of the capital structure, according to documents presented to Nevada's board of finance. In contrast, its investment in the Florida line was about 36%.

The California and Nevada debt will be sold as private activity bonds, which are meant for ventures for the public interest that are capped annually by the federal government. The decision by officials in California to spend that scarce low-cost financing resource on a train to shuttle tourists to casinos raised the ire of advocates who had pressed for all of the state's allocation to go toward alleviating California's housing crisis.

California set an Oct. 1 deadline for the bond sale. The company intends to market the bonds by the end of September, spokesman Ben Porritt said. He wouldn't say if the company would ask for

permission to put off the sale until next year. He also declined to comment on investor concerns about the project.

With a completed bond sale for the Las Vegas venture, combined with that for the Florida line, Brightline would account for about \$6 billion of high-yield debt in the municipal market. And that doesn't include another \$950 million the company could sell in additional borrowing for the Florida system because it has yet to convert the equivalent in variable-rate financing done in 2019 into long-term securities.

The thinly-traded Florida bonds haven't benefited as much from the rally in high-yield debt after the pandemic-triggered March rout. A 6.5% coupon security due in 2049 traded July 30 at an average price of 86 cents on the dollar, compared with about 104 cents in February, according to data compiled by Bloomberg.

Investors are wondering if holding that much long-term debt will pay off given trends that may diminish ridership, such as self-driving cars and increased online gaming.

"I do think there are some clear changes we're going to have with how people choose to interact with each other," said Terry Goode, a senior portfolio manager at Wells Capital Management, which holds \$2.3 billion in high-yield securities among its \$41 billion in municipal debt under management. "It's all going to boil down to whether people buy into train travel, and whether they feel like train travel from Victorville to Las Vegas, for whatever pricing, whether that makes sense."

Bloomberg Markets

By Romy Varghese

August 13, 2020, 4:00 AM PDT Updated on August 13, 2020, 7:39 AM PDT

[Goldman Sachs Dropped by NYC From Key Muni Underwriting Team.](#)

- **Goldman ranks 8th among U.S. municipal-bond underwriters**
- **Morgan Stanley was also left out of underwriting lineup**

New York City, among the biggest borrowers in the \$3.9 trillion U.S. municipal bond market, cut Goldman Sachs Group Inc. from the ranks of those who underwrite a big chunk of its debt.

The firm will no longer be part of the pool of underwriters that sell its senior general-obligation bonds and debt for the Transitional Finance Authority as a result of its periodic reshuffling of bankers, New York City said on Aug. 7. It wasn't immediately clear why the city made the change from Goldman.

While Goldman Sachs isn't a major banker to states and local governments when it comes to more mundane bond deals, the decision still means the firm will miss out on billions of dollars of bond sales over the next few years.

Such deals aren't a major focus of Goldman Sachs's municipal bond business. Instead, the bank focuses more on specialized deals like a \$1.1 billion issue of unrated bonds to finance American Dream, the long-stalled shopping and entertainment center in New Jersey's Meadowlands, as well as public utilities offerings by issuers like the Long Island Power Authority.

New York City last selected senior underwriters in 2016. The city judges investment banking proposals on criteria including deal execution and the quality of ideas and analysis pitched to city officials.

New York City, which had to close a \$8.3 billion budget deficit in the fiscal year that began July 1 as revenue plummeted and coronavirus related spending increased, plans to issue about \$39 billion of general-obligation bonds and Transitional Finance Authority debt in the next four fiscal years, according to the city's financial plan. The Transitional Finance Authority was created in 1997 to circumvent limits on New York City general-obligation bond sales and its debt is backed by the city's income tax, and if needed, its sales tax.

Goldman ranks 8th among muni bond underwriters this year, just below Piper Sandler & Co., a regional investment bank based in Minneapolis.

The underwriters were selected in a "competitive process" by the city's Office of Management and Budget and the Comptroller's Office, said Hazel Crampton-Hays, a spokesperson for Comptroller Scott Stringer.

"OMB and the Comptroller's Office determined that the interests of the City and its related issuers are best served by the announced underwriting assignments," Hays said.

Nicole Sharp, a spokesperson for Goldman Sachs, declined to comment. Laura Feyer, a spokesperson for New York City Mayor Bill de Blasio, said the city was confident the investment banks selected will help New York achieve its financing goals in support of funding critical infrastructure.

The city's senior GO and TFA bond managers include Bank of America Corp., Citigroup Inc., JPMorgan Chase & Co., Jefferies Financial Group Inc., Loop Capital Markets LLC, Samuel A. Ramirez & Co., Royal Bank of Canada, Siebert Williams Shank & Co., LLC and Wells Fargo & Co.

New York also selected Barclays Plc, Loop, Raymond James Financial Inc. and Siebert to serve as senior managers for bonds issued by the city's Municipal Water Finance Authority. Goldman can compete for a senior manager role on New York Water bond issues following deals managed by the four other firms, the city said in a statement.

One-third of GO and TFA senior bankers and 40% of New York Water's senior managers are minority and women-owned businesses, the city said.

Bloomberg Markets

By Martin Z Braun

August 10, 2020, 12:22 PM PDT Updated on August 10, 2020, 3:35 PM PDT

[LA Metro Prices Its Biggest Bond Deal Ever as Ridership Plunges.](#)

- **Authority is offering 10-year bonds at preliminary 0.79% yield**
- **Muni market favors highly-rated issuers in seeking tax havens**

The Los Angeles County Metropolitan Transportation Authority is seeing half the ridership it had a year ago because of the coronavirus pandemic, but that crisis isn't deterring its biggest bond deal

ever.

The agency known as Metro is selling about \$1.35 billion in tax-free revenue debt Tuesday to take advantage of historically low rates. Intervention by the Federal Reserve to prevent a liquidity crisis among municipalities has built up confidence among buyers, who are also favoring highly-rated issuers especially as they seek to shield income from taxes levied by California and other high-tax states.

“It’s a good time to enter the market,” said John Ceffalio, municipal credit research analyst at AllianceBernstein, which has about \$50 billion in municipal securities under management. “People are looking for high-quality paper, particularly high-quality California paper.”

Debt from California issuers is beating that of the overall market, returning 4.7% year-to-date compared with the market’s 4.34%, Bloomberg Barclays indexes show.

The agency is issuing the debt to refinance Transportation Infrastructure Finance and Innovation Act loans covering improvements and extensions to its rail system. Its construction projects continue despite the pandemic. The authority is offering \$1.35 billion of tax-exempt bonds for yields ranging from 0.14% to 1.36% on debt maturing from 2023 to 2037, according to a preliminary pricing wire viewed by Bloomberg.

“Based on what we have seen with other California offerings during the last month, we expect good investor reception,” Metro Treasurer Donna Mills said in a statement.

Metro isn’t the only transit system that’s coming to market during the pandemic. In May, New York’s Metropolitan Transportation Authority, the nation’s largest mass transit system, sold two bond offerings, and upsized both deals to meet buyer demand. The MTA, like Metro, is also struggling with declining ridership and falling revenue.

Operating buses, subways and rail, Metro spans 1,433 square miles in Los Angeles County, the nation’s most populous and also one hit hard by the coronavirus outbreak. Restrictions on economic activity first occurred in March and while some were rolled back, others were reimposed as cases rose.

In June, 14.3 million people rode the system, compared with 29.4 million in June 2019, Metro’s figures show. That month, collections of sales taxes used to back its bonds dropped 14% from the previous year, according to documents circulated to investors ahead of the sale. The agency said the sales tax receipts for the year ending in June may decline anywhere between 2% to 8% from the 2019 collections.

Still, even with the revenue drop, there will be more than enough to cover debt service, a factor in why the bonds carry a AA rating from S&P Global Ratings, the third-highest investment grade. The company has the rating on a negative outlook, however, as it does on other transit systems, because of the pandemic.

“Even if you were to have a hit worse than the last recession, bondholders would still be comfortable,” said Ceffalio, who said his firm is looking at the deal.

Bloomberg Markets

By Romy Varghese

August 11, 2020, 10:56 AM PDT

PUBLIC UTILITIES - FEDERAL

[SFPP, L.P. v. Federal Energy Regulatory Commission and United States of America](#)

United States Court of Appeals, District of Columbia Circuit - July 31, 2020 - F.3d - 2020 WL 4377850

Partnership oil pipeline filed tariff increases and, after Federal Energy Regulatory Commission (FERC) issued three orders, the Court of Appeals vacated the orders in part.

On remand, FERC issued two further orders that removed the income tax allowance, among other holdings. Pipeline and shippers petitioned for review.

The Court of Appeals held that:

- FERC's decision to remove income tax allowance was not arbitrary and capricious;
- Pipeline was not entitled to reopen administrative record;
- FERC decision to direct partnership oil pipeline to use its originally filed index rates was not arbitrary;
- FERC did not act contrary to law or arbitrarily and capriciously in permitting pipeline to remove deferred tax account from its cost of service; and
- FERC's decision to allow pipeline to recover litigation expenses through three-year surcharge was adequately explained and reasonable.

Federal Energy Regulatory Commission (FERC) reasonably identified double-recovery problem in granting both an income tax allowance and a discounted cash flow return on equity, and thus FERC's decision to remove income tax allowance for partnership oil pipeline was not arbitrary and capricious; FERC explained that granting an income tax allowance for investor-level taxes did not alter investor's discounted cash flow rate of return, but rather it only inflated pipeline's cost of service with tax costs already covered by that return.

Partnership oil pipeline was not entitled to reopen record at Federal Energy Regulatory Commission (FERC) regarding tariff dispute and FERC's decision to remove income tax allowance; even though other parties would not be precluded from arguing that their recovery of income tax allowance did not result in double-recovery of investors' income tax costs, pipeline had fully litigated issue at FERC and Court of Appeals, and FERC could deny pipeline another bite at the apple while leaving door open for others to argue issue on facts of their cases.

Federal Energy Regulatory Commission's (FERC) decision to direct partnership oil pipeline to use its originally filed index rates in its compliance filing, which calculated certain refunds, was not arbitrary; FERC explained that it would not permit refunds following a rate case that were based on index rates different from those previously filed by pipeline and accepted by FERC, cost-of-service litigation neither altered industry-wide annual inflationary changes justifying annual index changes nor addressed annual cost changes pipeline itself experienced, and allowing pipeline retroactive adjustment would have inoculated pipeline from risk of its chosen ratemaking strategy.

Federal Energy Regulatory Commission (FERC) did not act contrary to law or arbitrarily and capriciously in permitting partnership oil pipeline to remove deferred tax account from its cost of service; refunding tax account to ratepayers or continuing to remove it from rate base would have constituted impermissible retroactive ratemaking, as decision by FERC to return account to shippers would have as a necessary predicate a conclusion that account should not have been collected in the

first place, regardless of reason that account became overfunded.

Federal Energy Regulatory Commission's (FERC) decision to allow partnership oil pipeline to recover tariff litigation expenses through three-year surcharge was adequately explained and reasonable, despite contention that costs should have been spread over 11 years of litigation, where 85.9% of expenses were incurred over three-year period to which surcharge would apply.

TAX - ARIZONA

[State ex rel. Brnovich v. City of Phoenix](#)

Supreme Court of Arizona - August 3, 2020 - P.3d - 2020 WL 4431892

Attorney General brought special action seeking resolution of issue of whether ordinance imposing fees on commercial ground transportation providers who transported passengers to and from airport violated state constitution's prohibition on the imposition or increase of taxes or other transaction-based fees on services.

The Supreme Court held that:

- Fees imposed by ordinance were not transaction-based and thus did not violate constitutional prohibition on the imposition or increase of taxes or other transaction-based fees on services, and
- Statutory requirement for local government to post a bond, in a special action by Attorney General to determine whether a local law violates state law or constitution, was so incomplete and unintelligible as to be unenforceable.

Trip fees which ordinance imposed on commercial ground transportation providers who transported passengers to and from airport were not transaction-based and thus did not violate constitutional prohibition on the imposition or increase of taxes or other transaction-based fees on services; neither imposition of trip fee nor its amount depended on whether a passenger took a ride, cancelled it, or even paid for it, but rather, trip fees were based on providers' use of airport property in picking up and dropping off passengers at designated sites as recorded by technology-based trip-tracking or provider reports.

Statutory requirement for local government to post a bond, in a special action by Attorney General to determine whether a local law violates state law or constitution, was so incomplete and unintelligible as to be unenforceable, where neither statute nor legislative history clarified bond's purpose, conditions on which it was based, what would happen if no bond were posted, or what conditions were required to exonerate bond.

[Reminder: BLX/Orrick 2020 Post-Issuance Compliance Educational Webinar Series Begins 8/19](#)

BLX and Orrick are pleased to present a 2020 Post-Issuance Compliance Educational Webinar Series. This Series offers timely discussions of topics related to post-issuance compliance and securities law for the public finance and 501(c)(3) communities who borrow on a tax-exempt basis.

Our team strives to make the discussion of tedious tax laws understandable and relatable.

The Series consists of the following webinars:

1 - Post-Issuance Compliance Best Practices

August 19, 2020; 10 am PT / 1 pm ET (60 minutes)

Alan Bond - BLX Group

Richard Chirls - Orrick

Barbara Jane League - Orrick

Sandee Stallings - BLX Group

Post-issuance tax compliance continues to be a focus of the IRS. Developing a program founded on best practices related to policies and procedures, private business use ("PBU"), arbitrage rebate, and other areas will equip organizations with the tools to withstand IRS scrutiny in this area.

This webinar will review the components of an effective post-issuance tax compliance program and discuss the benefits of such a program. In addition, this webinar will include a discussion of the items that should be included in written post-issuance tax compliance policies, the evolving expectations of the IRS with respect to such policies, and what organizations should be doing to update and modify policies that they have previously adopted.

2 - Managing Private Business Use in Tax-Exempt Bond Financed Facilities

September 17, 2020; 10 am PT / 1 pm ET (60 minutes)

Alan Bond - BLX Group

Andrea Ball - Orrick

Ed Oswald - Orrick

The federal tax rules and regulations relating to private business use ("PBU") are complicated and can be difficult to understand. Complying with these rules relating to tax-exempt debt is critical to ensuring that the tax-exempt status of such debt is not compromised.

This webinar will provide a thorough review of the federal tax rules and tax-exempt bond regulations relating to PBU (and Unrelated Trade or Business Use for nonprofits), including certain safe harbors relating to management contracts and sponsored research agreements. The panelists will also discuss how funding a portion of a project with "qualified equity" will impact the calculation of PBU, and the exceptions available with respect to PBU. Understanding the relevant PBU restrictions and applicable exceptions will allow issuers and borrowers of tax-exempt bonds to make sound and prudent decisions about the activities occurring in their tax-exempt bond financed facilities.

3 - IRS Schedule K Reporting for Nonprofit Organizations

September 30, 2020; 10 am PT / 1 pm ET (60 minutes)

Alan Bond - BLX Group

Caleb Lansky - BLX Group

Aviva Roth - Orrick

Larry Sobel - Orrick

This webinar will provide a review of the 2019 IRS Schedule K with commentary on the information being requested on the form and on specific calculations required by nonprofit borrowers with respect to their outstanding tax-exempt bonds.

The panel will also discuss the relationship of certain questions on the form that may not be obvious to some and provide guidance with respect to answering specific questions. This webinar will allow 501(c)(3) organizations to more fully understand the information being provided to the IRS on an annual basis and why the information being requested is important to the IRS.

4 - Continuing Disclosure in an Uncertain Environment

October 13, 2020; 10 am PT / 1 pm ET (60 minutes)

Alan Bond - BLX Group
Jeff Higgins - BLX Group
Jenna Magan - Orrick

This webinar will provide an overview of recent events relating to SEC Rule 15c2-12, including the recent settlements by underwriters and issuers resulting from the Municipal Continuing Disclosure Cooperation Initiative ("MCDC"), what issuers and underwriters can learn from such SEC actions.

This webinar will equip participants with information to better comply with their ongoing continuing disclosure requirements in a post-MCDC environment.

BLX and Orrick professionals will lead the program and assist participants with understanding the IRS and SEC regulations and requirements relating to tax-exempt debt. For more information on Orrick, please [click here](#).

CPE will be provided. (Not eligible for MCLE Credit)

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Cynthia Sixtos
csixtos@blxgroup.com
or call 213-612-2207

[MSRB COVID-19 Rating Change Disclosure Report.](#)

COVID-19-related rating change disclosures continue to rise, now at their highest point in almost three months.

[Read the MSRB's new disclosure summary report.](#)

[Accounting and Financial Reporting for Leases - Session 1: GFOA Webinar](#)

August 21, 2020 | 2 p.m.-4 p.m. ET

[Click here](#) to learn more and to register.

[SIFMA Files Suit Seeking to Vacate SEC's Temporary Conditional Exemption for Municipal Advisors.](#)

Washington, D.C., August 14, 2020 - SIFMA today filed a suit seeking to vacate the Securities and Exchange Commission's Order Granting a Temporary Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors (TCE). The TCE permits registered municipal advisors to solicit banks, their wholly-owned subsidiaries that are engaged in commercial lending and financing activities, and credit unions in connection with direct placements of securities issued by their municipal issuer clients, without registering as broker-dealers.

The Commission described the TCE as a measure needed to provide relief to small issuers in light of the Covid-19 pandemic. Generally speaking, SIFMA applauds the SEC's and other regulators' ongoing efforts to proactively respond to pandemic-related interference with normal market operations. In this case, however, the purported need for the TCE is not supported by existing market data and creates a host of negative consequences for not only other market competitors but also issuers and investors alike.

"The TCE creates an uneven playing field that exclusively benefits municipal advisors at the expense of more regulated broker-dealers, and ultimately we believe at the expense of issuers and market transparency," said Kenneth E. Bentsen, Jr., president and CEO of SIFMA. "The SEC in effect suspended SEC regulatory requirements for one type of business entity, at the expense of another. Further, we believe the SEC failed to follow the proper procedure by taking such sweeping action absent a formal rulemaking with notice and comment, along with a genuine cost benefit analysis."

The SEC has suggested for some time that it would consider taking this type of action and SIFMA has repeatedly argued that the Commission must go through a formal rulemaking process involving notice and comment and rigorous cost benefit analysis, where SIFMA believes the proposal would fail. Instead, the Commission chose to assert its exemptive powers to cure a perceived emergency in the small-issue municipal market, which is not supported by existing market data. The Commission's claim is not supported by the facts, and even if it were, such circumstances would not justify eliminating substantive issuer and investor protections.

The Commission's action has a detrimental impact on investors and the municipal market by eliminating investor protections and critical reporting requirements. In addition, there is no evidence the TCE creates cost savings for municipal issuers by lowering fees or by creating additional market liquidity. The only parties benefiting from the TCE are municipal advisors who are now incentivized to advise clients to engage in transactions that fit within the parameters of the TCE. As a result, the investor protections and stringent reporting requirements under MSRB rules and Exchange Act Rule 15c2-12 that apply when a broker-dealer is involved do not apply to municipal advisors under the TCE. The resulting lack of transparency could have broad and detrimental effects on issuers, investors and the municipal markets.

The SEC did not adequately justify why it is "consistent with the public interest and protection of investors" for municipal advisors to engage in broker-dealer activity pursuant to the terms of the TCE without the protections afforded to investors when a registered broker-dealer is engaged.

"Through the TCE, the SEC allows municipal advisors to engage in broker-dealer activity without the attendant legal and regulatory requirements that apply when a broker-dealer is engaged. Broker-dealer transaction reporting requirements provide critical market data and transparency to the municipal securities market. These reporting requirements, along with other significant compliance obligations, are completely lacking when a municipal advisor acts pursuant to the TCE. There is also a risk of harm to issuers, as the TCE undermines the duty owed them by advisors, and the SEC has not provided any empirical evidence that issuers would benefit from the TCE as compared to the public market or direct placements solicited by broker-dealers," said Mr. Bentsen.

[**GASB Offers Grants for Research on Severe Financial Stress.**](#)

[Read the Request for Research.](#)

[08/12/20]

[**N.J. Wins Ruling to Issue Up to \\$9.9 Billion Debt for Crisis.**](#)

- **Virus is 'emergency' giving governor power to sell the bonds**
- **Court does limit debt to size of budget gap as sale approaches**

Governor Phil Murphy can sell as much as \$9.9 billion in debt to plug a revenue hole from the coronavirus, New Jersey's highest court ruled amid a looming budget deadline and as states across the country grapple with their finances.

The decision by the New Jersey Supreme Court allows one of the most financially strapped U.S. states to increase bonded debt — long-term debt with payments made over decades — by 22%. New Jersey Republicans had challenged the bond sale, saying it violated the state's constitution by bypassing voters, while Murphy said the pandemic was a crisis that gave him the power to act.

"The pandemic has caused a health emergency, a broad-based economic one that has devastated many individuals and families, and a fiscal crisis for the state," Chief Justice Stuart Rabner wrote for the seven judges in Wednesday's unanimous decision. "The present 'emergency caused by disaster' extends to all three areas."

The court did limit the size of the offering to the budget gap, requiring New Jersey to certify its revenue projections and the size of the shortfall before the sale. Should the hole be \$7 billion, the state would be allowed to borrow only that amount. If it goes in the other direction, however, \$9.9 billion — the projected revenue shortfall the state treasurer reported in May — is still the limit.

The ruling comes as states across the U.S. are racing to figure out budget plans rendered useless when the pandemic forced an economic halt. The National Conference of State Legislators was tracking revenue declines due to the virus in at least 34 states as of last month, with some projections exceeding 20%. A fight over whether to send federal aid to states is among the issues that have stymied a broader stimulus bill in Congress.

“Our schools can be funded, our residents and communities can be protected and our state can move forward,” Murphy said at a news conference in Trenton. But New Jersey still will “need the federal government to step up and provide direct assistance to us and our fellow states,” he said.

New Jersey Republican Chairman Douglas Steinhardt tweeted out a different perspective.

One concern from an investor’s perspective is that New Jersey was already on a shaky budget footing before the pandemic upended its finances, said Howard Cure, head of municipal research at Evercore Wealth Management.

“The state doesn’t really have reserve funds, their pension is very underfunded, they were slow to get out of the last recession as well,” he said. “It’s a bad debt practice and budgeting practice to create a long-term liability to take care of a yearly operating expenditure.”

Still, Cure said, the debt will probably be well received by investors clamoring for yield.

“Rates are so low, for a little extra yield there could be some pretty strong demand for this,” he said.

Murphy, a first-term Democrat and retired Goldman Sachs Group Inc. senior director, has estimated a \$10.1 billion revenue shortfall in New Jersey through June 2021. He said that without the borrowing, state and local governments would have to dismiss at least half of their 400,000 public employees, including teachers and first responders.

If he can’t find enough revenue to pay off the bonds, Murphy said, he would raise sales and property taxes for homeowners, who already shoulder the nation’s highest such levies, averaging \$8,953 last year.

Murphy, who took office in January 2018, campaigned on a return to fiscal health for New Jersey, whose credit rating is second-worst among U.S. states, behind Illinois. New Jersey bonded debt was \$44.4 billion as of June 30, 2019, but the state since has added at least \$2.2 billion in borrowing. Non-bonded debt, including what’s owed for public pensions, amounts to at least \$200 billion, making the state among the country’s most indebted.

The New Jersey Republican State Committee, which brought the lawsuit, argued that under the state constitution, voters must approve such spending, and Murphy’s plan bypassed them. The committee cited a 2004 state Supreme Court decision that found then-Governor Jim McGreevey, a Democrat, had violated the constitution’s appropriations and debt-limitations clauses when he borrowed \$2 billion to balance a budget without going to voters.

Murphy argued that in this instance, voter approval wasn’t needed because the constitution gave him emergency borrowing power. In addition to issuing debt, Murphy has been counting on billions of dollars in far-from-certain federal grants toward budget aid while the state continues to reel from

the economic and health effects of the pandemic. Almost 16,000 New Jersey deaths have a lab-confirmed or probable link to Covid-19.

Murphy must present a fiscal 2021 budget to lawmakers by Aug. 25. The state lengthened the current fiscal year by three months, to Sept. 30, and shortened the next by three months to weather budget uncertainty as a result of the pandemic.

The case is New Jersey State Republican Committee et al v. Philip D. Murphy, Supreme Court of New Jersey, Docket M-1291, September Term 2019, 08471.

Bloomberg Politics

By Elise Young and Chris Dolmetsch

August 12, 2020, 9:05 AM PDT Updated on August 12, 2020, 11:41 AM PDT

— *With assistance by Danielle Moran*

[NJ Supreme Court Upholds COVID-19 Emergency Bond Act: Ballard Spahr](#)

The Supreme Court of the State of New Jersey upheld the New Jersey COVID-19 Emergency Bond Act (the Act), authorizing the State to issue up to \$9.9 billion in state borrowing either through general obligation bonds or short-term debt through the federal Municipal Liquidity Facility program to respond to the financial crisis caused by the COVID-19 pandemic. The court made the decision August 12, 2020, in [New Jersey Republican State Committee v. Philip D. Murphy](#).

The Act was signed into law by New Jersey Governor Phil Murphy on July 16, 2020. The New Jersey Republican State Committee filed suit against the Governor, arguing that the Act violated the Appropriations Clause and the Debt Limitation Clause of the Constitution of the State of New Jersey.

The appropriations clause requires the State to maintain a balanced budget each fiscal year and requires that all moneys for the support of State government and other State purposes be made in one general appropriation law each fiscal year. The debt limitation clause prohibits the State from creating debt that exceeds 1 percent of the total amount appropriated in the general appropriations law without voter approval. However, the debt limitation clause does not apply to any debt incurred “to meet an emergency caused by disaster.”

The Decision

Subject to the limits imposed by the court, the Act was upheld and found to be constitutional. In reaching this decision, the court addressed whether the act and any borrowing thereunder meets the emergency exception of the debt limitation clause. It was determined that (1) COVID-19 qualifies as a “disaster;” and (2) subject to certain limitations, the State may borrow money to meet the needs of the emergency (i.e. the State’s fiscal shortfall in revenue caused by the COVID-19 pandemic).

by the Public Finance Group

August 13, 2020

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[Municipal Bond Market Update - August Edition](#)

The incremental reopening of the economy and improving labor market conditions contributed positively to equity market performance in July, however the path of recovery remains uncertain and highly dependent on the course of the virus.

As the economy gradually reopens, state and local governments may see improvement in tax collections as workers continue to return to their jobs. The Bureau of Labor Statistics released its latest report on the state of the labor market on August 7. The unemployment rate declined to 10.2% in July, adding 1.8 million jobs to the economy. However, concerns of a second wave, coupled with a resurgence in infections in states such as Texas, Florida, Arizona, and California, may slow the pace of re-openings. As phase 4 stimulus negotiations continue, many municipal market participants have turned their attention to Washington. Investors are particularly interested in the potential state and local government aid that could be included in the next package. Sector-specific aid, such as education, transportation, and healthcare will be closely monitored as well.

[Continue reading.](#)

municipalbonds.com

by Corey Boller

Aug 10, 2020

[Why 2020 is Primed For Opportunity Zone Investments.](#)

OZs are an effective investment vehicle, especially in this precarious moment

Amid all the bad news, there may be one bright spot this summer (and beyond) for investors: Opportunity Zones. New deadlines, growing momentum, and various market factors will converge to make such investments — and the positive social impact they bring — more attractive than ever.

First, a new IRS deadline extension should help put 2019 capital gains to work this summer and the months that follow. Here's why: in normal times, regulations dictate that investors have 180 days from when capital gains are realized to invest them in a qualified opportunity fund (QOF); however, in response to the economic crisis, these regulations have been adjusted such that investors who realized capital gains on or after October 4, 2019 now have until the end of 2020 to invest in a QOF. This gives investors sorely needed time to make decisions and should ultimately prime OZs for the rest of the year.

The recent selloff in the stock market only adds to the dry powder on hand this summer. Coming off a strong bull run, COVID-19 incited some investors to sell stock and take (a potentially unplanned) recognition of capital gains. Investors with newfound liquidity might find OZs an appealing diversifier in a volatile environment.

But none of this would matter if OZs weren't such an effective investment vehicle, especially in this precarious moment. Their long-term nature (investors must hold onto assets for 10 years to realize their full benefit) provides ample time for projects to move through the downturn and appreciate before investors look to sell.

OZ investors today can also be confident knowing they're getting in at the start of a new real estate cycle, replete with lower labor, land and construction costs, and historically low-interest rates.

These factors, in tandem with the [growing momentum](#) of Q3 and Q4 OZ investments from 2019, have already borne fruit. QOFs have continued to make deals, close construction financing agreements and break ground on new developments. At least four new OZ developments have started construction since March in the D.C. area alone.

Most importantly, as the U.S. begins to emerge from the immediate aftermath of COVID-19 - and with protests continuing across the country - there will be an added focus on social impact and equitable recovery of our hardest-hit and historically underfunded communities. These priorities are shared by the OZ program, which aims to invest and uplift these very communities.

In this respect, we expect residential housing to [remain](#) the top investment area, be it affordable housing, apartment buildings in emerging regions, or multifamily housing serving a growing population. On the other hand, retail and hospitality may remain at higher risk, given the uncertainty of these industries' recoveries.

The coming wave of OZ investment will also underscore the need for specialty financial administration, [more transparency and better reporting](#). Now more than ever, new and existing investors will demand a quantitative measurement of their dollars' social impact, a clear picture of how many jobs it created, and whether it met affordability mandates. And with so much else in our lives still wracked with unknowns, they'll want to know that the QOF they choose fully understands the complex tax, accounting, and compliance nuances inherent in a specialty fund.

With all that said, one thing is clear: For those looking to escape the turbulent market for calmer waters - while contributing to the recovery of our hardest-hit communities - now may be the perfect time to check out Opportunity Zones.

Governor Gavin Newsom's [2019-2020 proposed budget](#) includes language which addresses the issue of federal conformity related to the Opportunity Zones, on page 94 of the budget summary: "The state will also make EIFDs a more attractive economic tool by pairing them with the federal Opportunity Zones program. To make Opportunity Zones more effective, the state will conform to federal law allowing for deferred and reduced taxes on capital gains in Opportunity Zones for investments in green technology or in affordable housing, and for exclusion of gains on such investments in Opportunity Zones held for 10 years or more.

californiaglobe.com

By Reid Thomas, July 31, 2020 10:45 am

[Can Opportunity Zones Recover from the COVID-19 Crisis? \(Episode #104\)](#)

Do Opportunity Zones have the potential to create a more optimistic and hopeful outlook, and to help build national recovery...

[HUD's Carson Provides Opportunity Zone Updates.](#)

The Mayor of Fort Myers, Florida said he is “encouraged” by results of the Opportunity Zone initiative for economically struggling neighborhoods in his city.

U.S. Housing and Urban Development Secretary Dr. Benjamin Carson, Chairman of the White House Opportunity and Revitalization Council, this week delivered an update on government-designated Opportunity Zones located in Fort Meyers Florida.

Carson visited Opportunity Zone neighborhoods in Fort Myers to view the progress made as a result of the 2017 Tax Cuts and Jobs Act, which created Opportunity Zones in the effort to stimulate long-term investments in low-income communities. Opportunity Zone plans are in place for communities in all 50 states this year.

“Today, I am encouraged by the force of positive change happening here in Fort Myers as a result of the Opportunity Zones initiative. I thank [Fort Myers] Mayor [Randy] Henderson and the local leadership for their determined partnership in ensuring economic growth and opportunity for all,” Carson said.

Henderson added that the Opportunity Zone initiative is an important program for the City of Fort Myers.

“Secretary Carson has championed attainable housing and public private partnerships that make it possible to attract investors, particularly in our Opportunity Zones.”

Housing advocates such as the National Association of Realtors (NAR) have expressed support for Opportunity Zones as a tool for building more housing in economically distressed areas.

On December 12, 2018, the White House established the Council to support the administration’s pledge to encourage public and private investment in urban and economically distressed areas, including Opportunity Zones.

Secretary Carson last month delivered the latest report outlining Opportunity Zone best practices and examples of revitalization occurring nationwide to President Donald Trump.

At that time, Carson reported, “There are inspiring stories happening in real time, with action being taken by State governments, local governments, Qualified Opportunity Funds, public-private partnerships, and others to spur revitalizing investments in the areas of most need. This report will prove to be especially helpful and encouraging to communities as they continue to admirably fight the invisible enemy known as COVID-19.”

dsnews.com

[Municipal Bond Investing In The COVID-19 Era.](#)

Summary

- This is a follow up to my first article on this topic published in April 2019.
- It gives some updated ideas when buying individual muni bonds and muni bond funds.
- Other considerations for bond investors.

[Continue reading.](#)

Seeking Alpha

Aug. 12, 2020

- [FINRA Issues Guidance to Help Firms Prepare for LIBOR Transition: McGuireWoods](#)
 - [Brace for More SEC Muni Advisor Antifraud Actions.](#)
 - [Why Federal Aid Remains a Tough Sell for States and Localities.](#)
 - [Bank of America Sees Dwindling Muni Yields Nearing Major Test.](#)
 - [Muni Yields Hit Lowest Since 1952 as Fiscal Crisis Tests a Haven.](#)
 - [San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego](#) - In reverse validation action brought by citizens' group alleging conflicts of interest, Court of Appeals holds that the prohibitions of section 526 denying taxpayers standing to enjoin the issuance, offer for sale or sale of municipal bonds extends to any action that would result in invalidating bonds, regardless of the form of the action or the particular remedy sought - in this case, disgorgement of profits.
 - And finally, Judge Dredd, Presiding is brought to us this week by [Hinterberger v. City of Indianapolis](#), in which the Court of Appeals began its opinion with, "Courts expect parties to know and follow local rules of practice. Failing to do so can prove fatal." Damn. Dismissed with prejudice. Extreme prejudice.
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BOND VALIDATION - CALIFORNIA

[San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego](#)

Court of Appeal, Fourth District, Division 1, California - June 30, 2020 - Not Reported in Cal.Rptr. - 2020 WL 3527338

On March 17, 2015, the City of San Diego and the Public Facilities Financing Authority issued 2015 Refunding Bonds.

On May 18, 2015, San Diegans for Open Government (SDOG) filed a reverse-validation complaint that challenged the validity of the Bonds based upon alleged conflicts of interest under section 1090. SDOG claimed that three financial institutions were hired for the Bond financing team, although those entities already acted as fiduciaries to the City on other financial matters, and the City would allow existing financial brokers to purchase the Bonds through a negotiated sale instead of through a public sale to the highest bidder.

As to standing, the Court of Appeals concluded that SDOG had standing under Government Code section 1092 (section 1092) to sue the city to invalidate the Bond Approvals and Bonds allegedly made in violation of section 1090.

The Supreme Court of California granted review and reversed the decision, holding that section

1092 did not provide plaintiff a private right of action because it was not a party to the contracts.

The Supreme Court remanded the case to decide what sort of relief SDOG was seeking and whether SDOG could proceed under section 526a or any other statutory provision.

The Bonds were issued and sold in May 2016. SDOG then stated that it no longer sought to enjoin issuance and sale of the Bonds, but sought instead disgorgement by the interested individual or individuals. The City responded that disgorgement would necessarily require voiding of the Bond Approvals and a declaration that the Bonds were void.

The Court of Appeals agreed, and concluded that SDOG had no standing to invalidate the Bond Approvals and Bonds. "In sum, when granting standing to taxpayers to challenge illegal or wasteful actions, the Legislature carved out an exception, choosing not to give taxpayers standing to enjoin the issuance, offer for sale or sale of municipal bonds. (§ 526a, subd. (b).) We conclude that this prohibition extends to any action that would result in invalidating bonds, regardless of the form of the action or the particular remedy sought."

The Court of Appeals held that, "A declaration that the Bond Approvals and Bonds were null and void is equivalent to a restraint on the issuance and sale on the bonds, because it would invalidate the municipal backing of the Bonds, their essential feature, and thus is barred by section 526, subdivision (b)."

EMINENT DOMAIN - GEORGIA

[Hardy v. United States](#)

United States Court of Appeals, Federal Circuit - July 15, 2020 - F.3d - 2020 WL 3980705

Owners of property adjacent to railroad corridor filed rails-to-trails class action against United States, claiming taking of their property without just compensation in violation of Fifth Amendment by Surface Transportation Board (STB) authorizing railbanking by conversion of railroad rights-of-way to recreational trails pursuant to National Trail Systems Act (Trails Act).

The Court of Federal Claims granted property owners' summary judgment motion, concluding that property owners had a cognizable property interest in the land at issue, and holding that issuance of applicable Notice of Interim Trail Use or Abandonment (NITU) effected a temporary taking of certain parcels along the railroad corridor. Government appealed.

The Court of Appeals held that:

- Under Georgia law, deeds reflected parties' apparent intent to convey easements, rather than land in fee simple, and
- Vacatur of Court of Federal Claims' decision and remand to trial court was warranted for further proceedings on questions of whether and when railroad would have abandoned portion of its rail line absent NITU.

Under Georgia law, deeds reflected parties' apparent intent to convey easements in the form of railroad rights of way, rather than a fee simple estate, and thus property owners had compensable property interests in land, where deeds consistently referred to property conveyed as a right of way, property owners received nominal consideration for interests conveyed, deeds did not fix acreage

subject to conveyance, instead describing the location and quantity of subject land by reference to railroad track, neither habendum clause nor warranty clause recited conveyance in fee simple, and word “forever” in habendum and warranty clauses merely described duration of conveyance.

Under Georgia law, deed, when considered in its entirety, reflected parties’ apparent intent to convey easement in the form of railroad right of way, rather than a fee simple estate, and thus property owner had a compensable property interest in land, although property owner received substantial consideration of \$150 for conveyance, where face of deed described conveyance as a right of way, county clerk’s office seemed to have recorded deed as a right of way deed, conveyance was expressly defined as “what is necessary for Railroad purposes for said Railroad as a right of way,” and amount of consideration was determined by a committee of arbiters selected to assess the damage sustained by property owner on account of right of way.

Under Georgia law, considered as a whole, deeds conveyed easements, rather than land in fee simple, to State Highway Department of Georgia to build state aid road, and thus property owners had compensable property interest in land, where deeds were titled “Right of Way Deed” and repeatedly referred to conveyance as a right of way, recited nominal consideration of one dollar, granted drainage rights, and some of deeds recited a reversionary interest, recitation of “in fee simple” in habendum clause modified, rather than superseded, conveyed premises and were descriptive of extent of duration of enjoyment of easement, and statute pursuant to which road was built recited no requirement that real property rights for such state aid roads be acquired in fee simple.

Briefing and argument before appellate court did not sufficiently focus on whether or when railroad would have abandoned its easements absent Notice of Interim Trail Use or Abandonment (NITU), thus warranting vacatur of Court of Federal Claims’ decision that issuance of NITU effected a physical taking of land, and remand to trial court for further proceedings on questions of whether and when railroad would have abandoned the portion of its rail line absent NITU.

DEVELOPMENT - INDIANA

[Hinterberger v. City of Indianapolis](#)

United States Court of Appeals, Seventh Circuit - July 15, 2020 - F.3d - 2020 WL 3980690

Real estate developer and his companies sued city and others under § 1983 and state law for alleged harms arising from failed mixed-use development project for which they were unable to obtain public funding.

City moved for summary judgment. After rejecting plaintiffs’ statement of facts for violating local rule governing summary judgment practice, the United States District Court for the Southern District of Indiana granted city’s motion and subsequently directed entry of partial final judgment as to city. Plaintiffs appealed.

The Court of Appeals held that:

- The district court did not abuse its discretion in striking plaintiffs’ statement of facts;
- Plaintiffs failed to establish their so-called class of one claim under the Equal Protection Clause of the Fourteenth Amendment; and
- Under Indiana law, plaintiffs failed to establish that city breached a nondisclosure agreement to which it was not a party.

District court did not abuse its discretion in striking statement of disputed material facts filed pursuant to local summary judgment rule by plaintiffs opposing summary judgment; although statement, which identified nine topical areas of allegedly disputed facts and from there explained those facts in paragraphs, looked to be compliant with local rule, statement misrepresented the evidence, contained inaccurate and misleading citations to the record, and presented improper and unsupported argument rather than materially disputed facts, and striking entire statement, rather than only the offending material, was not too harsh because requiring the district court to sift through improper denials and legal argument in search of a genuinely disputed fact would have defeated purpose of rule.

Real estate developer and his companies failed to establish so-called class of one claim brought against city under the Equal Protection Clause of the Fourteenth Amendment, arising from failed mixed-use development project for which they were unable to obtain public funding, absent evidence creating a trial issue on whether developer had been intentionally treated differently from others similarly situated when there was no rational basis for the difference in treatment, given city's un rebutted argument that it rationally treated other developers differently because they had better timing and met public-funding conditions.

Under Indiana law, real estate developer and his companies failed to establish claim against city for breach of nondisclosure agreement, signed by third party, to which city was not a party.

DEDICATION - MAINE

[Pilot Point, LLC v. Town of Cape Elizabeth](#)

Supreme Judicial Court of Maine - July 21, 2020 - A.3d - 2020 WL 4118660 - 2020 ME 100

Property owners brought declaratory judgment actions, alleging town's right to accept an incipient dedication of proposed, but unaccepted way, had lapsed, and even if it had not lapsed, that town's right was limited by the scope of the original dedication.

The Superior Court consolidated the complaints. On transfer, Business and Consumer Court conducted a bench trial, and entered judgment for town. Property owner appealed.

The Supreme Judicial Court held that:

- Town's recordation of statutorily authorized notice to extend its right to accept incipient dedication of way did not create property owner's cause of action alleging town's right to accept an incipient dedication had lapsed, or start the running of a the six-year limitations period for a civil action;
- The statute of limitations with regard to property owner's claim that town's right to accept the dedication had lapsed would not begin to run until such time as the town formally accepted the dedication;
- Town's recordation of statutorily authorized notice to extend its right to accept incipient dedication was sufficient to satisfy the statutory requirements and thereby prevent the deemed vacation of the proposed way at issue, and to extend the time within which the town could accept the way if it chose to do so;
- Trial court did not abuse its discretion by dismissing without prejudice property owner's claim that, even if town's right to accept the incipient dedication of a way had not lapsed, its right was limited by the scope of the original dedication;
- Evidence was insufficient to establish town's right to accept incipient dedication had lapsed at common law; and

- Trial court did not abuse its discretion in dismissing, as unripe for review, property owner's claim that, even if town's right to accept an incipient dedication had not lapsed, town's right was limited by the original dedication.

EMINENT DOMAIN - MICHIGAN

[Mays v. Governor of Michigan](#)

Supreme Court of Michigan - July 29, 2020 - N.W.2d - 2020 WL 4360845

Water users and property owners brought putative class action against State and former city emergency managers for their role in switching city's water supply that allegedly resulted in Legionella bacteria and toxic levels of iron and lead, claiming inverse condemnation and a violation of their right to bodily integrity under state constitution's due process clause, among other claims.

The Court of Claims granted partial summary disposition to State and managers on the other claims, but denied summary disposition on the inverse condemnation and bodily integrity claims. State appealed, and managers and users and owners filed cross-appeals. The Court of Appeals affirmed. State's and managers' applications for leave to appeal were granted.

The Supreme Court held that:

- Allegations were sufficient to state a claim for inverse condemnation;
- For an equally divided court, genuine issue of material fact precluded summary disposition on bases of lack of subject-matter jurisdiction and immunity;
- For an equally divided court, recognizable due-process claim for violation of right to bodily integrity was pled; and
- For an equally divided court, damages remedy was not precluded as possible remedy for due-process claim.

Property owners sufficiently alleged that State's and city emergency managers' actions in changing city's water supply were substantial cause of decline of their property's value, as required to state claim for inverse condemnation; owners alleged that switching water source resulted in physical damage to pipes, service lines, and water heaters, and owners alleged that, after water crisis became public knowledge, lenders were hesitant to authorize loans for purchase of realty within city and property values plummeted.

Property owners sufficiently alleged that State and city emergency managers abused their powers in affirmative actions directly aimed at property, as required to state claim for inverse condemnation, based on their actions in changing city's water supply that allegedly damaged pipes, service lines, and water heaters; State allegedly authorized managers to use different river as interim water source while State and managers knew that using river could result in harm to property, and State and managers allegedly concealed or misrepresented data and made false statements about safety of river water in attempt to downplay risk of its use and consumption.

Property owners alleged that they suffered unique or special injury different in kind, not simply in degree, from harm suffered by all persons similarly situated, as required to state claim for inverse condemnation, based on State's and city emergency managers' actions in changing city's water supply that allegedly damaged pipes, service lines, and water heaters; comparison group was municipal water users generally, not water users within city, and owners alleged that State authorized managers to use interim water source despite knowing potential harm, which was different from harms that municipal water users experienced generally, such as service disruptions

and externalities associated with construction.

Genuine issue of material fact as to when water users' and property owners' constitutional-tort claims accrued, for purposes of timeliness of statutory notice under Court of Claims Act (COCA), precluded summary disposition for State and city emergency managers based on lack of subject-matter jurisdiction and immunity.

Water users alleged state custom or policy so egregious that it shocked contemporary conscience, and thus users pled recognizable due-process claim under state constitution for violation of their right to bodily integrity against State and city emergency managers; users alleged that decision to switch city's water source resulted in nonconsensual entry of water contaminated with bacteria and toxic levels of lead in users' bodies, that State and managers knew that city's water-treatment system was inadequate, and that State and managers concealed scientific data and made misleading statements about safety of water.

Damages remedy was not precluded as possible remedy for water users' due-process claim under state constitution for violation of their right to bodily integrity against State and city emergency managers, arising out of decision to switch city's water source that led to water contaminated with bacteria and toxic levels of lead; even though due process protections were not as "clear-cut" as other specific protections, users' allegations established clear violation of state constitution, users had no alternative recourse in light of immunity, and alleged conduct, involving one of the most troublesome breaches of public trust in state's history with catastrophic consequences for health, well-being, and property, was shocking and outrageous.

PUBLIC HOUSING - MINNESOTA

[Fletcher Properties, Inc. v. City of Minneapolis](#)

Supreme Court of Minnesota - July 29, 2020 - N.W.2d - 2020 WL 4342651

Landlords brought constitutional challenge to ordinance prohibiting landlords from refusing to rent property to prospective tenants when that refusal was motivated by desire to avoid Section 8 requirements.

The District Court granted summary judgment to landlords. City appealed. The Court of Appeals reversed and remanded. Landlords sought review, which was granted.

The Supreme Court held that:

- Ordinance was reasonable means to achieve city's purposes of increasing housing opportunities for voucher holders, addressing discriminatory effects of housing denials, and prohibiting prejudice-based discrimination, supporting finding that ordinance satisfied rational basis standard as to due process claim;
- Unless a law that treats groups of people differently impacts fundamental rights or creates a suspect class, it does not violate the equal protection principle of the state constitution when it is a rational means of achieving a legislative body's legitimate policy goal; however, this rule is subject to an important exception, which is that under the equal protection guarantee of the state constitution, court holds lawmakers to a higher standard of evidence when a statutory classification demonstrably and adversely affects one race differently than other races, even if the lawmakers' purpose in enacting the law was not to affect any race differently; and
- Distinction created by ordinance between certain landlords was rational method to achieve

exemption's legislative purpose of administrative efficiency, and therefore ordinance did not violate equal protection guarantee.

EMINENT DOMAIN - NORTH DAKOTA

[City of Fargo v. Wieland](#)

Supreme Court of North Dakota - July 22, 2020 - N.W.2d - 2020 WL 4199567 - 2020 ND 170

City brought eminent domain action, seeking to acquire landowner's property for flood protection purposes.

The District Court granted partial summary judgment, concluding that permanent flood protection was public use authorized by law and that the taking of landowner's property was necessary to the use, and following a trial, jury awarded landowner \$850,000 as just compensation for the taking. Landowner appealed, and the Supreme Court affirmed. Landowner thereafter moved for payment of the original amended judgment that had been deposited by the city in court, plus any accrued post-judgment interest. The District Court denied post-judgment interest, and landowner appealed.

The Supreme Court held that:

- Supreme Court's prior affirmance did not preclude landowner's subsequent request for post-judgment interest;
- Statute allowing court to order possession upon deposit of full amount of judgment does not provide for the accrual of post-judgment interest subsequent to the deposit; and
- Statute regarding payment of money into court at risk of plaintiff does not require the accrual of interest on the post-judgment deposit of the full amount.

Under law of the case doctrine, Supreme Court's prior affirmance of judgment in eminent domain action without remand did not preclude landowner's subsequent request for post-judgment interest; Supreme Court recognized the open issue of whether a landowner who appeals an award in eminent domain proceedings, in lieu of accepting or withdrawing deposited funds, is entitled to the payment of post-judgment interest, and, at time of prior appeal, district court had not been asked to consider whether the accrual of post-judgment interest was authorized by statute.

Eminent domain statute allowing court to order possession upon deposit of full amount of judgment does not provide for the accrual of post-judgment interest subsequent to a deposit of the full amount of the judgment by the political subdivision.

Eminent domain statute regarding payment of money into court at risk of plaintiff, which allocates risk of loss to the political subdivision and provides that payment of money to court does not release the subdivision "from liability to keep the said fund full and without diminution," does not require the accrual of interest on the post-judgment deposit of the full amount of the judgment made by the political subdivision.

PUBLIC PENSIONS - PENNSYLVANIA

[Estate of Benyo v. Breidenbach](#)

Supreme Court of Pennsylvania - July 21, 2020 - A.3d - 2020 WL 4102382

Husband's estate, and husband's brother brought action against wife, alleging wife waived any right to husband's police-pension benefits.

Following a bench trial, the Court of Common Pleas entered judgment for husband's estate. Following wife's death, her estate appealed. The Superior Court affirmed. Wife appealed.

The Supreme Court held, in a matter of first impression, that statutes that governed disbursement of retirement allowances from police pensions did not prohibit enforcement of a property settlement agreement that directed wife to transfer those funds to husband's brother after wife received them.

Statutes that provided that retirement allowances from police pension funds shall be payable only to the designated beneficiary and not subject to assignment or transfer, and that pension benefits shall not be subject to attachment, execution, levy, garnishment, or other legal process, applied only to pension funds in the possession of the plan administrator, and thus, did not prohibit enforcement of a property settlement agreement that directed wife to transfer those funds to husband's brother after wife received them; when wife agreed to waive all rights, title, and interest in husband's police pension she made a legally enforceable bargain, concomitantly exposing herself to legal process if she refused to make good on her contractual obligations.

EMINENT DOMAIN - TEXAS

[Hlavinka v. HSC Pipeline Partnership, LLC](#)

Court of Appeals of Texas, Houston (1st Dist.) - June 18, 2020 - S.W.3d - 2020 WL 3393540

Pipeline system owner transporting polymer grade propylene initiated condemnation proceeding against landowner to obtain right to pipeline easement across landowner's four tracts of land.

Landowner filed plea to jurisdiction challenging pipeline's eminent domain power, arguing trial court did not have jurisdiction because pipeline was not a common carrier and therefore did not have authority to condemn property.

The County Court at Law No. 2 and Probate Court, Brazoria County granted pipeline's partial motion for summary judgment, denied landowner's plea to the jurisdiction, granted pipeline's motion to exclude landowner's testimony as to property valuation, and awarded landowner \$132,293.36 for condemnation. Landowner appealed.

The Court of Appeals held that:

- Pipeline transported oil product for purposes of statute providing independent grant of eminent domain authority to pipelines as common carriers;
- Reasonable probability test applied to determination of if, at some point after construction, pipeline would serve public;
- Genuine issue of material fact existed as to reasonable probability that pipeline would serve public rather than private interests;
- Existing easements over ten-foot tracts of land created well-defined separate economic units, and thus landowner could rely on per rod factor to determine value; and
- Landowner's valuation testimony as to land condemned for pipeline easement did not violate project-enhancement rule.

Pipeline transported oil product for purposes of statute providing independent grant of eminent domain authority to pipelines as common carriers, and thus trial court had jurisdiction to hear

pipeline's condemnation proceeding to acquire right to pipeline easement across landowner's property, where pipeline transported polymer grade propylene produced from refinery grade propylene and propane which were both components of, or derived from, crude petroleum.

Reasonable probability test applied in pipeline's condemnation proceeding seeking right to pipeline easement over landowner's property in order to transport polymer grade propylene oil product, to determination of if, at some point after construction, pipeline would serve public by transporting gas for one or more customers who would either retain ownership of gas or sell it to parties other than pipeline owner, and was thus a common carrier.

Genuine issue of material fact existed as to reasonable probability that pipeline system owner's proposed pipeline would serve the public rather than system owner's private interest in selling transported polymer grade propylene to single buyer, precluding summary judgment in pipeline's condemnation action seeking right to pipeline easement over landowner's property.

Genuine issue of material fact existed as to reasonable probability that pipeline system owner's proposed pipeline would serve the public rather than system owner's private interest in selling transported polymer grade propylene to single buyer, precluding summary judgment in pipeline's condemnation action seeking right to pipeline easement over landowner's property.

Existing easements over ten-foot tracts of land on landowner's property created well-defined separate economic units functionally separate from larger property, and thus landowner could rely on per rod factor to determine value of 30-foot-wide easement condemned by pipeline system owner, where landowner relied on additional information to support valuation opinion, including experience of neighboring property owners and his own experience with land agent for existing pipeline on property, market value of easement was influenced by other factors including type of easement and location of easement, and income derived from pipeline development far exceeded income derived from any other use of property.

Landowner's valuation testimony did not violate project-enhancement rule prohibiting factfinder from considering any enhancement to value of landowner's property that resulted from taking itself in assessing damages to be award for condemnation, where landowner established separate economic units already existed on land in ten-foot-wide tracts running parallel to other pipelines on property prior to pipeline system's condemnation, landowner defined parameters for existing pipeline easements that were different from condemnation project, and units were valuable as tracts for future pipeline development separate and apart from pipeline system project.

EMINENT DOMAIN - WYOMING

[EOG Resources, Inc. v. Floyd C. Reno & Sons, Inc.](#)

Supreme Court of Wyoming - July 23, 2020 - P.3d - 2020 WL 4218031 - 2020 WY 95

Oil and gas company filed complaint under the Wyoming Eminent Domain Act, seeking to condemn rights-of-way, easements, and surface use rights on approximately 2,100 acres of ranch owner's property, and, following hearing, amended complaint to seek only 70-acre pipeline easement.

The District Court dismissed the complaint for failure to comply with the Act's good-faith negotiation requirement, and company appealed.

The Supreme Court held that:

- Oil and gas company failed to satisfy good-faith negotiation requirement of the Eminent Domain Act, and
- Ranch owner was entitled to attorney's fees and costs incurred on appeal.

Oil and gas company failed to satisfy good-faith negotiation requirement of the Wyoming Eminent Domain Act, where company filed complaint seeking to condemn rights-of-way, easements, and surface use rights on approximately 2,100 acres of ranch property, but then, after hearing was continued on the complaint, amended the complaint and sought to condemn only a 70-acre pipeline easement, ranch owner could not have known that it had any option to accept the offer only as to those 70 acres, and company appeared uncertain as to what it was negotiating for, given its confusion concerning the extent of its rights under existing surface use agreement.

While the property sought to be condemned need not be identical to the property described in the offer in order to satisfy the good faith requirement in an eminent domain action, there must be a sufficient resemblance between the two to allow a court to conclude that the subject of the negotiation was clear to both parties and that the offer might have been accepted as it related to the property ultimately sought to be condemned.

Under the Eminent Domain Act, ranch owner was entitled to attorney's fees and costs incurred on appeal in light of determination that oil and gas company failed to negotiate in good faith prior to filing condemnation complaint.

Bank of America Sees Dwindling Muni Yields Nearing Major Test.

- **Analysts say 10-year yields of 0.5% an inflection point**
- **Market is dominated by cash from buy-and-hold investors**

The largest underwriter in the \$3.9 trillion municipal-bond market says the rally is about to face a crucial hurdle.

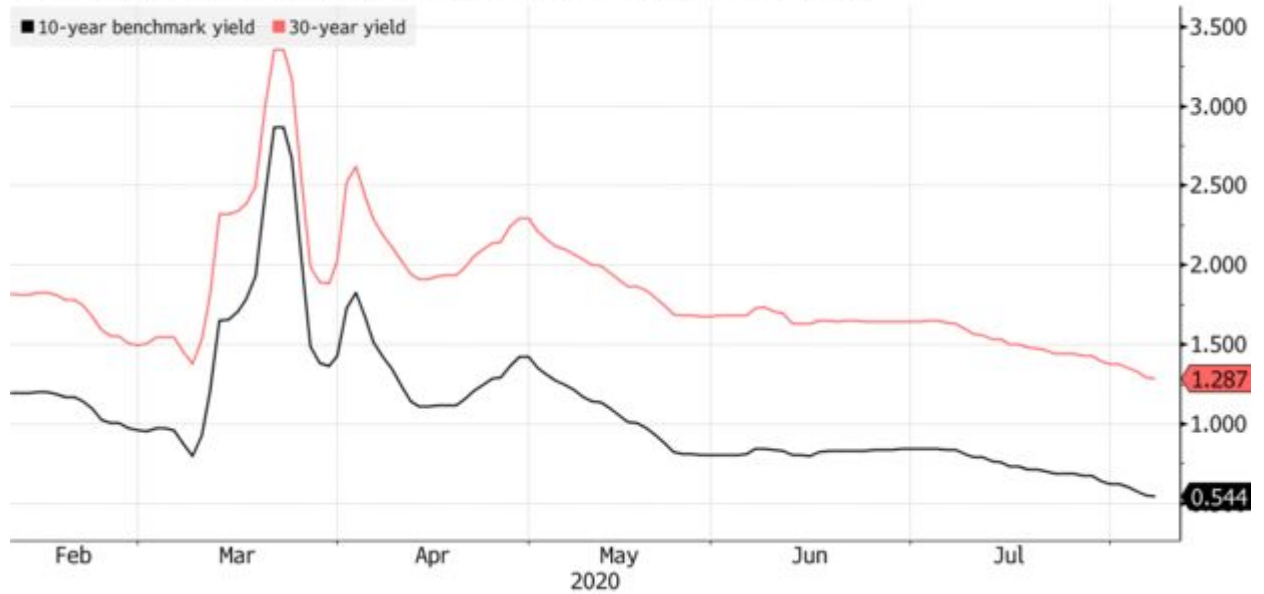
Bank of America Corp. analysts Yingchen Li and Ian Rogow said they're watching to see what happens if 10-year benchmark yields hit 0.5% — a threshold that may mark a test of whether investors continue stampeding into the market.

Such pricing milestones are often watched in other markets, from stocks to mortgages, as a sort of psychological test of whether investors will shift gear if prices seem to heady or payouts too low.

Prices in the state and local government bond market have rebounded sharply since March as investors poured billions of dollars back into mutual funds, sending yields tumbling to the lowest in decades. That's raised a question of whether the buy-and-hold investors who dominate the market will pull back if yields keep dropping, especially given the steady drumbeat of news about the financial hit the pandemic is dealing to states and cities.

Muni Market Test

Swiftly disappearing yields may provide a test for investors



Bloomberg's 10-year benchmark yield has slipped to 0.54%, the lowest since it was started in 2011 and near Bank of America's threshold.

"By the time it gets there, it may bounce back if there's not enough demand," Li said in a telephone interview. "If the demand for muni market is overwhelming, it will go right through it."

"It's eye catching," he said.

They said 30-year yields are already around such an inflection point, with the next test seen once it hits 1%.]

Bloomberg Markets

By Shruti Singh

August 7, 2020, 11:06 AM PDT

[Muni Yields Hit Lowest Since 1952 as Fiscal Crisis Tests a Haven.](#)

- **Budget crisis for states, cities seen worse than 2008**
- **'The market is very complacent,' Deutsche Bank's Pollack says**

America's municipal bondholders have never been paid so little for taking on so much risk.

The yields on state and local government bonds have steadily dwindled over the past month, even as the resurgent coronavirus pandemic is threatening to prolong the deep recession that's dealing a financial setback to borrowers in virtually every corner of the \$3.9 trillion market.

The oldest gauge of municipal yields, the Bond Buyer index of those on 20-year general-obligation bonds, now stands at 2.09%, the lowest since 1952. The Bloomberg 10-year benchmark slipped below 0.6% on Wednesday, the least since at least 2011. And MMD's measure of 30-year yields has

dropped to the lowest since it was started in 1982, according to Greg Saulnier, a managing analyst at Refinitiv.

The disappearing yields aren't unique to the municipal market. With the Federal Reserve injecting cash into the financial markets to stoke the economy, those on corporate bonds, mortgages and U.S. Treasuries have tumbled, too.

But the drop in the municipal market is leaving investors receiving far less compensation than they did when the Fed cut rates near zero after the last recession, even though the current rout is projected to drive states and cities into what may be the biggest budget crisis in memory. Many bonds have been issued for ventures like hotels, stadiums, airports and public transit systems that are also highly sensitive to the downturn.

Yet investors appear to expect municipal bonds will continue to remain one of the world's safest investments, given how rare defaults are by governments that can raise taxes or by agencies seen as too vital to fail.

Moody's Investors Service said in a report last month that it didn't expect bonds that it rates to default in 2020 due to the pandemic, aside from the two small borrowers that had done so already. That suggests the lapses, at least for now, will be confined to riskier borrowers that forgo credit ratings to avoid the stigma of being labeled junk.

Gary Pollack, head of fixed income for private wealth management at Deutsche Bank, said investors' confidence reflects how municipalities have weathered crises like the last recession, when defaults and bankruptcies remained rare.

While municipal bonds recorded a loss of 2.5% in 2008, they rebounded with a nearly 13% gain in 2009, according to Bloomberg Barclays indexes.

"Having lived through the 2008 crisis, the market is more comfortable with muni credits in general," Pollack said.

Still, he thinks the pandemic may be tougher on municipal credits than the 2008 downturn was. "The market is very complacent, I would say, with how municipalities will get through this," he said.

Wall Street analysts have also been confident that Congress will extend large amounts of aid to states and cities, a prospect that's now uncertain in the face of opposition from President Donald Trump.

Some firms have started warning that the plan could fall short. Barclays Plc strategists said in a report on Tuesday that the package is likely to be \$1.5 trillion or less given the divisions between Democrats and Republicans, "which would leave state and local governments with less money than the market initially projected."

Bloomberg Markets

By Amanda Albright

August 5, 2020, 10:42 AM PDT

[Amendment Introduced in Senate to Expand Municipal Facility to Underwrite Credits that Incur a Loss.](#)

As the Senate continues to debate a potential stimulus package, Senate Banking Chairman Mike Crapo (R-SD) has introduced an amendment that would expand the Fed's authority granted in the CARES Act to allow the Municipal Liquidity Facility to underwrite credits that may incur losses, without expanding the list of eligible entities.

Text of the amendment can be viewed [here](#).

The amendment would alter the CARES Act by:

Clarification of 13(3) authorities under the CARES Act: clarifies that "the Secretary shall prioritize the provision of credit and liquidity to assist eligible businesses, States and municipalities, even if the Secretary estimates that such loans, loan guarantees, and other investments may incur losses."

The BDA will continue to provide updates on the potential stimulus package as they develop.

Bond Dealers of America

August 5, 2020

[DC Update: Muni Amendments Submitted for Senate Stimulus Package](#)

Today, Senators Roger Wicker (R-MS) and Debbie Stabenow (D-MI) introduced amendments to the HEALS Act that would fully restore advance refundings and create a new BABs program exempt from sequestration. **The Chamber still remains far from a deal with the House and Administration, with little progress made this week.**

- The Advance Refundings legislation can be viewed [here](#)
- The BABs legislation can be viewed [here](#)

****We continue to work with key Senate offices on inclusion of advance refundings and direct pay bonds as the Senate continues to deliberate a final package. While the introduction of amendments is a good sign, probability of passage and inclusion remain an uphill fight.**

Bond Dealers of America

August 7, 2020

[Why Federal Aid Remains a Tough Sell for States and Localities.](#)

President Trump remains opposed to a bailout for "poorly run states." The administration may end up agreeing to help, but warnings about dire spending cuts have not yet prompted action.

President Trump is not sold on the idea of helping states, cities and counties. In recent days,

administration officials negotiating with congressional Democrats have apparently agreed to offer as much as \$150 billion in state and local aid as part of the next coronavirus relief bill, but the president himself says it would be a bad idea to bail out “poorly run states.”

“We can’t go along with the bailout money,” Trump said during a White House news conference on Wednesday. “We’re not going to go along with that, especially since it’s not COVID-related.”

Since the pandemic began, Republicans have been skeptical about federal aid for states and localities. In April, Senate Majority Leader Mitch McConnell floated the idea of letting states go bankrupt instead. The American Legislative Exchange Council has organized a letter-writing campaign among hundreds of legislators concerned about the federal deficit and other potential harms from a bailout.

The bipartisan associations that represent state and local officials assume that this has all been political posturing. Federal-level Republicans may not agree to the \$1 trillion in aid sought by congressional Democrats, but the expectation ever since the spring has been that eventually the two sides would meet halfway. That’s still not a bad bet.

Estimates vary, but states and localities may end up collectively falling about \$500 billion short of revenue projections over the next couple of fiscal years. A half-trillion dollars – the midpoint between the Democrats’ \$1 trillion and the GOP’s zero – would stave off major economic damage, says Dan White, director of government consulting at Moody’s Analytics, an economic research group.

“\$500 billion is not a bad place,” White says. “Quite frankly, I would be shocked if we don’t end up somewhere around this point.”

Economists almost universally agree that direct aid to states and localities is one of the best tools the federal government has at its disposal to avoid a weak recovery or a dip back into recession. States and localities employ about one out of seven American workers. Every federal dollar sent their way contributes at least \$1.30 to the economy.

“Federal aid to state and local governments has not been in question in prior recessions,” says Chris Hoene, executive director of the California Budget & Policy Center, a nonprofit watchdog group. “The surprise here is that there’s even a debate about whether there should be additional aid to state and local governments when there’s so clearly a need.”

States and localities have failed to convince their colleagues in Washington that they represent not just a good but necessary investment. Politically, they’ve presented a less sympathetic face than others seeking assistance, including schools, small businesses and unemployed individuals. Some of this may be due to “anti-government feeling,” says Laura Curran, the Nassau County, N.Y., executive.

“Numbers are important, but behind the numbers are actual people and actual services being provided to people,” she says. “What’s lost is the human element – the contact tracing and the ambulances and the medics and the EMTs and all of the first responders.”

Curran says she “shudders to think” what kind of cuts she’ll have to make if federal aid is ultimately denied. The longer the negotiations in Washington drag out, the more nervous state and local officials are getting. They know that their revenue pictures are only going to grow worse.

On Wednesday, Maine Gov. Janet Mills directed state agencies to come up with 10 percent budget reduction plans. That’s a lower percentage drop than some other governors are imposing.

“We’re expecting states to have to go back and make adjustments to their fiscal 2021 budgets,” says Brian Sigritz, director of state fiscal studies at the National Association of State Budget Officers. “We’re hearing that fiscal 2022 is likely to be as difficult, or more difficult, than 2021.”

Why Resistance Remains Strong

An earlier aid package enacted in March, the CARES Act, provided \$150 billion for state and local governments. McConnell and some other officials are unhappy that states and localities are asking for more money when they haven’t spent all of the CARES funding yet.

The Treasury Department has given states and localities some wiggle room, but there are still issues with how freely the CARES money can be spent. It was originally intended for expenses directly related to the coronavirus, not backfilling budget holes. For the most part, unspent sums are being held for anticipated expenses.

“That money is already spoken for,” says Tracy Gordon, a public finance expert at the Urban Institute. “You can’t spend the same dollar twice.”

There’s also a boy who cried wolf complaint. State and local revenues have yet to take a beating that’s been as serious as their initial fears. To a large extent, that’s because as late as July 15, they were still collecting taxes based on pre-pandemic income from 2019. Property taxes, of course, have not taken the kind of immediate hit that sales taxes have.

That doesn’t mean things won’t get worse. Tax revenues are always a lagging indicator, taking time to be affected as the economy slows. “I think the real pain you’re going to see in a lot of states is at the end of this year and the start of 2021, when you start seeing the income earned in 2020 reflected,” says White, the Moody’s analyst.

State and local officials are worried about the economy continuing to stall, or even reverse. The general economy has been propped up by the \$2 trillion CARES Act, but its extra money for unemployment benefits and small business aid has run dry.

“There’s this coming economic cliff that could have a huge impact on future revenue projections,” Hoene says.

Not Just Partisan Opposition

The question of aid for state and local governments has become a partisan question, with Democrats and Republicans by and large lined up on opposite sides. But there are other forms of political resistance making federal relief uncertain.

During the debate over stimulus back in 2009, members of Congress were reluctant to send money out to other levels of government to spend. It’s just human nature. No one likes handing over their checkbook for other people to spend money. “Members of Congress push back,” Gordon says. “We raise the revenue and governors get to spend it.”

In the end, state and local spending under the 2009 American Recovery and Reinvestment Act was closely monitored by the federal government. The feds set up a reporting system, with each state designating an official who participated in weekly calls with the Office of Management and Budget. President Barack Obama called Joe Biden, then his vice president and about to be anointed the Democratic nominee against Trump, as “the sheriff” overseeing the effort.

It may be more difficult to imagine such a cooperative effort taking place now. There have been

moments of overt hostility between Trump and various Democratic governors recently, with constant friction over the years - including numerous lawsuits - between blue states and the administration.

But if federal policymakers don't trust states and localities to spend the money wisely, they could send out money based on formulas - such as an increase in the Medicaid matching rate - while also demanding longer-term looks at issues such as pensions and "guardrails" against frivolous spending.

Counties are looking for help for the coronavirus response, not money to build new courthouses, says Boone County, Ky., Judge-Executive Gary Moore, the new president of the National Association of Counties (NACo).

"We hear the stories that local governments might actually increase their revenues over last year's budget," he says. "We're not advocating for that. We're advocating for oversight."

A Drag on the Economy

Rather than spending more, states and localities are looking at places they can cut. Most states had to draft budgets for the fiscal year that started July 1 without knowing what their 2019 income tax collections would look like or whether federal aid would be forthcoming. "Many are placeholder budgets, that explicitly say there's too much uncertainty, so we're going to pass a continuing resolution or include magic asterisks," says Gordon, of the Urban Institute.

The most prominent example of the latter is California. Its budget includes dramatic cuts that will occur automatically if \$14 billion in flexible federal aid is not forthcoming by Oct. 15. It's not clear what the cuts will look like if there's less federal aid than hoped for, but the scheduled cuts include \$7 billion from K-12 and higher education and \$2 billion from employee compensation, with smaller cuts to courts and the like.

California began the year expecting to run a \$7 billion surplus. Instead, it ended up facing a \$54 billion shortfall. In contrast to the president's complaints about mismanagement, the state entered the pandemic in sound financial shape. Its enacted budget includes \$9 billion drawn from reserves. "I would say that we certainly went into this recession, even as surprising and rapid as it came about, much better prepared than in prior recessions, particularly the Great Recession," Hoene says.

California's budget illustrates the kinds of cuts that will occur if federal aid is not provided to states and localities. Two-thirds of state and local budgets are spent on education, health and social services. To achieve substantial savings, that's what they'll have to cut.

Many of those programs are, in fact, federal programs that the states and localities carry out. The fact that governments act in many ways as pass-throughs makes them less sympathetic, politically, than stand-alone entities such as schools and hospitals. "People can visualize what it means, not having a teacher or not having police," Gordon says. "It's tangible. But state and local governments, they're just something in the background."

Sending aid to states and localities is a way to send money into every corner of the country. Failure to do so will not only hurt those governments, but the larger economy. The capital projects being put on hold all over mean vendors aren't being hired. "Yes, counties have their own employees, but typically private sector contractors are doing the job for us," says Matt Chase, NACo's executive director.

States and localities have shed 1.2 million jobs since February. Friday's job report showed some improvement, but absent federal aid, it could take years to recover those lost workers.

It's the lesson from the last recession that's potentially being forgotten, when state and local governments acted as a drag on the economy. Balanced budget requirements mean those governments, absent outside revenues, have to cut spending or increase taxes just at the time the economy is already hurting.

"They're actually amplifying the business cycle and making it worse," White says. "It's one of the significant reasons why the Great Recession was followed by the not-so-great recovery."

GOVERNING.COM

ALAN GREENBLATT, SENIOR STAFF WRITER | AUGUST 7, 2020

[**States Are Using Federal Fiscal Aid But Need Substantially More.**](#)

The Trump Administration and some news outlets are citing Treasury Department data showing that states had spent 25 percent of the CARES Act's Coronavirus Relief Fund (CRF) as of June 30 to argue that states don't need more fiscal aid to address their massive, pandemic-induced budget shortfalls. Policymakers shouldn't take this argument seriously, for three main reasons:

- **States have already allocated three-quarters of the CRF, a [survey by the National Association of Budget Officers](#) found.** This means they've committed those funds to health care providers, local governments, businesses, and others whose costs have risen due to the pandemic. Those entities are counting on the funds to reimburse costs they've already incurred or will soon incur. That's why the bipartisan National Conference of State Legislatures has expressed concern that the Treasury report "is not a complete picture of how states have budgeted money under the CRF."
- **Treasury's data cover less than half the time that states have to spend the CRF.** Recipients may spend the CRF to cover costs incurred to respond to COVID-19 from March 1 through December 30. Treasury's data cover spending for just four of those ten months, so it's no surprise that states haven't yet spent most of the funds. With the money meant to cover a ten-month period, it would be irresponsible for states to spend all or most of it in the first four months and then have none left to contain and respond to the virus and recession for the rest of the year.
- **Treasury's [confusing guidance](#) has hampered CRF recipients.** Treasury's confusing and contradictory guidance about the CRF's allowable uses, which it issued gradually over several weeks, slowed the process significantly as states, localities, and other governments tried to decipher it and sought further clarification. Most importantly, Treasury barred states from using the aid to offset the massive revenue losses from the pandemic and resulting economic downturn, which is the main cause of the fiscal crisis. Further, Treasury issued the guidance in fits and starts from late April (when states got their CRF allocations) through early July — the period covered by Treasury's data on CRF spending. The fact that states still managed to allocate and spend a significant share of the funds during this period highlights the urgency of their needs.

The reality is that states, localities, tribal nations, and U.S. territories need significantly more federal aid. The pandemic has caused their revenue to collapse, creating an extraordinary fiscal crisis. Based on past recessions and economic forecasts from the Federal Reserve and Congressional Budget Office, we project that states alone face shortfalls totaling about \$555 billion through fiscal year 2022.

States and localities already have furloughed or laid off some 1.5 million workers. Without

substantially more aid, they will permanently lay off more of these workers and cut other jobs for teachers, health care workers, and others — making the recession worse — and cut services that help people who've lost their jobs and others struggling due to the pandemic and its harmful impacts on families and communities.

Center on Budget and Policy Priorities

by Michael Leachman

AUGUST 3, 2020 AT 2:00 PM

[House Democrats Seek Better Rates on Loans to Cities and States.](#)

Rashida Tlaib, Alexandria Ocasio-Cortez and other House Democrats signed on to a letter urging the Federal Reserve to do more to support state and local governments, adding to criticism that the central bank is being too cautious in some of the programs it set up to help the economy during the pandemic.

“Our states and cities are already anticipating unprecedented and catastrophic budget shortfalls,” according to [the letter](#), shared with The New York Times ahead of its release on Thursday. It urges the Fed chair, Jerome H. Powell, to lower the rate charged on the loans the central bank makes to municipal bond holders to near-zero, while extending the debt payback period to at least five years.

The central bank is buying municipal bonds, something that Mr. Powell had long been wary of doing because he worried that it ran the risk of picking winners and losers. The Fed has restrained the pool of eligible borrowers and made the terms unattractive. Only Illinois has chosen to use the program to date, given its pricing.

The Fed generally charges relatively high rates in its emergency lending programs, because it tries not to compete with private capital. But the central bank's role has blurred during the coronavirus crisis. For example, it now buys corporate bonds and offers loans to midsize businesses, backed by Congressional funding provided to the Treasury Department to protect the Fed against losses. Those programs have been difficult to run as a backup option, and in some cases provide credit alongside the private market rather than as a last resort.

The Democrat's letter — led by Ms. Tlaib, Pramila Jayapal, Joe Neguse and Mark Pocan — argues that the central bank is offering friendlier loan terms to businesses than to state and local governments.

But it is difficult or impossible to make an apples-to-apples comparison between the terms of the corporate programs and the municipal facility, because the programs and the markets they aim to help are drastically different.

“The terms of borrowing are not particularly generous,” Charles Evans, the president of the Federal Reserve Bank of Chicago told reporters this week, referring to the municipal program. “It would make sense for a lot of state and local governments to be waiting until they see what the parameters of fiscal support actually are.”

Mr. Evans said that lowering the interest rate could be a “sensible thing to do,” but he noted that the programs were settled on in conjunction with the Treasury Department.

“Sometimes there are differences of perspective there,” he said. The Treasury has generally been more risk-averse than the Fed in creating emergency facilities.

The New York Times

By Jeanna Smialek

Aug. 6, 2020

Citigroup Suggests States Stoke Own Economies as Congress Flails.

- **Chance to seize on lowest interest rates in nearly 70 years**
- **Analysts suggests raising cash to soften hit on poor**

With congressional talks surrounding a stimulus program at an impasse, Citigroup Inc. suggests state and local governments should seize on rock-bottom interest rates to do it on their own.

Municipal strategists led by Vikram Rai, said that state and local governments should consider selling bonds to finance social projects like access to affordable housing, health care or low-cost utilities.

“The populations are hurting right now,” Rai said in an interview. “There has to be some level of state stimulus that should happen, given that there is a bottleneck with lawmakers in Congress.”

But that may be a hard sell in statehouses and city halls, where officials are facing unprecedented budget challenges as the coronavirus pandemic slashes their tax collections. Governors and mayors have been pleading with lawmakers in Washington for aid, though talks on another relief package so far have failed, and they would likely be hesitant to run up debt just as their finances crumble.

Still, municipal bond yields are at their lowest point in nearly 70 years. That’s providing an opportunity for state and local governments to tap markets at ultra-low borrowing costs, according to Citigroup, the second-biggest underwriter of municipal debt.

“There has never been a greater need to issue social bonds, and yields have never been lower,” Rai said. “They shouldn’t miss out on this window of opportunity.”

Bloomberg Economics

By Danielle Moran

August 7, 2020, 11:31 AM PDT

Fed’s Mester Says U.S. Economy Clearly Needs More Fiscal Support.

Cleveland Fed President Loretta Mester says it’s “clear that more fiscal support is needed to provide a bridge for households, small businesses, and state and local municipalities that have borne the brunt of the economic shutdown until the recovery is sustainably in place”

- “As the economy emerges from the reopening phase and moves into the recovery phase, the focus of Fed policy will expand from supporting market functioning and the flow of credit to ensuring that appropriate monetary policy accommodation remains in place to support the economy’s return to more normal levels of economic activity and employment and inflation’s moving back up,” Mester says Wednesday in remarks prepared for a virtual event
- “Although our policy rate is already at its effective lower bound, the tools that we used to support the recovery from the Great Recession, including forward guidance about the future path of policy and purchases of longer-term Treasuries and agency mortgage-backed securities, can be used to provide additional accommodation”: Mester
- “Clear communications about our policy strategy, which is part of our current review of our monetary policy framework, can also make the monetary policy actions we take more effective”
- “The increase in virus cases that we’ve seen in recent weeks has raised the downside risks to the outlook and is a stark reminder that there are several different scenarios that could play out”
- “Higher-frequency data and discussions with regional contacts do indicate that economic activity has slowed in recent weeks. Thus, the reopening phase may be more protracted than many had anticipated when it started”
- NOTE: Mester is a voter this year on the rate-setting FOMC

Bloomberg Economics

By Matthew Boesler

August 5, 2020, 2:00 PM PDT

[Fitch: US Sovereign Negative Outlook Reflects Pressures Shared by USPF Issuers](#)

Fitch Ratings-New York-05 August 2020: US Public Finance (USPF) ratings are broadly affected by the same macroeconomic factors that precipitated the recent Rating Outlook Revision to Negative from Stable for the United States Sovereign Rating, says Fitch Ratings. However, most USPF ratings are not directly tied to the US Sovereign Rating and will not be immediately affected by the change in the US Outlook. Fitch expects the economic shock brought on by the coronavirus pandemic, which led to the deepest post-war recession, to cause a significant drop in GDP, contracting by 5.6% in 2020 and recovering by 4% in 2021. Failure to contain the virus and renewed lockdowns remains a risk and would further weigh on unemployment, financial stability and growth potential.

Federal actions to curb the nation’s very high debt burden by curtailing spending might address Fitch’s primary concern about the sovereign rating but would create challenges for states and healthcare systems that rely on federal funding for certain programs. State spending tightening in response could, in turn, affect aid to local governments. Medicaid comprises a significant share of state spending, much of which is provided by federal funding. Not-for-profit healthcare institutions derive a large portion of their revenues from Medicare and Medicaid, and changes to these programs’ funding or rate setting can affect hospital budgets and ultimately ratings.

Public finance housing sectors have exposure to the potential delay or curtailment of federal funds such as US Department of Housing and Urban Development (HUD) rental housing or interest rate subsidies and capital grants, military housing payments, and Housing Finance Agency (HFA) mortgage insurance payments.

Fiscal challenges at the federal level could ultimately affect grant anticipation revenue vehicle (GARVEE) bond ratings, particularly if the Highway Trust Fund does not receive needed funding in September when the program is up for renewal. Ratings for standalone GARVEEs are derived in large part from the strength, stability and reliability of the programmatic framework of the federal surface transportation funding program.

USPF ratings are not capped by the US Sovereign Rating unless the repayment is tied to federal government agencies or instruments. The Rating Outlooks of a limited number of ratings with direct linkages to or dependence on the Sovereign Credit will be revised to Negative, unless there are mitigants that reduce US sovereign exposure. These are: 1) pre-refunded municipal bonds where escrowed funds deposited with a trustee to advance refund the bonds are invested in US government obligations. Ratings on these bonds depend on the rating assigned to those securities, which are generally US treasuries or other bonds directly guaranteed by a US federal agency; and 2) tax-exempt housing bonds currently rated 'AAA' and secured entirely, or predominately, by Fannie Mae and Freddie Mac mortgage-backed securities.

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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. All opinions expressed are those of Fitch Ratings.

[Fitch: Coronavirus Upending U.S. States' 2021 Budgets](#)

Related Fitch Ratings Content: [Pandemic Upends U.S. State 2021 Budgets \(Revenue Outlook Uncertain\)](#)

Fitch Ratings-London-05 August 2020: U.S. states are generally well positioned to address the economic and revenue volatility emerging from the coronavirus pandemic although the fiscal resilience they built following the Great Recession will be put to the test, according to Fitch Ratings in a new report.

State governments have seen a steep drop in state tax revenues since the onset of the pandemic a few months ago. And with the new fiscal year now in effect for 46 states, Fitch expects most, if not all, budgets will be substantially revised over the next several months, representing an unprecedented lack of clarity facing state fiscal managers.

“Many states are facing significant revenue gaps in fiscal 2021,” said Senior Director Karen Krop. “As a result, many states will need to take additional steps to achieve budgetary balance, which may include non-recurring actions and even deficit borrowing, which historically has rarely been used by states.”

Two states long on Fitch’s “States to Watch” list, Illinois and New Jersey, are both considering sizable deficit financing to address the fiscal implications of the downturn caused by the coronavirus. “Illinois’ adopted fiscal 2021 budget serves as a fiscal placeholder with answers to key questions around federal actions, state expense management and voter sentiment expected over the next several months,” said Krop. “New Jersey’s response to pandemic-related budgetary disruptions has been swift, although the outlines for the state’s budget through fiscal 2021 remain a work in progress.”

What has worked in states’ favor as a whole is that they took advantage of the long expansion after the Great Recession to build their fiscal resilience, bring structural balance to operations, add to reserves and reduce budgetary liabilities. Because of these actions, they are relatively well-positioned to address the current downturn. Additional federal aid could mitigate deep spending cuts or sharp revenue increases that could have material economic implications and prolong the recovery. That said, a pivotal factor over the next several months will be how long the fallout of the pandemic lasts with coronavirus outbreaks surging across much of the country.

“Pandemic Upends U.S. State 2021 Budgets” is available at ‘[fitchratings.com](https://www.fitchratings.com)’

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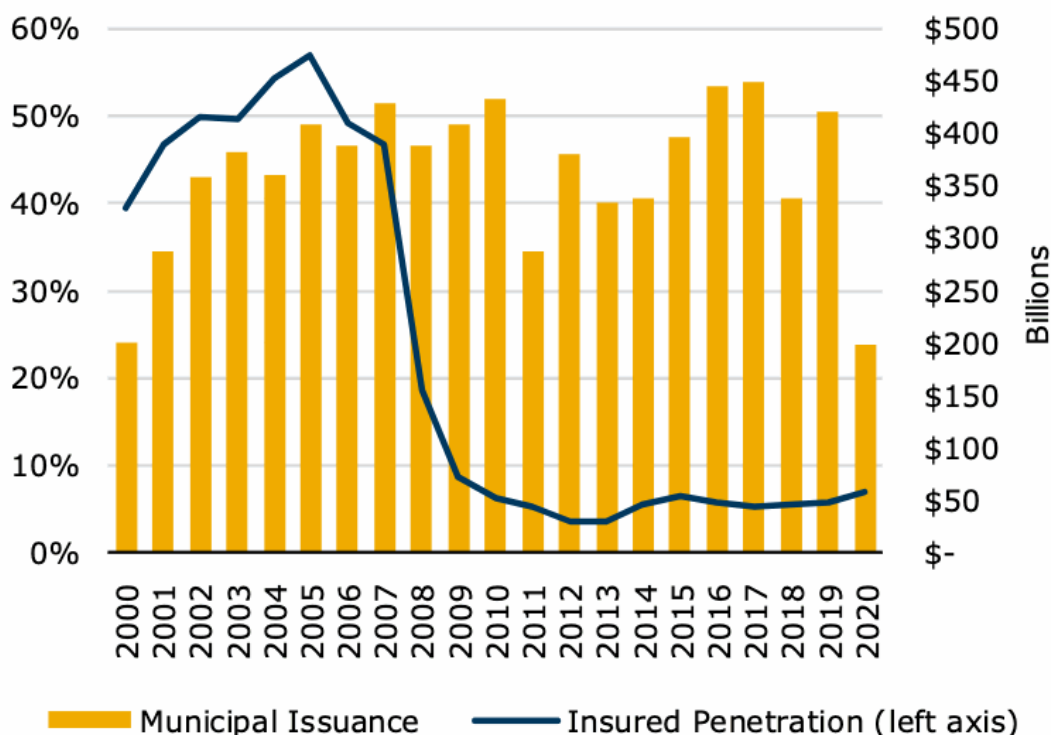
[COVID-19 Pandemic Fears Drove Market Demand for Bond Insurance: KBRA](#)

The COVID-19 pandemic has overturned global markets and impacted multiple bond sectors. One of the pandemic's many knock-on effects is a shift in investor appetite for insured debt.

US credit rating agency, Kroll Bond Rating Agency (KBRA), released research which highlights the shift in investor appetite for insured debt as one of the many knock-on effects of COVID-19.

The current environment may present financial guarantors an opportunity to grow their insured portfolios to replace legacy exposure run-off.

Figure 2: Insured Penetration and Municipal Issuance Since 2000 Through 1H 2020



Source: Refinitiv as accessed through Bondbuyer.com

It was recorded that bond insurance penetration spiked sharply up to 7% in the first half of 2020, a level which has not been seen since the global financial crisis. However, KBRA notes that insured penetration remains well below historical highs of over 50%, with a return to that level seen as unrealistic.

The underlying causes of the rise in demand are widening credit spreads as well as increased investor concerns across many sectors of public finance. This is where the impact of COVID-19 continues to cause extensive financial and economic stress for issuers and heightened uncertainty.

Whilst putting capital as a replacement for the run-off of legacy exposure is a long-term positive for the financial guaranty industry, such a development would need to be balanced by adherence to conservative underwriting standards.

Additionally, since the GFC, the emphasis on in-house credit analysis instead of relying solely on a financial guaranty policy, has raised.

A combination of low insurance penetration and steady run-off of legacy portfolios have led to historical lows in leverage ratios for financial guaranty insurers.

KBRA will continue to monitor the impact of the demand for bond insurance on the municipal market and on the financial guaranty industry.

KBRA

5th August 2020 - Author: Steve Evans

[KBRA Report Highlights Growth in Demand for Municipal Bond insurance: Report Notes Bond industry Insurance Penetration Spiked Sharply Higher in First Half of 2020](#)

HAMILTON, Bermuda-(BUSINESS WIRE)-Assured Guaranty Ltd. (NYSE:AGO) announced today that Kroll Bond Rating Agency (KBRA) issued a report published July 30, 2020 entitled "[Coronavirus \(COVID-19\): Pandemic Fears Spur Market Demand for Bond Insurance](#)".

"A main reason an issuer or investor may decide to 'wrap' a bond includes the benefit derived from lower interest cost coupled with improved liquidity and credit protection. These benefits are derived from the strength of the insurer's balance sheet behind each policy."

The report notes that "bond industry insurance penetration spiked sharply higher (nearly 7%) in the first half of 2020" due to widening credit spreads, increased investor concerns and heightened uncertainty for issuers.

Additionally, KBRA noted that "If the 1H level persists for the remainder of the year, it would be the highest level since 2009."

Kroll further added, "A main reason an issuer or investor may decide to 'wrap' a bond includes the benefit derived from lower interest cost coupled with improved liquidity and credit protection. These benefits are derived from the strength of the insurer's balance sheet behind each policy."

The KBRA report follows S&P Global Rating's (S&P's) report published April 3, 2020 where it, too, pointed out that "in the current macroeconomic environment, demand for the financial guarantee product appears to be growing in the U.S. public finance market."

During this challenging period for the U.S. economy, Assured Guaranty remains committed to its strict underwriting standards while continuing to help lower the cost of funding for municipalities and issuers, and providing enhanced security to investors.

In response to the report, Dominic Frederico, President and CEO of Assured Guaranty, said: "We are seeing significant increases in new business volume for Assured Guaranty in both primary and secondary public finance markets and increased municipal bond insurance penetration for the Company since the start of the COVID-19 pandemic. We will continue to work with issuers, municipalities and our investors on meeting their financing and investing needs through our insurance guarantee and strong capital adequacy."

August 04, 2020

S&P Global Ratings Definitions.

(Editor’s Note: We republished this article on Aug. 7, 2020, to add definitional content to it from various existing articles. See the media release “S&P Global Ratings Consolidates Various Articles Into Its Rating Definitions,” published on Aug. 7, 2020, for a list of these articles. Also, we replaced “exchange offer” with “debt restructuring” in various tables, added a clarification sentence to our description of long- and short-term issuer credit ratings in the “General-Purpose Credit Ratings” section, refined the definition of financial enhancement ratings, updated wording in the “Types Of Instruments Carrying The ‘sf’ Identifier” section, and made minor refinements.)

[Continue reading.](#)

R.J. Lehmann: Could ‘Advance Refunding’ Solve the Phase 4 Impasse?

With Treasury Secretary Steven Mnuchin setting a Friday deadline for negotiations between the White House and House Democrats over the fourth iteration of legislation to deal with the COVID-19 crisis, perhaps no disagreement between the sides is more intractable than aid to state and local governments.

While Democrats prescribed \$1 trillion of aid in the Phase 4 package they approved in May, Republicans initially insisted the only aid they would consider is to allow local governments discretion to use an existing \$150 billion coronavirus relief fund to cover operating expenses, which initially was prohibited. GOP negotiators reportedly have since upped the offer to \$200 billion of new aid.

Democrats point to the extraordinary financial strain the pandemic has placed on local governments, both on the revenue and outlay sides of the ledger. Republicans insist that taxpayers ought not be asked to bail out irresponsible state and local governments that had spent themselves to the brink of insolvency—particularly with ever-more-generous pension fund obligations—long before the virus arrived on these shores.

There is, however, a compromise approach that could begin to address the concerns both parties bring to the table, so long as negotiators are willing to be creative. If Congress were to revisit a change made in the 2017 tax reform bill, which removed the option to “advance refund” municipal bonds, they could make it easier for local governments to borrow without any bailouts.

The Tax Cuts and Jobs Act (TCJA) of 2017 eliminated an option state and local governments previously had to conduct a single advance refund of bond issues. Under an advance refund, a new bond is issued and its proceeds, which are withheld for more than 90 days, are used to pay off the obligations from an outstanding bond issue. It allows the governmental issuer to take advantage of lower interest rates.

While TCJA maintained muni bonds’ tax-free status, it declared the interest income from any advance refunding bonds issued since 2017 is taxable. There were \$91 billion of advance refunding bonds issued in that final year before tax reform took effect, representing nearly a quarter of the muni bond market. According to the National Governors Association, which strongly supports reinstating advance refunding, volume of the issues fell 30 percent from Q1 2017 to Q1 2018.

Losing the option to advance refund has combined with broader effects from TCJA, notably cutting corporate rates from 35 percent to 21 percent. On a relative basis, that makes munis' tax-exempt status less attractive, particularly to institutional buyers like banks and insurance companies. The natural effect, over time, is that muni bonds' yields would need to rise to remain competitive, thus contributing to the cost for state and local governments to borrow.

Reinstating advance refunding—as proposed by the Investing in Our Communities Act, bipartisan legislation introduced by U.S. Reps. Dutch Ruppersberger, D-Mary, and Steve Stivers, R-Ohio—would lessen the crush on state and local governments by making it easier and less costly to borrow. The Government Finance Officers Association reports that, between 2013 and 2017, advance refunding saved taxpayers a combined \$12 billion.

At the same time, reinstating the option would not change the fact that local governments need to demonstrate they have a path to repayment, which in many cases will mean cutting spending to present to the market that they are on a sustainable fiscal path. It is a potential win-win that ought to be on the table.

floridadaily.com

R.J. Lehmann is the director of finance, insurance and trade and a resident senior fellow at R Street.

08.06.20

[Brookings Institute Releases Infrastructure Stimulus Plan for the COVID-19 Recession.](#)

[Read the Report.](#)

Brookings Institute | Aug. 3

[College Towns Across the U.S. Are Bearing the Brunt of COVID-19.](#)

In the wake of COVID-19, California's largest higher public education institution, California State University (CSU), announced its plan to go completely virtual in the fall of 2020. This means that CSU's 23 campuses with eight off-campus centers, enrolling 484,300 students annually with 26,858 faculty members, will not be physically opening their doors in the fall for students. Along the same lines, the UC (University of California) system is also looking to follow suit and not allow students to physically attend classes at their 10 campuses throughout California serving over 285,000 students.

This may be bittersweet for prospective and current students, but financially speaking, the college campuses are facing huge financial challenges in the near future i.e., a shortfall in student housing revenue and other revenue streams.

In this article, we will explore the future of college towns and how they are likely to bear the brunt of financial challenges due to no students in their respective towns.

[Continue reading.](#)

municipalbonds.com

by Jayden Sangha

Aug 05, 2020

Fitch: Calif. Court Decision Maintains Pension Protections

Fitch Ratings-New York-05 August 2020: In a much-anticipated ruling last week, the California Supreme Court upheld a 2012 state pension reform provision that prevents pension “spiking” while simultaneously choosing not opining on, and therefore leaving in place, the “California rule,” a legal doctrine that sets a high bar for rolling back the pension benefit provisions of existing workers. The ruling has no impact on Fitch’s ratings on California state and local governments, as the 2012 reforms and limitations on changing benefits are already assumed in Fitch’s analysis.

Fitch views the court’s affirmation of the anti-spiking provision as a positive step toward eventually achieving the savings envisioned by the state’s comprehensive 2012 reform package. However, most of these savings will be limited and take decades to emerge. In the meantime, retaining the California rule leaves governments in California with little discretion to manage their pensions, and underscores that near-term funding trends will be driven by more immediate factors, including asset performance, actuarial and economic assumptions and the ability of participating governments to continue making rising contributions. Other cases challenging the California rule have been on hold awaiting last week’s decision. Since the court did not opine on the rule itself, the new ruling fails to offer a precedent for these other cases.

In *Alameda County Deputy Sheriff’s Association v. Alameda County Employees’ Retirement Association*, employees had sought to overturn the restriction on spiking, a practice that allowed excess compensation to be earned by employees nearing retirement in order to inflate future benefits. The restriction was adopted in 2012 as part of the Public Employees’ Pension Reform Act (PEPRA), the comprehensive pension reform law that broadly rolled back benefits for workers hired beginning on Jan. 1, 2013.

At the time of passage, PEPRA was anticipated to save \$42 billion to \$55 billion over 30 years just in the plans administered by the California Public Employees Retirement System (CalPERS); additional savings could be expected in the California State Teachers’ Retirement System, county systems operating under the County Employees’ Retirement Law (CERL) and the University of California Retirement System.

Most benefit changes in PEPRA pertained to new hires, although a handful of provisions affected existing workers, including the anti-spiking provision. Benefits for existing workers are protected under the California Rule, a legal interpretation of contract protections dating to a 1955 state Supreme Court case that limits the ability to modify pension benefit provisions of current workers, unless offset by other benefits of equal value. The impact is that governments subject to it can change benefits only for new hires, and therefore any savings from reform only accrue gradually over decades, as employee turnover shifts the workforce into the newer, lower benefits structure. Many other states have modeled their own contract protection of pensions on the California rule, although other states have adhered to somewhat less restrictive contract protections, including those that permit changes to benefits prior to vesting or changes to noncore benefits, such as cost-

of-living adjustments.

PEPRA is undoubtedly improving the sustainability of California's public pensions, as more of the workforce is covered under PEPRA benefit provisions and as the court affirms some of the minor reform provisions applicable to workers hired before 2013. The ruling last week held that closing the spiking loophole among county systems subject to CERL was within the powers of the legislature, without having to grant an offsetting benefit. It marks the top court's second decision in two years affirming specific PEPRA reforms while leaving the California Rule untouched. In March 2019, the ruling in *Cal Fire Local 4881 v. California Public Employees' Retirement System* preserved PEPRA's prohibition on "airtime", a practice whereby employees could buy additional years of retirement service credit.

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[Challenge to \\$14 Billion in Illinois Debt Revived.](#)

The decision is a victory for the head of a conservative think tank who had sued to block further payments on state debt sold in 2003 and 2017

An appeals court in Illinois has reinstated litigation seeking to block payments on \$14.3 billion in municipal debt, saying the attempt to restrain borrowing in the country's worst-rated state isn't frivolous or malicious.

The appellate court said John Tillman, chief executive of the right-leaning Illinois Policy Institute, had put forth a legitimate claim in support of his theory that past bond sales by the state were impermissible. The court stressed that it wasn't deciding the merits of Mr. Tillman's claims but said that the litigation could continue in a lower court.

The complaint accused Illinois of taking on more debt than its constitution allows and breaking a state rule prohibiting deficit financing with bond deals in 2003 and 2017. Some of those bonds raised money to prop up Illinois pension funds, while others funded back payments to stretched government vendors.

Mr. Tillman, a prominent foe of public-sector unions, argues Illinois is barred from taking out long-

term debt except for “specific purposes” or to refinance longer-term debt, while the state had instead borrowed to bridge deficits and to speculate on financial markets.

He has asked for a court order declaring the 2003 and 2014 debt sales invalid and unenforceable and prohibiting state officials from making further payments to bondholders.

A state judge dismissed the litigation last year, saying it risked “an unjustified interference with the application of public funds” and it would draw the courts into political questions that should be left to lawmakers.

Mr. Tillman’s challenge has drawn fierce responses from state officials, including Gov. J.B. Pritzker, a Democrat who was named as a defendant in the complaint and who has accused Mr. Tillman of a “pathological focus to drive Illinois into bankruptcy.”

A spokeswoman for Mr. Pritzker said, “This lawsuit continues to be a tired tactic of the extreme right who continue to push their ideology over sound fiscal policy. This administration will continue to focus on the important work of acting responsibly to keep the state on stable fiscal footing.”

Municipal bond-market investors including Nuveen Asset Management and AllianceBernstein LP have defended the state, saying the case had roiled the market for Illinois debt and cost them money.

While state and local governments nationwide are grappling with how to cover revenue gaps stemming from coronavirus restrictions, few are as strained as Illinois, which entered the pandemic with the worst credit rating of any state—just above junk status.

Financial instability at the municipal level has become a national political issue, with both President Trump and Senate Majority Leader Mitch McConnell (R., Ky.) questioning whether states should receive federal assistance during negotiations over stimulus legislation.

Mr. McConnell suggested in April that instead of coming up with a federal bailout for states, Congress should consider allowing them to use bankruptcy protection to cut their debts, an option they don’t currently have. Illinois was the first borrower to access the Federal Reserve’s municipal lending program earlier this year.

No U.S. state has failed to pay bondholders since Arkansas in 1933, although the island territory of Puerto Rico defaulted in 2016 and was later placed under a court-supervised bankruptcy.

The Wall Street Journal

By Andrew Scurria

Updated Aug. 6, 2020 7:21 pm ET

[Illinois Appeals Court Allows Constitutional Challenge to State's Bonds.](#)

CHICAGO, Aug 6 (Reuters) – An Illinois appeals court on Thursday gave the green light for a lawsuit to be filed challenging the constitutionality of \$16 billion of the state’s general obligation bonds.

The court reversed a Sangamon County judge’s ruling last year that blocked a so-called taxpayer lawsuit from being filed, calling it political in nature. The appeals court said it expresses no opinion

on the merits of the claims, but merely concluded the lawsuit should be permitted to be filed because it was not “frivolous or malicious.”

Illinois, the lowest-rated state at a notch above junk, pays the biggest yield penalty among states in the U.S. municipal bond market and an ensuing lawsuit is likely to pressure prices on its bonds.

In July 2019, John Tillman, CEO of the conservative Illinois Policy Institute, petitioned to file a taxpayer lawsuit against state officials to stop billions of dollars in future payments on the approximately \$14 billion of bonds, backed by the state’s full faith and credit pledge, that remained outstanding.

The petition claimed bonds Illinois sold in 2003 and 2017 violated the state constitution because the proceeds were not used to fund specific purposes like capital improvements. Illinois used proceeds from 2003’s \$10 billion bond sale for its underfunded retirement system, while money from \$6 billion of bonds sold in 2017 was used to pay overdue bills.

There was no immediate reaction to the ruling from state officials. Tillman said he looks forward to his day in court. “By continuing to issue debt in violation of the rule of law, state politicians in Illinois have harmed taxpayers and the poor and disadvantaged who depend on the delivery of government services,” he said in a statement.

(Reporting by Karen Pierog in Chicago Editing by Matthew Lewis)

[U.S. Lawmakers Seek Probe of Investment Firms' Dealings in Puerto Rico Debt.](#)

(Reuters) - Five members of U.S. Congress from New York said on Wednesday that several investment firms involved in Puerto Rico’s ongoing bankruptcy may have engaged in insider trading and urged the state attorney general to investigate.

In a letter to New York Attorney General Letitia James, the lawmakers cited allegations arising from the island’s bankruptcy litigation “that some hedge fund groups may have been engaging in insider trading and using the PROMESA restructuring process to artificially manipulate bond markets.”

Using the 2016 PROMESA Act, Puerto Rico’s federally created financial oversight board filed a form of municipal bankruptcy for the U.S. commonwealth in 2017 in an effort to restructure about \$120 billion of debt and obligations.

“Not only is this another example of deep pocketed interests profiteering off Puerto Ricans’ suffering, but these hedge funds may have also violated securities law,” U.S. Representative Nydia Velázquez, a New York Democrat, said in a statement.

The letter, which was also signed by Congress members Alexandria Ocasio-Cortez, Carolyn Maloney, José Serrano, and Adriano Espaillat, pointed out that the federal judge overseeing the bankruptcy ordered detailed disclosures from the Lawful Constitutional Debt Coalition (LCDC), whose members include Aristeia Capital LLC, Whitebox Advisors LLC, Taconic Capital Advisors LP, and GoldenTree Asset Management.

Those disclosures revealed that LCDC members “significantly increased their holdings of bonds they argued in court were of no value while engaging in confidential mediation talks about their

restructuring,” according to the letter.

Meanwhile, the bonds increased in value “and the restructuring plan revealed at the end of the mediation period increased their return.” The LCDC was part of a global settlement announced in February to restructure Puerto Rico’s core government debt.

“An investigation is needed to reveal whether some hedge funds may have made these trades with non-public information obtained through the mediation discussions, and without disclosing their true economic interests,” the letter said.

In a statement, the LCDC said its members “adhered to and respected all elements of the mediation protocol and trading restrictions during the period in which they were negotiating with the oversight board.”

“As creditors with long-term investments in Puerto Rico, our members have consistently engaged in a constructive, transparent manner with the oversight board to facilitate the commonwealth’s timely emergence from bankruptcy and economic recovery,” it added.

The individual firms listed in the letter did not immediately respond to requests for comment or deferred to the LCDC statement.

A spokesman for the New York Attorney General’s office said: “We’re reviewing the letter now, and will look further into this matter.” The oversight board declined to comment.

By Reuters

Aug. 5, 2020

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

[New York Lawmakers Seek Probe of Puerto Rico Bondholders.](#)

Reps. Alexandria Ocasio-Cortez, Nydia Velázquez are among those asking New York’s attorney general to investigate allegations that bondholders concealed interests

Five New York-based members of Congress are asking their state’s attorney general to probe whether investment firms that own billions of dollars in Puerto Rico bonds concealed aspects of their investments to manipulate prices and profit unfairly.

In a letter sent Wednesday, the Democratic lawmakers, led by Reps. Alexandria Ocasio-Cortez and Nydia Velázquez, asked New York Attorney General Letitia James to investigate allegations of insider trading using the Martin Act, a broad antifraud statute commonly used to pursue financial crime, or other similar laws.

“Although hedge funds have secured generous settlements and made billions off this crisis, it now appears that their greed may have driven some New York financial institutions to take illegal actions,” said Ms. Ocasio-Cortez, a critic of the management of Puerto Rico’s debt crisis.

Fabien Levy, a spokesman for the New York attorney general’s office, said the office had received the letter.

“We appreciate multiple members of Congress reaching out with their concerns,” he said. “We’re reviewing the letter now, and will look further into this matter.”

The letter concerns allegations that a bondholder committee took public positions that drove down the price of certain debt securities while its members bought them at discounted prices and negotiated a restructuring proposal that improved how they would be repaid.

The lawmakers said those bond trades might have been made without proper disclosure of the “true economic interests” of bondholders, including Aristeia Capital LLC and Taconic Capital Advisors LP.

Puerto Rico’s financial oversight board, which is steering the bankruptcy and leading negotiations, declined to comment.

A spokesman for the bondholder committee said its members “adhered to and respected all elements of the mediation protocol and trading restrictions during the period in which they were negotiating.”

“As creditors with long-term investments in Puerto Rico, our members have consistently engaged in a constructive, transparent manner with the oversight board to facilitate the Commonwealth’s timely emergence from bankruptcy and economic recovery,” the spokesman said.

The Martin Act was used successfully in the early 2000s by Eliot Spitzer, New York’s attorney general at the time, to go after Merrill Lynch and the investment-banking industry. More recently, New York’s attorney general attempted to use the antifraud statute in a case against Exxon Mobil Corp., alleging that the oil giant misled investors about how it accounts for the impact of climate change on its operations by using internal estimates that differed from its public statements.

New York State Supreme Court Justice Barry Ostrager ruled in December last year that the attorney general’s office didn’t prove that the company had violated the law. Lawyers for Exxon said the company had done nothing wrong.

Wednesday’s letter said the Martin Act could be used to investigate possible wrongdoing by Puerto Rico bondholders “and ensure the integrity of the municipal bond markets.”

Puerto Rico entered bankruptcy in 2017 under the weight of government debts, spiraling pension obligations and a poverty rate over 40%. While the bankruptcy has crushed the value of many of the U.S. territory’s bond debts, some savvy investors have profited handsomely, buying bonds on the cheap that have rallied on expectations about how much they will recover.

Since the bankruptcy, some investors have argued that older government bonds should be treated more favorably in a restructuring, saying that more recent debt issuances breached debt limits in Puerto Rico’s constitution and should be reduced or disallowed.

Bondholders generally have to disclose the size of their investments in court filings, but weren’t always required to break down which securities they owned. That changed in May, when the federal judge overseeing the bankruptcy case ordered the submission of more detailed disclosures.

Some bondholders later revealed they owned bonds they had said publicly were of no value while “engaging in confidential mediation talks about their restructuring,” according to the New York lawmakers. A restructuring proposal released after those restructuring talks included higher recoveries for some of the older, disputed bonds compared with earlier discussions, rallying prices.

The lawmakers’ letter called for an investigation “to reveal whether some hedge funds may have made these trades with non-public information obtained through the mediation discussions.”

Other large creditors in Puerto Rico's bankruptcy have hinted at similar concerns about bondholder disclosures. In March, financial guarantors with billions of dollars on the line asked for greater transparency and raised concerns about bond trading based on nonpublic information. They later amended their court filings to remove those allegations, though they maintained that bondholders had traded and negotiated without making proper disclosures.
