
PUBLIC UTILITIES - CALIFORNIA

Humphreville v. City of Los Angeles

Court of Appeal, Second District, Division 2, California - December 3, 2020 - Cal.Rptr.3d - 2020 WL 7065315 - 20 Cal. Daily Op. Serv. 12,480

City resident brought action against city, city's Department of Water and Power, and city Board of Water and Power Commissioners, alleging that defendants' annual practice of transferring surplus from city-owned utilities to city's general fund constituted a "tax" that required voter approval.

The Superior Court sustained defendants' demurrer without leave to amend. Resident appealed.

The Court of Appeal held that city's practice of transferring surplus from city-owned utilities to city's general fund did not constitute a "tax" requiring voter approval.

City's alleged ongoing practice of transferring a surplus from city-owned utilities to city's general fund, when rates charged to customers nevertheless did not exceed costs of providing electricity to them, did not constitute a "tax" that required voter approval; practice did not satisfy definition of a " tax" under plain language of the California Constitution, conclusion was one that best aligned with purpose behind Constitution's restrictions on local taxation to stop local governments from extracting more revenue from taxpayers, and Supreme Court precedent strongly suggested that yearly transfers of surplus funds did not constitute a "tax" when they did not cause the utility rates to exceed costs of providing electricity.

LOAN GUARANTY - KANSAS

Farmers Bank & Trust v. Homestead Community Development

Court of Appeals of Kansas - October 2, 2020 - 476 P.3d 1

Bank brought action against city for breach of guaranty, fraud, and negligent misrepresentation, based on city's failure to render payment to bank pursuant to their guaranty agreement after community development group defaulted on its loan.

The District Court granted summary judgment in favor of city. Bank appealed.

The Court of Appeals held that:

- Issue of whether city had undesignated funds in excess of the guaranty was irrelevant in determining whether the Cash-Basis Law and the Budget Law rendered the guaranty void;
- City finance director's deposition testimony did not warrant disregarding of her affidavit;

- City’s payments to community development group did not ratify the guaranty;
- Fact that the guaranty was contingent on group’s default was irrelevant in determining whether the guaranty was void;
- The guaranty was void on its face;
- Notice of bank’s tort claims to city attorney did not constitute substantial compliance with statutory notice requirements; and
- Mayor, city clerk, and city attorney acted within scope of employment in executing guaranty.

Issue of whether city had undesignated funds on hand in excess of the amount of guaranty which bank executed with city was irrelevant in determining whether the Cash-Basis Law and the Budget Law precluded city from paying the guaranty, for purposes of bank’s action for breach of guaranty, fraud, and negligent misrepresentation; the Cash-Basis Law precluded payment by city unless it had enough funds available in its treasury to do so and such funds had been designated to pay the guaranty, and the Budget Law, which had to be construed together with cash-basis statute, required city to appropriate funds for its expenditures.

City finance director’s deposition testimony that she did not reach out to prior city employees regarding guaranty which city executed with bank and was not involved in investigations regarding bank’s suit against city for payment did not warrant disregarding of director’s summary judgment affidavit averring that city never budgeted or appropriated any funds to pay guaranty, as to preclude city from paying the guaranty under the Cash-Basis Law and the Budget Law.

City’s payments to community development group did not ratify city’s guaranty with bank, which was void due to city’s failure to establish and maintain separate funds for payment of guaranty as required by the Cash-Basis Law and the Budget Law, and thus city was not obligated to pay the guaranty after group defaulted on its loan.

Bank, which contracted with city for a loan guaranty on behalf of community development group, was bound at its peril to check city’s budget and accounts to verify that city had appropriated necessary funds to pay the guaranty, and thus city’s failure to allocate such funds precluded city from having to pay the guaranty pursuant to the Cash-Basis Law and the Budget Law; financial institutions transacting business with municipalities in the state typically asked for annual budgets and audits to verify that municipalities had appropriated necessary funds to pay debt obligations but bank never asked for such verifications.

Fact that guaranty which city executed with bank for loan to community development group was contingent on group’s default was irrelevant in determining whether the guaranty was void pursuant to the Cash-Basis Law and the Budget Law, which together prohibited city from creating indebtedness without having funds on hand for that purpose.

City could not have amended its budget to appropriate funds each time it had to make a payment on guaranty executed with bank for a loan to community development group, and thus the guaranty was void on its face pursuant to the Cash-Basis Law and the Budget Law, which together prohibited city from creating an indebtedness without having funds on hand for that purpose; amendment would only have been allowed if guaranty had contained a stipulation that it was conditioned on future appropriations but guaranty had no such conditions.

Bank’s notice to city attorney of its fraud and negligent misrepresentation claims against city for failure to pay a loan guaranty did not constitute substantial compliance with statutory notice requirements for tort claims against municipalities, and thus the statute precluded bank’s claims; city did not designate city attorney to receive notice of tort claims, and, even if city had done so, it could not have waived statutory requirement of notice to the city clerk or city’s governing body.

Issue of whether city clerk or city's governing body received all of the correspondence regarding city's loan guaranty with bank was irrelevant in determining whether bank substantially complied with statutory notice requirements for its fraud and negligent misrepresentation claims against city; statute required that notice of claims be served on city clerk or city's governing body but bank only served notice to city attorney.

No evidence supported bank's claim that mayor, city clerk, or city attorney were motivated by a personal purpose in executing guaranty between city and bank for a loan to community development group, and thus these officials acted foreseeably within scope of employment even though they lacked express authority to execute guaranty, thereby obligating bank to comply with statutory notice requirements for its fraud and negligent misrepresentation claims against city under the Tort Claims Act.

The Court of Appeals was not obligated to consider bank's argument that city employees could have been sued in their individual capacities under the Tort Claims Act for city's alleged breach of loan guaranty agreement, even if said employees were acting within the scope of employment, where bank abandoned its argument by failing to cite any supporting authority, on appeal from grant of summary judgment in favor of city.

INSURANCE - GEORGIA

Atlantic Specialty Insurance Company v. City of College Park

Court of Appeals of Georgia - November 2, 2020 - S.E.2d - 2020 WL 6390041

Relatives of deceased persons brought action against municipality, alleging wrongful death after deceased persons' vehicle was struck by unknown driver who was being pursued by police.

Insurer intervened for limited purpose of litigating limits of its insurance policy with municipality, and trial court held on insurer's motion for partial summary judgment that insurance policy limits available were $5 million under business auto and excess liability coverage. Insurer appealed.

The Court of Appeals held that policy's endorsements did not exempt insurer from statutory language that increased sovereign immunity waiver to amount of coverage.

Public policy prevented sovereign immunity endorsement in municipality's insurance policy that included business auto and excess liability coverage from limiting $1 million for automobile liability coverage and $4 million for excess coverage to $700,000 for claimants who sustained injuries arising out of negligent use of government motor vehicle; insurer was required to pay damages under policy if defense of sovereign immunity was not applicable, and waiver of sovereign immunity, which occurred by operation of law, was limited to amount of coverage purchased by municipality as prescribed by statute.

ZONING & PLANNING - ILLINOIS

Sullivan v. Village of Glenview

Appellate Court of Illinois - November 4, 2020 - N.E.3d - 2020 IL App (1st) 200142 - 2020 WL 6483137

After commercial developer applied for permits to rezone and construct commercial buildings on

property adjacent to homeowners' properties, homeowners brought action against city, seeking declaratory judgment invalidating the municipal ordinance purportedly allowing the property to be rezoned.

The Circuit Court dismissed action as untimely. Homeowners appealed.

The Appellate Court held that:

- To constitute a "decision" triggering the limitations period for challenges to municipal zoning actions, an ordinance must make change to subject property, and
- Ordinance had no effect on zoning classification of property, and thus was not a "decision" that triggered limitations period.

To constitute a "decision" triggering the running of the limitations period for challenges to municipal zoning actions, a municipal ordinance must actually make some sort of change with respect to the zoning classification of the subject property.

Municipal ordinance did not effect zoning classification of landowner's property, and, thus, was not a "decision" within meaning of municipal code, as was required to trigger running of 90-day limitations period applicable to challenges to municipal zoning actions; even though ordinance contemplated rezoning of property, ordinance conditionally required landowner to begin entirely new application process before property could actually be rezoned, thereby placing landowner in precisely same position as before ordinance was passed.

COMMUNITY IMPROVEMENT DISTRICT ASSESSMENTS - MISSOURI

Real Estate Recovery, LLC v. Branson Hills Facility Infrastructure Community Improvement District

Missouri Court of Appeals, Southern District, Division One - October 14, 2020 - S.W.3d - 2020 WL 6054606

Purchaser of land parcels at post-third-offering sale filed petition against community improvement district (CID) and others to quiet title to parcels. After purchaser failed to pay additional assessments levied by CID upon parcels, purchaser and CID filed cross-motions for summary judgment.

The Circuit Court initially denied motions, but upon parties' joint request for reconsideration, granted summary judgment in favor of CID. Purchaser appealed.

The Court of Appeals held that:

- Amendment to Community Improvement District Act (CID Act) governing special assessments was change in procedural law that could apply retrospectively, and
- As a matter of first impression, purchase of parcels did not remove parcels from CID's authority to levy assessments.

Amendment to section of Community Improvement District Act (CID Act) governing special assessments was change in procedural rather than substantive law, and, thus, retrospective application of amendment did not violate constitutional prohibition on retrospective laws, where amendment merely dealt with mechanism and machinery by which delinquent CID assessments could be collected.

Provision of Jones-Munger Act stating that purchasers of property at post-third offering tax sales would receive collector's deeds with "priority over all liens and encumbrances on the property sold except for real property taxes" did not mean that parcels bought by purchaser were no longer subject to community improvement district (CID) assessments; language of Community Improvement District Act (CID Act), which provided authority for sale at issue, indicated legislature did not intend to remove property from CID's power and authority to levy and impose assessments when sold via Jones-Munger Act, and interpreting term "real property taxes" to exclude CID assessments would upend entire statutory framework for CID assessments, CID initiative financing, and removal of property from CIDs.

PUBLIC UTILITIES - NEW HAMPSHIRE

Northern New England Telephone Operations, LLC v. Town of Acworth

Supreme Court of New Hampshire - November 6, 2020 - A.3d - 2020 WL 6534452

Telecommunications company brought actions against several towns and cities, alleging claims of ultra vires taxation and disproportionate taxation arising out of company's use of municipal rights-o--way for poles, conduits, and other equipment.

After consolidation of cases into a "test case" structure, the Superior Court granted summary judgment for company on most of its claims of ultra vires taxation, and, following trial, entered judgment for company on its tax abatement claims. Towns appealed.

The Supreme Court held that:

- Licenses must include requirement to pay personal and real estate taxes;
- Nature of use did not constitute a perpetual lease which gave rise to an independently taxable property interest;
- Court's decisions to credit various expert opinions were reasonable; and
- Guy wires and anchors were not taxable as "structures."

Licenses to place telecommunications equipment in public rights-of-way arising pursuant to statute providing that certain poles, structures, conduits, and related property in a location which becomes a public highway shall "be deemed legally licensed" must, as a matter of law, include requirement to pay personal and real estate taxes, as, without such tax payment requirements, licenses would not be legal.

Purpose of statute providing that telecommunications poles, cables, and other equipment approved by a local land use board shall be deemed legally permitted or licensed if the location of the equipment becomes a public highway is to place the utility in the same position it would have been had it applied for a license, without the need for further proceedings.

Nature of telecommunications company's use or occupation of municipal rights-of-way as an owner of telephone poles, conduits, and related property did not constitute a perpetual lease as a matter of law which gave rise to an independently taxable property interest, but rather was pursuant to a license or permit.

Trial court's decisions to credit various opinions of telecommunications company's expert as to value of company's poles and conduits, and on company's use or occupation of municipal rights-of-way, and to reject those of towns' expert were reasonable based upon the evidence presented at trial on company's tax abatement claim; court did not accept company's expert's valuations carte blanche,

but engaged in a mindful evaluation of her opinions, even rejecting some.

Telecommunications company's guy wires and anchors were not taxable as "structures" under statute providing for real estate taxes for "structures, poles, towers, and conduits employed in the transmission of telecommunication" services; as licensing statute for erecting or installing structures in public highways authorized a licensee "to place upon such poles and structures the necessary and proper guys, cross-arms, fixtures, transformers and other attachments and appurtenances," the guy wires and anchors could not be considered "structures," but rather were items placed upon the structures.

EMINENT DOMAIN - OHIO

State ex rel. AWMS Water Solutions, L.L.C. v. Mertz

Supreme Court of Ohio - December 2, 2020 - N.E.3d - 2020 WL 7213816 - 2020 -Ohio- 5482

Saltwater injection well operator filed petition for writ of mandamus to compel state to commence property-appropriation proceedings, alleging that state's suspension order with respect to one of its two wells effected a governmental total or partial taking of property requiring state to pay it just compensation.

State moved for summary judgment. The Eleventh District Court of Appeals granted the motion. Operator appealed.

On reconsideration, the Supreme Court held that:

- Operator's failure to submit third restart plan did not render its takings claim unripe;
- Fact issues precluded summary judgment on determination that state effected a total regulatory taking;
- State waived its nuisance defense to total takings claim;
- Fact issues precluded summary judgment on economic-impact factor of test for partial takings;
- Fact issues precluded summary judgment on reasonable-backed expectations factor of test for partial takings;
- Character of state's regulation weighed against finding a partial taking.

Saltwater injection well operator's failure to submit third restart plan did not render its takings claim, arising from state's suspension of operation of one of its wells due to potential seismicity problem, unripe for judicial resolution; state suggested that if operator submitted plan that met its standards, then operator would be able to restart operations, but operator had twice tried, and failed, to persuade state to allow it to restart operations at the well, and there was no indication state's standards, if met, would be binding on state, as it could change the standards at any time and create another opportunity to say all that operator had to do was submit another plan.

State's suspension of saltwater injection well for potential seismicity problem could not be characterized as temporary, for purposes of determining analysis of total or partial taking applied in assessing well operator's takings claim arising from state's suspension of operation of one of its wells, where suspension would remain in effect unless and until Department of Natural Resources' Division of Oil and Gas Resources Management decided that operations at the well could be restarted.

Genuine issue of material fact as to whether state's suspension of operations of second of two saltwater injection wells due to potential seismicity problems deprived operator of all economically

beneficial use of its leasehold precluded summary judgment determination that state effected a total regulatory taking of operator's property.

State waived its nuisance defense to saltwater injection well operator's total takings claim, arising from state's suspensions of operations at one of two wells due to potential seismicity problems, for purposes of summary judgment and appeal of that judgment, where, even though its amended answer to the complaint clearly set forth the defense, state supplied no argument regarding whether relevant case law, applied to the facts of the case, justified decision in its favor.

Genuine issue of material fact as to value of operator's investment in the leasehold after state suspended operation on one of operator's two saltwater injection wells due to potential seismicity problem precluded summary judgment determination on economic-impact factor of test for determining whether state's regulation effected a partial taking.

Genuine issues of material fact existed as to whether operator was aware of the potential seismicity problem with its saltwater injection wells and whether operator could have anticipated that state would waver between case-by-case approach and statewide approach to addressing induced seismicity while rebuffing operator's attempt to meet state's regulatory expectations precluded summary judgment on reasonable investment-backed expectations factor for determining whether state's suspension of one of operator's two wells effected a partial taking.

Character of state's suspension of operations at one of two saltwater injection wells was to protect the public's health and safety, weighing against finding that the regulation was a temporary, partial taking of well operator's property, where state did not single out the well for unfair treatment, as well's injection volumes contributed to seismicity in the surrounding area and differed geologically, and was closer in proximity to densely populated areas, than the other well, well's operations posed imminent threat to public safety, and there was no showing that there was extraordinary delay in decisionmaking process with respect to operator's restart plan for the well.

PUBLIC UTILITIES - TEXAS

AEP Texas Central Company v. Arredondo

Supreme Court of Texas - November 20, 2020 - S.W.3d - 2020 WL 6811465 - 64 Tex. Sup. Ct. J. 165

Landowner brought negligence action against electric utility, utility's independent contractor, and utility's inspector arising from landowner's fall in hole that allegedly was created by contractor's removal of utility stub pole from municipal right-of-way on edge of landowner's property.

The District Court granted summary judgment for defendants. The San Antonio Court of Appeals affirmed in part, reversed in part, and remanded. Utility and contractor filed petitions for review, which were granted.

The Supreme Court held that:

- Factual issues as to whether contractor properly fill hole precluded summary judgment on negligence claim against contractor;
- Utility did not have a contractual right of control of contractor's work on which to base a duty to landowner;
- Contractor's removal of stub pole was not an inherently dangerous activity giving rise to a nondelegable duty of utility; and

- There was no statute on which to premise negligence per se claim against utility.

COUNTIES - WASHINGTON

Perillo Trustees of the Diane Perillo Living Trust, dated September 28, 2011 v. Island County

Court of Appeals of Washington, Division 1 - November 30, 2020 - P.3d - 2020 WL 7021689

Purchasers, who learned that house they bought had history as a "drug house" and had to be demolished due to methamphetamine contamination, brought negligence action against county for failure to inspect the property for hazardous chemical contamination. The Superior Court granted summary judgment for county under the public duty doctrine, and purchasers appealed.

The Court of Appeals held that:

- Law enforcement has a duty to report to local health officers when it has information that causes it to realize or perceive that hazardous chemicals are polluting a property, even if law enforcement does not have actual knowledge of contamination;
- Genuine issue of material fact as to whether county sheriff's office had sufficient information to cause it to realize or perceive that hazardous chemicals were polluting property, and thus trigger its duty to report to local health officers, precluded summary judgment; and
- County owed statutory duty to property purchasers, not just the public at large, to notify local health officials of information that hazardous chemicals were polluting property.

The Biggest Names in Municipals Reflect on an Unprecedented Year.

- **Pandemic hastened transition from rates to credit focus**
- **'It is much more exciting than ever before,' says Heppolette**

The municipal bond market's top bankers say they're worried about the continued impact of the pandemic next year, potential hiccups with vaccine distribution, a lack of federal aid to state and local governments and possible waning demand from investors.

Bloomberg News surveyed the heads of public finance at the market's top investment banks about how they fared in 2020 and their outlook for 2021. They say the $3.9 trillion market's resilience was on full display earlier this year when municipals experienced a record-setting sell-off and a quick rebound that has state and local debt returning 5%, heading for the seventh straight year of gains.

John Heppolette, Citigroup Inc.'s head of municipal markets and finance, said "the only thing more surprising than the most dramatic selloff in muni bond market history was the speed of the recovery."

Here's what the group had to say:

Continue reading.

Bloomberg Markets

By Danielle Moran

December 18, 2020

What a Joe Biden Win Means for Munis and Taxes.

Stephanie Larosiliere of Invesco talks about how a Joe Biden administration will impact municipal bonds and taxes. She spoke to Taylor Riggs on Nov. 18.

Watch.

Bloomberg Markets

December 18th, 2020

Cities Save Hotels, Arenas From Bond Defaults After Pandemic Hit.

- **Pledges to backstop debt raise new financial challenge**
- **Akron, Ohio, theater saved: 'There's a lot of history there'**

Cities across the U.S. are having to step in to keep civic projects from defaulting on bonds after months without events or public gatherings, dealing governments a fresh financial hit from the pandemic.

In Maryland Heights, Missouri, a St. Louis suburb, officials replenished the depleted reserves of an ice-skating and concert venue. San Antonio, Texas, used its hotel-tax revenue to help a Hyatt-run hotel make debt-service payments in July and plans to do so again in 2021. Akron, Ohio, in November honored its pledge to cover the debts of a nearly century-old downtown theater.

Such rescues are among the first of what may be many in the municipal-bond market, reflecting governments' decisions to guarantee bonds sold for stadiums, convention centers and other projects that promised to revitalize cities. Those businesses' revenues have dried up since March and it's unclear how soon they will recover once coronavirus vaccines allow American life to return to normal.

"It's an unprecedented crisis — these are structured to try to address that possibility," said Thomas Hazinski, a managing director at consulting firm HVS, which specializes in tourism and entertainment projects.

Debt for such projects is usually repaid by the revenue they generate or specific cash streams earmarked by cities and counties. But some local governments have also pledged to extend their own money, providing crucial support that helped increase bond ratings and drive down financing costs.

Making Good

With tourism battered by the 9-month pandemic and mass gatherings shut down, some local governments are having to make good on those pledges.

Maryland Heights, Missouri, had to step in and help even before its ice center and music arena got a

chance to fully debut. Financed with $55.5 million of bonds, the ice center opened in 2019, only to close less than a year later because of Covid-19. It has since reopened. The arena, which had an agreement with events promoter Live Nation and was set to open in May 2020 with a concert featuring Kesha, had to cancel all its shows for this year.

As revenue from ticket sales and concessions disappeared, the price of some of the bonds sold for the project due in 2039 tumbled, indicating concern among investors. Then the city council transferred more than $38,300 from its general fund to a reserve account for the bonds, part of its commitment to set aside $625,000 each year to backstop the senior debt's reserve account. That buoyed confidence, with the bonds trading at nearly 92 cents on the dollar.

David Watson, the director of finance for Maryland Heights, said the payment wasn't a major challenge this year, given that the city received one-time federal aid that will help offset an estimated $6 million to $7 million shortfall. But the longer-term support for the bonds could be an issue given the uncertainty of Covid-19.

"We think it's going to be successful," Watson said. "But we certainly would like people to come out and be able to enjoy it."

Common Support

The local government guarantees are especially common among debt issued for convention centers and hotels that cities have built to lure in the type of business conferences that have since disappeared.

San Antonio, Texas, helped make debt service payments on bonds for a convention-center hotel run by Hyatt that was financed with municipal bonds in 2005. At the same time, the city had to institute a civilian pay and hiring freeze and slashed its fiscal 2021 budget by about $4.4 million compared to last year.

In July, the city used about $338,000 in hotel-tax revenue for a debt service payment, and is expecting to do so again in January and July 2021, amounting to an estimated $13.5 million. The city said it expects to be repaid.

In Myrtle Beach, South Carolina, the city in 2015 provided a "limited" guarantee to replenish withdrawals from debt-service reserve fund for $16.4 million of bonds sold for a convention-center hotel. It had to tap those reserves in October, according to regulatory filings, and if the hotel doesn't generate enough revenue the city will be on the hook to replenish the $28,064.90 withdrawal. It may also have to provide $150,000 in the next year for an insurance reserve fund tied to the project.

Michelle Shumpert, the city's chief financial officer, said tax revenue from short-term stays in hotels or other rental spaces were down about 35% in the first quarter of the fiscal year. Still, she said they expect a revival after vaccines are widely used, given the area's popularity with beach-goers.

"We tend to rebound rather quickly," she said.

More Help

Other projects will need even more help. The Washington State Convention Center, which tapped the municipal market for $1 billion in financing in 2018 for an expansion, is seeking about $300 million in loans from the state, King County and Seattle to help finish the expansion, according to Jeff Blosser, chief executive officer.

The financing district that sold bonds already used certain lodging tax revenue to pay debt service rather than send it to the state. That counted as a nearly $14.3 million loan that the district will have to repay the state.

Allison Dyer, senior counsel at Holland & Knight, said the bond guarantees are a tool that municipalities have to support the projects. “Without those, these projects do not get built,” she said.

Akron, Ohio, extended such a guarantee nearly 20 years ago to restore the Akron Civic Theatre, a landmark built in 1929 that is one of five remaining theaters of its kind in the U.S. In late November, the city received notice that it would need to step in to cover debt service for December, or $45,452.98, according to a regulatory filing.

“There’s a lot of history there,” said Steve Fricker, Akron’s director of finance.

Bloomberg Markets

By Amanda Albright

December 15, 2020, 7:00 AM PST

— With assistance by Stephen Gorin

The Unpredictable Future of Publicly Funded Stadiums.

Despite the positive news on the COVID-19 vaccine and the federal government’s efforts to mass inoculate the American public by mid-2021, there is no foreseeable future for any large gatherings, including sporting events and business conferences in the United States – perhaps reflecting a permanent shift in this large crowd sector.

In 2020, the mass cancellation of events in sporting arenas and convention centers due to social distancing guidelines and the public fear of gathering was detrimental for their revenue streams, adding to the insurmountable pressure that already existed for local and state economies.

In this article, we will take a closer look at how publicly funded sporting areas and convention centers, once considered to have been the cash cows for local economies, are adding to the fiscal strain with no clear solution in sight.

Continue reading.

dividend.com

Dec 16, 2020

Fed’s Daly Welcomes More Fiscal Aid as Stimulus Deal Nears.

- **‘This support in unequivocally beneficial,’ Daly says of plan**
- **San Francisco Fed chief ‘bullish’ on post-Covid labor market**

Another $900 billion of fiscal support would “absolutely” make a significant difference to the U.S. economy’s ability to endure Covid-19, but “challenging months” lie ahead, a top Federal Reserve official said.

“This support in unequivocally beneficial,” Mary Daly, president of the Federal Reserve Bank of San Francisco, said on CBS’s “Face the Nation” on Sunday, after congressional negotiations cleared the last significant obstacle for pandemic relief, setting up a possible vote later in the day.

The proposal had been held up by a dispute over the future of Fed emergency lending programs, which was resolved by changing language restricting what the central bank could do in the future to make it less sweeping.

Daly said she wasn’t privy to the details of the negotiations but stressed that the Fed’s powers were there for the benefit of all Americans.

“I believe completely that Congress, the Federal Reserve, the Treasury Secretary, the American people, really want us to be able to deploy our full tools” to their best benefit, she said. “Remember, these are emergency too, we only bring them out in times of crisis and then we put them back away.”

Republican Senator Pat Toomey of Pennsylvania has insisted the stimulus bill include a provision barring the Fed from resuscitating various lending programs, including to Main Street businesses, corporations, and municipalities.

Democrats objected that this would harm the Fed’s ability to react to future economic crises and threaten its independence. A compromise was being explored and Senate Democratic leader Chuck Schumer told reporters late Saturday that negotiators were “very close.”

Daly said that massive policy support from the Fed and Congress had been vital in propping up the U.S. economy since the pandemic struck in March “to ensure that the bridge through coronavirus -- over coronavirus -- is both strong enough and long enough to get Americans fully through this.”

Fed officials last week forecast their benchmark lending rate would be held around zero for at least the next three years. They also revised up their economic growth forecast for next year to 4.2% from 4%, and lowered their unemployment forecast to 5% from 5.5%.

As virus cases surge again across the U.S. and new restrictions are imposed, the economic recovery risks slowing further at a time when more than 10 million are unemployed.

“I’m bullish on the job market once we get fully through coronavirus but we’re not there yet,” Daly said. “So our future is bright, but we’ve got some challenging months ahead of this.”

Bloomberg Markets

By Alister Bull

December 20, 2020

With No Federal Help Coming, Cities Cling to the Financial Cliff.

State and local governments have been left out of a Covid stimulus deal, even as nearly 3 in 10 cities say they will be “significantly impacted” without federal relief.

No level of government has escaped harm or fiscal damage related to the coronavirus crisis. But the fluctuations in municipal revenue caused by the pandemic — left conspicuously unaddressed by the latest version of a federal stimulus bill — reflect both long-term trouble for U.S. cities and the deeply uneven state of local economies.

As of Friday, the $900 billion Covid-19 stimulus bill, negotiated in tandem with a $1.4 trillion stopgap funding package to keep the government open, includes money for vaccine distribution and schools, $300-a-week jobless benefits, roughly $330 billion in new small business loans, and a new round of $600-per-person stimulus checks. But relief for states and cities that have been hammered by revenue losses does not appear to be forthcoming.

The lack of direct aid in the deal means that Congress has "abandoned American cities," said Mayor Greg Fischer of Louisville, Kentucky, president of the U.S. Conference of Mayors, in a statement. "There is no doubt that the pandemic has wrecked the budgets of local governments from coast to coast, and Washington's unwillingness to help will cost people jobs and make communities less safe. Nearly 1.3 million state and local government employees lost their jobs over the last year — exceeding the total number of public sector jobs lost during the Great Recession. History has shown us that we cannot have a strong economy without strong cities. Congress is now making it much harder for our economy to rebound."

Continue reading.

Blooomberg CityLab

by Patrick Sisson

December 18, 2020, 1:22 PM PST

Republicans Bind Virus Aid to Limit on Fed Lending, Risking Bill.

- **Democrats warn move would handicap Fed crisis fighting tools**
- **Dispute could derail virus relief talks as clock ticks down**

A bid by Republicans to constrain the Federal Reserve's crisis lending programs is threatening to derail negotiations on a pandemic relief plan and has drawn the incoming administration of President-elect Joe Biden into the 11th hour fight.

Senator Pat Toomey, a Republican from Pennsylvania, wants a provision in the relief bill that would bar the Fed from restarting five programs that expire at the end of the year, or create similar ones going forward. The roughly $900 billion proposal being debated by Congress, would, among other things, extend support to out-of-work Americans and thousands of small businesses.

While Toomey said the language only would affect a "narrow universe" of Fed facilities, Democrats in Congress have accused Republicans of trying to hamstring the incoming Biden administration.

Brian Deese, whom Biden has picked to be director of his National Economic Council, said in a statement that the relief package "should not include unnecessary provisions that would hamper the Treasury Department and the Federal Reserve's ability to fight economic crises."

Democratic aides said the dispute over Fed lending powers is the biggest issue impeding final

negotiations on coronavirus relief. Lawmakers are aiming to attach the aid to a bill funding the government, and a delay risks triggering a partial government shutdown after midnight Friday when current spending authority expires. Congressional leaders are trying to extend the deadline with another stopgap spending measure, but that too has become entangled in the wider debate on relief.

The Fed's aggressive action to provide liquidity and back-stop corporate America helped stem panic among investors that threatened to seize up financial markets as the pandemic took hold in March. The central bank opposed the Trump administration's Nov. 19 instruction to wind up several of those facilities but said it will comply with the request.

Fed Chair Jerome Powell and his colleagues have made plain their opposition to any measures that limit their emergency lending powers. They have repeatedly and publicly stressed the facilities played an important backstop role in supporting the economy during the pandemic.

A Fed spokesman declined to comment.

Legal exports said the prohibition on the Fed creating similar facilities could inhibit its response to future financial emergencies.

'Significant Change'

Jeremy Kress, an assistant professor of business law at the University of Michigan and a former Fed attorney, said this would be a "very significant change" in the Fed's emergency lending powers.

"I am concerned that this provision would tie the Fed's hands not in the short term during the coronavirus pandemic, but also handcuff the Fed in the long-term when responding to unforeseen crisis in the future," he said.

The language isn't clear about how much any future lending facilities would have to differ from the Cares Act programs to not be considered "similar," Kress said.

Toomey said the language will only apply to the five programs set to expire soon and wouldn't change the Fed's current powers.

"The language Senate Republicans are advocating for affects a very narrow universe of lending facilities and is emphatically not a broad overhaul of the Federal Reserve's emergency lending authority," he said in a statement.

Unusual and Exigent

Section 13(3) of the Federal Reserve Act allows the central bank to create emergency lending programs during "unusual and exigent circumstances" and with approval from the Treasury Department. It was invoked by Fed Chair Jerome Powell and his colleagues to launch a barrage of programs over the spring to shore up markets for everything from U.S. government bonds to the debt of corporates and cash-strapped municipalities.

The unprecedented scale and scope of their move was decisive in restoring order to markets that had been on the verge of seizing up.

Several of those facilities were backed with funds appropriated by Congress in the Cares Act, including support for small and medium-sized Main Street borrowers.

Democrats say that including the new language in the bill would fundamentally change the Fed's

ability to respond to the pandemic and future economic crises. Republicans say this would prevent the unused money — some $455 billion — from being used for unintended reasons.

“It would just force accountability and consensus rather than allow unilateral action,” Senator John Cornyn, a Texas Republican, said in a tweet Friday. “Shouldn’t leave it lying around so it could be used for unapproved purposes, like a back door to more state and local aid.”

The central bank has already seen its 13(3) powers narrowed after the 2008 financial crisis, when it was criticized for overstepping its authority and venturing into fiscal policy terrain. The Fed now has to seek Treasury approval before launching an emergency facility. Adding Congress to that mix might make it too cumbersome for the Fed to respond in a swift manner during a crisis, said Stephen Stanley, chief economist at Amherst Pierpont Securities.

“I don’t know that I like the notion of Congress actually stipulating when these facilities can or can’t be created or used,” Stanley said. “If it’s written in a way that makes it hard or impossible for the Fed to have the ability to engage in 13(3) lending without congressional action then I think it makes it more difficult in future crises to prompt a response.”

Bloomberg Politics

By Catarina Saraiva and Laura Davison

December 18, 2020, 11:46 AM PST

Mayors Pessimistic About Cities' Prospects for Post-Covid Rebound.

Concerns highlighted by the Menino Survey of Mayors include possible deep cuts to local education and the changing economic landscape for local businesses.

A new survey finds U.S. mayors are pessimistic about the ability of their cities to economically recover from the coronavirus pandemic—expressing particular concern over anticipated education budget cuts and the closure of small businesses.

Forty-five percent of mayors said they expect “dramatic” cuts to K-12 school budgets and fewer than 10% expect childcare and public schools to return to normal before next year, according to the Menino Survey of Mayors conducted by the Boston University Initiative on Cities.

The survey also highlights the concern that local government leaders have for their cities’ economies and the financial stability of residents.

Businesses like live entertainment venues, hotels and restaurants face significant financial difficulties, either unable to open at all during the pandemic or forced to significantly curtail how many people they serve at one time. In New York, for example, as many as a third of small businesses could shutter for good amid the economic turmoil.

The Menino survey found that only 36% of mayors expect new businesses to quickly replace those that permanently closed due to the pandemic, while 60% said downtown office buildings will become “less desirable” as employees continue to work remotely.

The survey collected responses from 130 mayors representing cities with more than 75,000

residents between June and August.

Researchers said mayors' responses this year stood in stark contrast to their generally optimistic views expressed in previous surveys.

"This year, while we still hear glimmers of optimism, their pessimism in the face of a once-in-a-century pandemic is palpable," said Graham Wilson, director of Boston University's Initiative on Cities. "And with the pandemic still spreading and the federal government still unable to come to an agreement on additional stimulus, we suspect mayors may actually be underestimating just how much their cities will change."

Since the CARES Act was passed in March, congressional lawmakers have struggled to come to an agreement over additional coronavirus relief funding. Negotiations between Democrats and Republicans stalled out ahead of the November election, but a bipartisan effort to restart discussions emerged this week with the introduction of a $908 billion coronavirus aid proposal.

State and local government leaders have continued to press Congress for more direct financial assistance to respond to the coronavirus. And the Menino survey found many mayors believed that the federal economic aid fell short of the needs of local businesses and economies. Only 13% of mayors said the Paycheck Protection Program, which provided forgivable loans to businesses, provided enough money to meet local needs. In their responses, several mayors highlighted the disparities in the banking system that made it more difficult for small and minority-owned businesses to obtain PPP funds.

Mayors also expressed concern over the disproportionate effect the pandemic is having on minority groups, which have faced higher Covid-19 infection rates. Two-thirds of mayors said they expect Latinos, renters, immigrants, and Black residents would continue to feel at least "a lot" of economic harm next summer. And 80% of mayors said the coronavirus pandemic is widening racial health disparities.

In the early months of the pandemic, cities explored a variety of initiatives to try and help residents and local businesses. The survey found residential eviction moratoriums were one of the most popular initiatives, with 81% of mayors supportive of moratoriums and 56% of cities enacting moratoriums shortly after the pandemic hit.

Other local initiatives that mayors reported utilizing included direct financial support, including grants (35%) or utility bill or tax forgiveness (16%), and regulatory relief (30%), including initiatives to loosen restrictions to allow outdoor dining or alcohol to-go.

ROUTE FIFTY

by ANDREA NOBLE

DECEMBER 3, 2020

Andrea Noble is a staff correspondent with Route Fifty.

[The Washington Weekly: Stimulus, Shutdown or Both?]

After 6+ months of negation, Congress appears to be on the brink of passing an additional stimulus

bill. The package, which will most likely be attached to the year-end funding bill, looks to be approaching $1 trillion dollars but is **not expected to include additional direct funding to state and local governments.**

While the package provides little additional help for issuers, certain sectors are expected to receive some relief. These include:

- Education funding for K-12 and higher-ed,
- Transportation sector funding,
- Health care, and
- Housing.

The next steps at this juncture are uncertain. An additional short-term funding resolution is possible so that these discussions can continue into the weekend, or even a short shut down, but all indications are that Congress will act prior to the Christmas holiday.

The lack of funding to state and locals puts the early 2021 legislative calendar in-flux. Congressional leaders continue to issue promises that state and local aid will be revisited in early 2021, however, skeptics abound due to the continued struggles to pass stimulus measures in 2020. This could slow progress on issues such as infrastructure in which the BDA continues laying the groundwork for bond provisions to be included.

Transition Update:

Former Mayor Pete Buttigieg Nominated to Lead Infrastructure Push
Former South Bend, IN Mayor Pete Buttigieg, has been officially nominated for Secretary of DOT. While this role is historically a mid-range Cabinet post, due to President-Elect Biden's focus on infrastructure and his "Build Back Better" plan, DOT will likely play an outsized role in 2021.

Buttigieg is no stranger to the municipal market. During his tenure as Mayor, South Bend had dozens of bonds issued including general obligation bonds to bonds for park districts and economic development among others. South Bend had a dramatic economic turnaround during this tenure, mostly focusing on innovative infrastructure.

Infrastructure was also a pillar of the Mayor's platform during his brief presidential run. While there was no direct mention of municipal bonds, he focused heavily on transit and pushed for the continued funding of the Highway Trust Fund which was part of the House Moving Forward Act.

Fed Recap:

Powell Calls for Additional Debt Purchases

While noting economic predictions have improved mildly, Federal Reserve Chairman Powell continues to call for additional Congressional and Fed action and continued purchase of Federal debt. He also reiterated that the task of curbing government spending should be set aside until a time when "the economy is strong and when unemployment is low."

Powell noted: *"The Federal Reserve will continue to increase its holdings of Treasury securities by at least $80 billion per month and of agency mortgage-backed securities by at least $40 billion per month until substantial further progress has been made toward the Committee's maximum employment and price stability goals."*

Further, Powell also discussed the future of the American economy, while pressing Congress to take

additional action regardless of projections. He also urged Congressional Leadership not to worry about debt and deficits in this time or need stating:

"We've always looked at debt to GDP, and we're very high by that measure. By some other measures, we're actually not that high. In particular, you can look at real interest rate payments — what does it cost? And from that standpoint, if you sort of take real interest costs of the federal deficit and divide that by GDP, we're actually on a more sustainable fiscal path."

Bond Dealers of America

December 18, 2020

Republican Bid to End Virus Lending Slows Relief Deal.

- **Key GOP lawmakers say bill must include Fed facility stop date**
- **Democrats say the lending programs can continue for years**

Two leading Senate Republicans say that language terminating the Federal Reserve's pandemic lending facilities should be in the economic relief bill — a demand that could slow negotiations as lawmakers look to make a deal.

Senator Pat Toomey of Pennsylvania said Thursday that ending the facilities is a top issue for him to include in the bill. Senator Mike Crapo of Idaho said including language to explicitly wind down the emergency lending programs by the end of the year is becoming a red-line issue for Republicans.

Democrats have said the central bank lending facilities should remain operational until 2026 as a way to help the economy recover from the coronavirus pandemic.

The central bank emergency lending programs, created under the March Cares Act, were intended to prop up struggling small businesses, municipal governments and credit markets. Toomey has said that the programs were always intended to be short-lived and that the law requires them to be terminated by the end of the year.

"It's not acceptable for anybody to decide that they're going to circumvent this law, restart these programs and turn them into something that they were never intended to be," Toomey said in a call with reporters on Thursday.

The Fed lending program dispute is one of several unresolved issues holding up the passage of a government funding and economic relief bill that lawmakers hope to pass in coming days. An eviction moratorium, stimulus payments and funding for the Federal Emergency Management Agency were among the sticking points to finalizing the legislation as of midday Thursday.

The holdup comes as some 11 million people are unemployed, and applications for U.S. state jobless benefits unexpectedly jumped to the highest level in three months. The data, released Thursday, suggests the labor market's recovery is faltering amid the surge in Covid-19 cases and widening business restrictions.

Toomey said on the call that work to end the facilities by year end began in March when the law was written and in July he began additional work on a provision that would make the end date exceedingly clear.

“In the future, if some kind of dire emergency occurs, at that point the Fed and Treasury should come to Congress if they believe any kind of extraordinary program is needed,” Toomey told reporters. “What this does is that nobody can revive or create a duplicate of the programs that received Cares Act money.”

Democrats have accused Republicans of trying to end the programs and repurpose the money as a way to limit President-elect Joe Biden’s Treasury Department.

“They are trying to take away some options for the new president to deal with some challenges to the economy,” Senator Ron Wyden, the top ranking Democrat on the Senate Finance Committee, told reporters Thursday.

Toomey rebuffed that idea saying efforts to end the program began long before the November presidential election.

Fed Chair Jerome Powell has repeatedly noted that the facilities could be renewed using funding from the Treasury’s Exchange Stabilization Fund that pre-dated the infusion from the Cares Act. He made that point again in a Wednesday press briefing.

Wyden said Democrats are conferring with Powell Thursday on the impact of the limits that Republicans are seeking.

Bloomberg

By Laura Davison, Saleha Mohsin, and Catarina Saraiva

December 17, 2020, 11:40 AM PST Updated on December 17, 2020, 12:26 PM PST

— With assistance by Erik Wasson

Jerome Powell Sees Fed’s Limits and Punts to Congress.

The central bank opts against extending the maturities of its bond purchases and instead leaves the heavy lifting to Washington lawmakers.

Perhaps it’s because my alma mater, Northwestern, is competing in the Big Ten Championship Game this weekend against Ohio State, but I can’t help but use a football analogy to explain Wednesday’s prudent decision by the Federal Open Market Committee.

The Federal Reserve has clearly done an admirable job of defending the world’s largest economy from a steep and prolonged fallout from the Covid-19 pandemic in 2020. Since March, the central bank has lowered short-term interest rates to near-zero, bought wide swaths of U.S. Treasuries and mortgage-backed securities and even provided a backstop for corporate debt and municipal bonds.

Yet it’s clear to most central bank observers that there’s not much the Fed can do beyond what it has already done to propel the U.S. economy back toward full employment and steady inflation around 2%. The much bandied-about option — extending the weighted average maturity of its bond purchases — would hardly do much to move the ball forward, given that so many homeowners, corporate treasurers and municipal governments have already taken advantage of rock-bottom borrowing costs and wide-open capital markets during the year.

In football terms, clamping down on the long end of the yield curve now to boost economic growth would be the equivalent of Northwestern going for an early conversion on fourth-and-10 from its own 25 yard line. The likelihood of success is low. It would probably put the vaunted Wildcats defense in a tougher spot. The smart play is to punt.

That's exactly what Fed Chair Jerome Powell and his colleagues did, putting the fate of the economy in the coming months in Congress's hands.

The FOMC left the fed funds rate unchanged in a range of 0% to 0.25% and didn't tweak the composition or pace of its asset purchases after its two-day meeting. It only adjusted the language around how long the central bank would keep up its monthly purchases of $80 billion of Treasuries and $40 billion of agency mortgage-backed securities, saying it would do so "until substantial further progress has been made toward the Committee's maximum employment and price stability goals." That leaves policy makers with ample wiggle room to monitor the economic recovery in the coming years and leaves no doubt that when the Fed decides to scale back accommodation, it will first cut back on its bond buying before raising interest rates. 1

As for when the first interest-rate increase might come, not much has changed since September. One official still sees the first one in 2022. Five of the 17 members saw the fed funds rate above its current range by 2023, up from just four in September. This aligns with the Fed's updated economic projections: The central bank now sees 4.2% economic growth in 2021 and 3.2% in 2022, up from 4% and 3% in September, and an unemployment rate of 5% in 2021 and 4.2% in 2022, down from 5.5% and 4.6% previously. In 2023, the jobless rate may drop to 3.7%, within a hair of the half-century low set before the pandemic, though inflation might have a hard time cracking 2% in the coming years.

Put together, it was hard to make the case that long-term Treasuries needed to be contained. The benchmark 10-year yield hasn't crossed 1% since March and fluctuated around 0.92% after the Fed's decision. The yield curve from five to 30 years is near the steepest since late 2016, but that's healthy during an economic recovery. It's hardly derailed the steady march lower in 30-year U.S. mortgage rates, now at 2.71%, the lowest in at least a half-century, according to Freddie Mac data, which Powell credited when declaring the housing market had fully recovered from the downturn.

"In the near term, the help that people need isn't just from low interest rates that stimulate demand over time and work with long and variable lags," Powell said. "It's really support."

Clearly, the Fed understood that it didn't need to depress interest rates even further. In fact, given how much financial conditions have eased throughout the year — Goldman Sachs Group Inc.'s gauge is close to a record — there's a strong argument to be made that simply by leaving monetary policy unchanged in the face of record-high stock prices and wide-open capital markets, the central bank is passively taking an even more accommodative position.

"Financial conditions are highly accommodative — we monitor a range of financial condition indexes, there are many of them, and they'll all pretty much tell you that," Powell said. "The parts of the economy that are weak are the service-sector businesses that involve close contact. Those are not being held back by financial conditions but rather by the spread of the virus."

That was Powell's way of saying that fiscal policy needs to do the heavy lifting for the remainder of the pandemic. But just to leave no doubt, he later added that "the case for fiscal policy right now is very, very strong, and I think that's widely understood." As it stands, congressional leaders are rushing to finalize a coronavirus relief package by the end of the week that's expected to be worth less than $900 billion.

The Fed may yet have to take additional measures to prop up the U.S. economy. There could come a time when long-term yields rise to a level that the central bank sees as detrimental to a full recovery. But it's not when 10-year Treasuries are at less than 1%. Powell isn't going to get caught pushing on a string.

1. Fed officials have said they won't raise the fed funds rate "until labor market conditions have reached levels consistent with the Committee's assessments of maximum employment and inflation has risen to 2 percent and is on track to moderately exceed 2 percent for some time."

Bloomberg Opinion

By Brian Chappatta

December 16, 2020, 1:15 PM PST

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

California Health Facilities Financing Authority's $500 million Housing Bond Wins Deal of the Year.

This was the inaugural issuance under the "No Place Like Home" program, the municipal market's first large bonding program created to invest in homeless housing infrastructure and secured directly by taxes on high-income residents. The legislation gives the state $2 billion in bond authority backed by revenues from a 1% tax on personal income over $1 million approved by voters in 2004 to fund programs for mentally ill people. The bond proceeds can be used by cities and counties to develop permanent supportive housing.

"This year, our editorial board has selected a deal that truly meets all of our criteria," said Mike Scarchilli, Editor in Chief of The Bond Buyer at the Dec. 16 virtual event. "It's a complex deal that required creative solution making to pull off. It introduced a new, innovative credit and a replicable financing model. It attracted broad interest domestically and internationally. And though it wasn't brought to market in response to the pandemic, the significant social problem it addresses has been exacerbated since this deal's pricing."

The Bond Buyer's editorial board considered a range of factors when judging entries, including: creativity, the ability to pull a complex transaction together under challenging conditions, the ability to serve as a model for other financings, and the public purpose for which a deal?s proceeds were used.

CHFFA, a treasurer's conduit, issued the taxable revenue bonds. Bookrunners Raymond James and Citi led the banking syndicate that priced the deal. Montague De Rose & Associates was the financial adviser. Orrick was bond counsel.

The program had to overcome a legal challenge that suggested the revenue stream wasn't intended to fund housing, but rather other programs to help people who are suffering from mental illness. The state won the legal battle, validated the bond program and priced $500 million in taxable senior revenue bonds Nov. 19, 2019.

The program combines a long-established tax and a novel service contract mechanism to create a

strong, high-grade credit.

The bonds were rated Aa3/AA/AA-minus due to the strength of the security structure and data showing the breadth and depth of the subject tax base in California, which had grown 170% from 55,600 taxpayers in 2009 to 149,000 in 2018.

The virtual ceremony also included the presentation of the Freda Johnson Awards for Trailblazing Women in Public Finance. This year's honorees were California Treasurer Fiona Ma and Suzanne Mayes of Cozen O'Connor.

The other Deal of the Year finalists were:

Midwest Region

The Buckeye Tobacco Settlement Financing Authority's $5.53 billion offering of tobacco settlement asset-backed refunding bonds is the winner in the Midwest region. Not only the largest deal of 2020 but arguably also the most complex, the refinancing avoided an expected near-term default, and the $3.8 billion 2055 maturity is among the most actively traded bonds in the high-yield market.

Southwest Region

The Cities of Dallas and Fort Worth and DFW International Airport's $2.045 billion sale of joint revenue refunding bonds is the winner in the Southwest. In coming to market with three separate refinancings in a 16-day period, DFW became the first major airport to issue bonds during the COVID-19 pandemic, opening the market for other major airports.

Northeast Region

In the Northeast, the winner is the Power Authority of the State of New York's $1.23 billion issuance of tax-exempt and taxable revenue bonds. The deal included $791.6 million of green bonds, the authority's first such issuance, representing the largest public power green bond transaction of all time.

Southeast Region

The winner in the Southeast region is the city of Tampa, Florida's $362.8 million issuance of water and wastewater systems revenue and refunding revenue bonds. At the time of the sale, it was the largest bond sale in Florida completed since the start of the pandemic, and was the year's largest Southeast water and wastewater financing by par amount.

Health Care Financing

The Health Care winner is the $1.16 billion Bon Secours Mercy Health financing, which helped pave the way for the reopening of the capital markets for not-for-profit health systems amid the pandemic. Other issuers involved in the deal included Allen County, Ohio, the South Carolina Jobs-Economic Development Authority, and the Virginia Small Business Financing Authority.

ESG/Green Financing

The Ford Foundation's $1 billion issuance of taxable social bonds is the winner in the ESG/Green financing category. The transaction represented the first-ever social bond offering by a United States nonprofit foundation in the taxable corporate bond market and led the way for numerous other nonprofit foundations to follow suit.

Public-Private Partnership Financing

The P3 winner is the $236.8 million Arizona Industrial Development Authority financing for Nebraska's Lincoln South Beltway project. The first-of-its-kind transportation project utilizes an innovative contractor-led build finance structure and delivered the largest single-contract project in the history of conduit issuer Nebraska Department of Transportation.

Small Issuer Financing

The Small Issuer honoree is the recently formed Idawy Solid Waste District, a union of three Idaho counties and one in Wyoming, for its $22.36 million issuance of tax-exempt and taxable revenue bonds. This is the first financing of this type in Idaho and is the first time a county from another state has joined with Idaho counties to pursue a joint project.

Innovative Financing

The Connecticut Green Bank's $16.8 million issuance of "Green Liberty Bonds" is this year's Innovative Financing winner. Modeled after the Series-E War Bonds of the 1940s, this new sub-category of green bonds is sold in maximum denominations of $1,000, making them accessible to everyday citizens and retail investors.

BY SOURCEMEDIA | MUNICIPAL | 12/16/20 06:54 PM EST

Fitch Ratings Updates Criteria for U.S. Public Finance Prerefunded Bonds.

Fitch Ratings-New York/Chicago-14 December 2020: Fitch Ratings has published an updated criteria report titled "U.S Public Finance Prerefunded Bonds Rating Criteria." The report updates the prior report published on Nov. 20, 2018.

No changes to Fitch's underlying methodology were made, and the key elements of Fitch's prerefunded bonds rating criteria remain consistent with those of its prior criteria report.

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

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Fitch: US State Revolving Fund and Municipal Finance Pool Sector Performance Remains Strong

Fitch Ratings-New York-15 December 2020: Twenty-nine of the 33 programs included in Fitch's annual U.S. Public Finance State Revolving Fund and Municipal Finance Pool peer review are rated ' AAA', reflecting the sector's strong performance. The remaining four programs included in the report are rated 'AA' and consist of one health and higher education, two transportation programs and one pool program receiving Water Infrastructure Finance and Innovation Act (WIFIA) financing.

"The high ratings are driven by the sound credit quality of the program pool participants, the financial strength of the program structures or a combination of those two factors," said Tim Morilla, Director, U.S. Public Finance.

The overall median PASR for the sector in 2020 was 2.1x, up slightly from 2.0x in 2018 and 2019, as well as from the seven-year historical low of 1.7x in 2013. The high PASR levels reflect the robust financial strength of the pooled programs covered by Fitch, and demonstrates ample resources to cover outstanding aggregate debt service.
The PASR, an asset-to-liability ratio, is calculated by dividing the amount of aggregate pledged assets, including scheduled obligor repayments, reserve funds and account earnings, by aggregate outstanding debt service.

For more information, the full report "State Revolving Fund and Municipal Finance Pool – 2020 Peer Review" is available at www.fitchratings.com or by clicking on the link above.

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Fitch Ratings Updates Completion Risk Criteria.

Fitch Ratings-New York-16 December 2020: Fitch Ratings has published an updated version of its "Completion Risk Criteria." It updates Fitch's criteria of the same title published on March 24, 2020.

The key elements of Fitch's "Completion Risk Criteria" remain consistent with those of its prior criteria report. The primary changes improve the details on the security features and clarify the analytical approach during the operational ramp-up phase.

The changes to the criteria described above are not expected to result in any changes to outstanding ratings.

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Fitch Ratings Updates Coronavirus Scenarios for U.S. State and Local Governments.

Fitch Ratings-New York-16 December 2020: Fitch Ratings has updated the assumptions that underpin its scenario analysis to reflect the company's latest view of the United States' path to recovery from the coronavirus pandemic. Informed by Fitch's recently-published "Global Economic Outlook – December 2020" and "Fitch Ratings Coronavirus Scenarios: Baselines and Downside Cases – Update," the revised baseline scenario reflect somewhat stronger economic activity to date than anticipated, a weak start to 2021 and an anticipated pick-up later in the year, as a safe and effective vaccine becomes widely available. Scenario analysis informs Fitch's assessment of state and local governments' financial resilience.

Revised baseline GDP assumptions for the FAST States & Locals – Fitch Analytical Stress Test Model (FAST) model are for a 3.5% decline in year one, reflecting actual performance in 2020 to date, followed by growth of 4.5% and 3.5% in years two and three, respectively. In the new baseline scenario, real GDP recovers to 4Q19 levels in the 3Q21. Inflation assumptions remain zero in year one and 2% in years two and three. Even as fiscal 2020 actual financial results for issuers become

available (fiscal years ended June 30), Fitch will continue to utilize the year one revenue decline estimate in its analysis as the full revenue impact from the pandemic-fueled economic dislocation continues to take shape. In addition, revenues for most issuers were enhanced by direct and indirect federal stimulus and generally good performance in the first three quarters of the fiscal year. While an incremental $1 trillion in federal stimulus is assumed in the economic outlook for the U.S., Fitch's ratings do not incorporate an expectation for additional federal stimulus aid directly to states and local governments.

In addition to the baseline scenario, Fitch has updated its more severe downside scenario, as described in the updated company-wide common scenarios report noted above. This scenario anticipates repeated 'circuit-breaker' lockdown measures, unrelenting pressure on health systems, extensive voluntary social distancing through 2021 and a delay in the rollout of vaccines. The interpretation of the downside scenario for state and local governments was developed in consultation with Fitch's chief economist. It incorporates GDP declines of 3.9% in year one and 1.6% in year two, followed by growth of 3.8% in year three, and a delay in recovery to 2019 GDP levels until 2023.

U.S. Public Finance Tax-Supported Rating Criteria are forward-looking and designed to communicate state and local governments' ability to maintain financial resilience through an economic cycle at a level consistent with their typically very high rating levels. The economic crisis caused by the coronavirus pandemic and related containment efforts by government officials has led to a far more profound downturn than the standard moderate recessionary cycle envisioned in the criteria. The criteria allow for a temporary modification of the scenario, including key input assumptions, in a period of economic decline. To reflect the current unprecedented stress, Fitch began adjusting its scenario analysis model — the FAST — in April. Prior to the current downturn, the standard GDP assumptions for the scenario were down 1% in year one, followed by growth of 0.5% and 2.0% for years two and three respectively, with CPI assumed to be 2% per year.

FAST is not a forecast, but it represents Fitch's estimate of possible revenue behavior in a downturn based on historical revenue performance. Hence, actual revenue declines will vary from FAST results. FAST does provide a relative sense of the risk exposure of a particular entity compared with others.

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Fitch: Vaccine Mitigates Downside for US Public Finance; Risks Remain

Fitch Ratings-New York/Chicago-17 December 2020: Widespread availability of a coronavirus vaccine would help mitigate downside risk to US public finance (USPF) performance in the second half of the year, Fitch Ratings says. Extraordinary levels of federal economic stimulus have supported USPF credit quality throughout the pandemic, and vaccinations lessen the risk that support will end before business and consumer confidence leads to a sustained recovery. However, significant execution risks remain. Delays in vaccine availability or low inoculation rates would result in significantly weaker growth in 2021 and greater budget stress on credits.

We expect stagnant growth in 1Q21 with a surge in virus cases and hospitalization rates, the expiration of pandemic unemployment assistance at the end of 2020, and the initial limited vaccine distribution. Healthcare, higher education and state and local government credits will continue to see reduced revenues and increased expenses in 2021 and may rely on cost cutting, debt, and draws on liquidity and reserves. Renewed federal stimulus would help support the economy, but we do not assume additional direct aid in our USPF ratings.

Fitch's expectation for US GDP growth in 2021 has been revised upward by 50bps to 4.5% based on the large-scale dissemination of a vaccine, which is expected to bolster economic recovery in 2H21 with the easing of social distancing and shutdowns. Pfizer/BioNTech vaccine distribution began Monday and Moderna's vaccine is expected to be approved by the US Food and Drug Administration as early as Friday, with the Centers for Disease Control and Prevention recommending that health care workers and residents of long-term care facilities be first to receive vaccinations.

Not-for-profit hospitals and life plan communities (LPCs) will benefit from vaccine prioritization for its staff and, in the case of LPCs, residents. By reducing coronavirus hospitalization rates, inoculation will allow a return of elective procedures to pre-pandemic levels toward the end of 2021. Vaccination is expected to help bolster confidence in accessing health services, improving margins by driving volume and revenue increases, while alleviating labor cost pressures.

Widely available vaccines would help higher education student-driven revenues recover in fall 2021 and stabilize conditions for those schools that rely on non-recurring stimulus or expense cutting. As travel restrictions ease, we may see some recovery in international student interest. For those institutions that already exhibited weaker demand characteristics, enrollment may not return to previous levels. The coronavirus' lingering effects on revenues will require ongoing matching expense reductions, including cuts to staff, supplies and capital, which could increase in magnitude if net revenues remain pressured into FY 2022.

State and local governments should be able to lift lockdown restrictions as more people are vaccinated, boosting economic activity. The positive impact on sales and income tax revenues may not be felt until the next fiscal year for some credits, however, and in the meantime, a slow economic and jobs recovery will continue to squeeze budgets due to the lagged effect on finances.

The provision and administration of the vaccine may place logistical and financial burdens on state and local governments, adding to near-term pressures. Increased remote working and e-commerce, pre-pandemic trends that were accelerated will persist, affecting tax revenues long after the pandemic is contained. States and metro areas with large exposures to leisure and hospitality will see revenue erosion as a full recovery of this sector is unlikely in 2021, even with vaccinations.

Affordable housing and multifamily mortgage delinquency levels are currently low but may increase, particularly in areas with sustained high unemployment and slower economic recovery. In sectors that the coronavirus did not materially effect, namely public power and water and sewer, the vaccine should have limited positive upside.

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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: Employment Growth Slowing for U.S. States

Fitch Ratings-New York-17 December 2020: Employment numbers improved slightly for U.S. states in October, though Fitch Ratings' latest U.S. States Labor Markets Tracker says the pace continues to slow and employment will likely weaken over the next few months given the record number of coronavirus cases, hospitalizations and additional shutdowns.

"Most U.S. states continue to see sizeable employment rebounds with the median jobs recovery at 58% at the end of October, up from 55% in September" said Senior Director Olu Sonola. While the median official unemployment rate for states fell to 6.1% in October from 6.7% the median Fitch-adjusted unemployment rate for states, adding in labor force exits, fell more significantly to 8.1% in October from 9.3% in September. States with a larger percentage of those who dropped out of the labor force may suffer greater volatility in their official unemployment rates going forward.

Drilling down into state numbers, Fitch's adjusted unemployment rate actually weakened for Massachusetts, New Mexico and Connecticut even though the official unemployment rate improved for each state in October, which Sonola says points to deeper labor market challenges for these states.

Fitch's latest 'U.S. States Labor Markets Tracker' is available at 'www.fitchratings.com'.

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Additional information is available on www.fitchratings.com

Fitch Ratings 2021 Outlook: U.S. Water and Sewer Sector -- Amended

Fitch's Sector Outlook: Stable Fitch Ratings' 2021 stable outlook for the U.S. water and sewer sector (the sector) reflects strong sector characteristics and a conservative business model that provides utilities with stability, even during periods of uncertainty and volatility. The fundamental hallmarks of the sector include: essentiality of service, lack of competition and generally autonomous rate-

making authority. These underpinning strengths continue to produce favorable financial results and reliable cashflows even in the current environment. Rating Outlook: Stable The rating outlook for the sector is Stable, and only limited rating changes are expected in 2021. As of December 2020, 88% of the water and sewer ratings assigned by Fitch maintained a Stable Rating Outlook. Approximately 8% have a Positive Rating Outlook or are on Rating Watch Positive, and 3% have a Negative Rating Outlook or are on Rating Watch Negative. Ratings trending positive are dominated by utilities with improving leverage profiles. Conversely, ratings trending negative are predominantly driven by utilities with rising leverage as a result of increasing operating or capital expenses without offsetting rate support.

ACCESS REPORT

S&P: U.S. Charter School Medians In 2019 Were Stable Pre-COVID-19, But Disparity Grows Between Higher And Lower Rated Schools

Table of Contents

The key median indicators for U.S. charter schools were generally stable in fiscal 2019. Overall enrollment, demand, and financial profiles for charter schools remained similar to prior years, although the fiscal 2019 metrics were recorded before the unprecedented disruption that the COVID-19 pandemic has caused the sector. We expect to see the effects of operational and financial challenges related to the pandemic reflected beginning with the fiscal 2020 median credit metrics, with more pronounced changes likely in fiscal 2021. For charter schools already facing operational and financial challenges before the pandemic, we believe COVID-19 has exacerbated these pressures. Due to the duration of COVID-19 and the gradual, uneven economic recovery, we believe charter schools face heightened risk of state or local funding cuts due to the COVID-19 pandemic. Additionally, we believe there is potential for enrollment fluctuations, given the uncertainty surrounding school re-opening plans.

We are closely monitoring fiscal 2021 state budgets for potential funding pressure. We recognize the possibility of mid-year cuts, and even if fiscal 2021 funding holds in many of the key states in which our rated charter schools operate, there could be repercussions for fiscal 2022 and beyond. In our view, the ability of schools to react proactively and manage their expenses is key. With certain states indicating greater budget pressures than others, with end-of-year cuts to operating appropriations as well as state hold-backs and deferrals, many schools have reported offsetting operating pressure by cutting discretionary spending, enacting salary freezes, and pausing or re-evaluating capital projects. In addition to the receipt of federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funding that has helped offset increased COVID-19 related expenses. Some schools also qualified to receive loans through the Paycheck Protection Program (PPP) under the CARES Act, which in our view provides these schools with additional liquidity flexibility in the near term. We believe schools with stronger enrollment trends and financial cushion are likely to fare better, while lower-rated schools in pressured states will have less flexibility to absorb steep cuts. For more information see “How COVID-19 And The Recession Could Affect Credit Quality For U.S. K-14 Schools,” published Sept. 3, 2020, on RatingsDirect.

Continue reading.

S&P U.S. Not-For-Profit Health Care Rating Actions, November 2020.

S&P Global Ratings' U.S. not-for-profit health care rating actions in November were mixed with two downgrades and two upgrades. The November upgrades were due to a lower rated issuer completing a strategic combination with a higher rated issuer and because of the corrected application of our "Assigning Issue Credit Ratings Of Operating Entities" criteria, resulting in a higher rating on Circleport Conference Center, a subsidiary of St. Elizabeth Medical Center, Ky.

Outlook revisions were positive, with two favorable (negative to stable) revisions unaccompanied by a rating change. In November, we maintained ratings without revising the outlooks on 18 health care providers.

The table below summarizes S&P Global Ratings' monthly bond rating actions for U.S. not-for-profit health care providers in November. We based the credit rating affirmations and rating actions on several factors within enterprise and financial profiles, including business position, utilization, financial performance, debt levels, bond-issuance activity, physician relationships, and the external regulatory and reimbursement environment. Currently, this also includes an assessment of COVID-19, economic pressures, and market volatility.

Continue reading.

15 Dec, 2020

Municipal Volumes Cut in Half from October to November.

Read the Press Release.

DECEMBER 15TH, 2020

Moody's Talks - Outlook Connections Podcast Series

Strong rebound would boost US municipalities, not-for-profit hospitals and colleges

Kendra Smith, Tim Blake and Leonard Jones of the Public Finance team discuss the prospects in 2021 for US states, local governments, universities and not-for-profit hospitals.

A strong economic rebound accompanied by a successful coronavirus vaccine rollout would boost tax revenues, while encouraging students to return to campus and allowing hospitals to carry out more profitable elective surgeries.

An uneven recovery may force some states and local governments to cut spending further, particularly those dependent on tourism and energy.

Listen to the Podcast.

Migration to Low Tax States and the Muni Market.

Jamie Iselin, Neuberger Berman head of municipal fixed income, talks about the implications of people moving from high tax to low tax states. He appears on “Bloomberg Markets.” This is from Dec. 8.

Watch.

Bloomberg Markets

December 17th, 2020

Up Against Wall Street Bond Giants, Minority Firms Want More.

The push for racial justice has created the opportunity they need.

The big names were familiar: JPMorgan Chase & Co., Goldman Sachs Group Inc., Morgan Stanley. Then there was Blaylock Van. The tiny investment house managed to land a role on the $10 billion bond sale in August by Alphabet Inc. by bringing something else to the table: diversity.

For decades, minority-owned underwriters such as Blaylock have struggled to gain more than a small fraction of the deals in their traditional arena, the $3.9 trillion U.S. municipal bond market. Now, amid the national conversation over racism and inequality, these small firms are hoping companies will hire them more often to underwrite corporate bonds in a market that’s almost twice as big.

The prospects are daunting. Even though many states and cities have committed to allocating business to minority underwriters, these firms still handle just 5% of all muni sales. Their share of corporate bond deals is even less: 2% to 3%.

Continue reading.

Bloomberg Business

By Molly Smith and Danielle Moran

December 17, 2020, 4:31 AM PST

SEC Proposes Amendments to Reg ATS for Government Securities ATSs.

The Securities and Exchange Commission (SEC) proposed to amend Regulation ATS under the Securities Exchange Act of 1934 for alternative trading systems (ATSs) that trade government securities or repurchase and reverse repurchase agreements on government securities (Government Securities ATS). The SEC proposed to eliminate the exemption from compliance with Regulation ATS for Government Securities ATSs, and to require such ATSs, among other things, to

- Disclose information about their manner of operations and the ATS-related activities of the registered broker-dealer or government securities broker or government securities dealer that operates the ATS and its affiliates on new Form ATS-G;
- Comply with the Fair Access Rule under Rule 301(b)(5) of Regulation ATS if the ATS meets certain volume thresholds in US Treasury Securities or in a debt security issued or guaranteed by a US executive agency or a government-sponsored enterprise (Agency Securities); and
- Comply with Regulation Systems Compliance and Integrity (Reg SCI) if the ATS meets certain volume thresholds in US Treasury Securities or Agency Securities.

The SEC also issued a concept release on the regulatory framework for electronic platforms that trade corporate debt and municipal securities. The SEC requested comment on the proposed amendments to Regulation ATS and the concept release within 60 days after publication of the proposal in the Federal Register.

Continue reading.

Wilmer Cutler Pickering Hale and Dorr LLP – Andre E. Owens, Bruce H. Newman and Cherie Weldon

December 17 2020

What Investors Should Expect from 2021's Municipal Bond Market.

Head of BlackRock's municipal bonds group, Peter Hayes joined Yahoo Finance Live to break down the municipal bond outlook for 2021.

Video Transcript

ADAM SHAPIRO: We invite into the stream Peter Hayes. He is the head of BlackRock's municipal bonds group. He is a frequent guest here at Yahoo Finance. It's good to have you here, Peter.

PETER HAYES: Thanks for having me, Adam. Nice to be back.

ADAM SHAPIRO: I want to ask you about something that, in a recent note, you said to your clients, which is– this has to do with the Fed, the Fed started their meeting today. And you said that we do not believe the conclusion of the Muni Liquidity Facility at year end will have a meaningful impact on the overall market. Why not?

PETER HAYES: Well, I think, you know, it's interesting, a couple things. One is I heard this segment a couple sessions ago talking about state and local government and what would happen with the stimulus. The only two borrowers really have tapped that particular facility. So there hasn't been a lot of demand for it.

What has proven resilient, I think, is the primary new issue market with municipals themselves. We've seen tremendous issuance this year. But even lower quality issuers, those impacted by the virus, have been able to access the market, sometimes at higher borrowing costs. But I think the market is fully open for all those issuers.

So it may not have a very big impact if the MLF does expire at the end of the year, at least that's our thinking. If we get a second shutdown and we begin to see a big economic drag perhaps in the first

quarter, I think there's always a possibility that that liquidity facility could come back, be bought back. But right now, we don't view it as having a big impact on the market should it expire at the end of this month.

SEANA SMITH: And Peter, looking back over the last couple of months, I guess the question is how significantly has the Fed's Muni Facility– or has it significantly changed the dynamics of the market at all? I know you're saying going forward it might not make that big of a difference, but looking back, though, how critical has it been?

PETER HAYES: You know, that's a good question, and it's a little bit of a head-scratcher because if you go back into March and April when the market just felt like there was no bottom in sight, and where would we see the bottom, what would create a bottom, I think it was some of these facilities that did, whether it be the MLF which was created, some of the money market facilities helped overall liquidity in the market, et cetera. So they clearly have had an impact because the market has had an enormous bounce back.

When you think about the round trip of the index, which was up 3.5%, down 8 and change. So that's at a negative 11% move, which is fairly big for this particular market. And then you look at where we are now, which is 5%. So it's just an enormous amount of volatility. But it's been a tailwind. And I think a lot of the tailwind has come from some of these programs like the MLF.

I think that it's been psychological as opposed to really having an actual impact. Because as I mentioned, only two borrowers have really accessed that facility thus far.

ADAM SHAPIRO: So Peter, you also point out that the S&P Municipal Bond Index grew in November, what, 1.27%, but there's been part of the strong performance is because there is a lack of Muni issuance. Why? Municipalities and states need money right now. New Jersey came to market successfully, why haven't the others?

PETER HAYES: I think it's interesting. So that's– we're going to see right now about $450 billion worth of issuance, which is a pretty big number. But the breakdown of that is a really important element, I think, for your listeners. There's only been a little over 300 billion created in traditional tax exempt issuance. The rest has been in a taxable market.

That appeals to different types of investors. And part of the reason for that is simply advance refunding elimination from the 2017 Tax Act, as well as no restrictions on the use of proceeds that exists in the tax exempt market. You'd think they'd be borrowing more, and we do think they will borrow more in 2021. I think it's been a little bit of a surprise that the market reopened so quickly.

I think there's been an aversion, generally, to debt, but I think it's just– today, we saw the state of Florida, the legislature approve one of the biggest borrowing programs we've ever seen. So I think there'll be more issuance ahead. And then, again, in this segment just a few ahead of us, the infrastructure was mentioned, which everybody wants to do infrastructure. No one can really agree on how to pay for it.

Perhaps we'll see that in 2021 as well and that will add to issuance. But clearly, issuance is underwhelmed. It's been a huge tailwind. In fact, we view this really as a technical rally, very good demand, not a lot of bonds around. And that's been a big driver of the positive performance we've seen, even though the credit fundamentals still are fairly weak given the economy hasn't fully recovered.

SEANA SMITH: So Peter, then, going off of that and taking a look at the past performance, I know

the longer term in the lower credit quality assets have been the stronger performers, but what's your recommendation looking out 6 to 12 months? How should investors be positioned at this point?

PETER HAYES: A lot of that's going to depend. And I think we all agree that there will be long-term behavioral changes that will exist from this pandemic, even long after the economy stabilizes and the population is fully, or whatever percentage fully means, vaccinated. But, you know, what sectors will they impact?

So things like small colleges, will it be cheaper for someone to get an education by doing it virtually as opposed to being on campus? That likely is going to be detrimental to small colleges and student housing bonds. Senior living facilities have been particularly hard hit in the pandemic. You know, I think the long-term prognosis for those is not quite good as well.

So I think there's a lot of things that still have to play out. But there are areas, such as airport bonds, for instance, which had gotten beat up initially, I think there's a lot of pent up demand in the system for things like travel, et cetera, that likely will bounce back once we get to a better state in terms of vaccination and the– I guess the positivity rate declining to at least something closer to 0. So state and local governments, again, I think are going to benefit from the next leg up in the economy.

The housing market's been a big boost to the overall economy, again, state and local governments. So, you know, that tells us we have an up in quality bias over the next 6 to 12 months. Some of those other sectors are on the lower quality part of the spectrum.

ADAM SHAPIRO: Peter, we look forward to following up with you on all of this in the first quarter of next year. Thank you for joining us. Peter Hayes is head of municipal bonds group at BlackRock. All the best to you and your team.

PETER HAYES: Thank you for having me.

Yahoo Finance

December 15, 2020

Providence Pension Could Bankrupt Rhode Island City.

The financial condition of the City of Providence, Rhode Island certainly looks precarious. The municipality may need to seek bankruptcy protection in the near future primarily as a result of its over $1 billion in unfunded pension obligations.

As indicated below, the Mayor of Providence agrees with this dire analysis.

According to the Comprehensive Annual Financial Report (CAFR) of the City for the fiscal year ended June 30, 2019, the Employee Retirement System of the City (ERS) had a funded ratio of only 25.83%. That is, ERS had approximately $367 million in assets to cover its total $1.4 billion pension liability.

Continue reading.

Forbes

by Edward Siedle

Dec 16, 2020

CRE Pros Laud Biden's Proposed Changes to Opportunity Zone Program.

Biden and his team contend that the program has fallen short of its promise of bolstering communities of color, small businesses and homeowners.

The federal Tax Cuts and Jobs Act of 2017 created the Opportunity Zone program, an initiative touted by the Trump administration as a vehicle for spurring investment in economically distressed pockets of the country. Today, more than 8,700 of these zones have been designated. As of the end of 2019, Opportunity Zone funds had collected more than $75 billion in private capital for an array of real estate projects.

The Trump administration hails the Opportunity Zone program as a success. A report released in August by the White House Council of Economic Advisers promoted the potential of these zones "to further prosperity and self-sufficiency in those areas that most lack it."

Continue reading.

National Real Estate Investor

John Egan | Dec 07, 2020

MSRB Seeking Applications for Governing Board.

The MSRB is seeking applications for four positions on its governing Board.

Listen to what a former public representative enjoyed about her tenure.

3-D Accounting: Developments in Debt Disclosures and Derivative Instrument.

January 20, 2021 | 2:00 – 3:15 Eastern Time

Governments already have several required disclosures for debt, but users of financial statements continually want more. As a result, finance officers must now become familiar with the latest round of new reporting requirements for debt. In this session, speakers will discuss what constitutes debt and the additional debt disclosures required by GASB 88, the issuance of GASB 91 for conduit debt, and the soon-to-be-issued new guidance on derivatives related to changing from LIBOR to SOFR.

Learning Objectives:

- Identify and implement GASB Statement No. 88 note disclosure requirements
- Understand the classifications of conduit debt obligations and when to report a liability
- Understand why LIBOR is being replaced as an appropriate benchmark interest rate for derivatives
- Identify the appropriate benchmark interest rates to be used with derivatives.

Member Price: $35.00
Non-member Price: $50.00

REGISTER

Joint Letter on Alternative Reference Rates Committee's Legislative Proposal.

SUMMARY

We are writing to make you aware of an issue that, if left unaddressed, could have significant consequences not only for the State of New York and its residents, but for U.S. and global markets. Avoiding further unnecessary disruptions will be especially important as the economy seeks to recover from the damage done from the pandemic. As you are likely aware, the regulator of LIBOR, an interest rate benchmark used in an estimated $200 trillion of financial transactions, has stated that LIBOR will end and warned that market participants should prepare for the risk that it may be discontinued as soon as the end of 2021. However, many existing contracts either do not address a permanent end to LIBOR or have ambiguous fallback language that could dramatically alter the economics of hundreds of thousands of contracts.

This legal uncertainty could create complex problems for parties or courts to sort out, and create great uncertainty in financial markets. Many of the financial products and agreements that reference LIBOR are governed by New York law. It is because of this, and New York's critical role in financial markets, that we urge your consideration of the Alternative Reference Rates Committee's legislative proposal.

Read the Letter.

SIFMA Statement on Transition From LIBOR to Alternative Rates and ARRC Model Law for New York State.

New York, NY, December 16, 2020 – SIFMA today issued the following statement from SIFMA president and CEO Kenneth E. Bentsen, Jr. on the transition from LIBOR to alternative rates, in support of the letter from the ARRC on its model law for New York State:

"The transition from LIBOR to alternative rates is a top priority for the financial services industry. SIFMA supports market, legislative and regulatory efforts to ensure a smooth transition, while avoiding market disruption and legal uncertainty. We continue to work as part of the Alternative Reference Rate Committee on issues such as resolution of legacy transactions, development of a term rate, and socialization in the cash markets. Notably, the ARRC developed a model law for New York to help transition 'tough legacy' contracts that are difficult or practically impossible to amend, which SIFMA fully supports and urges New York to pass.

"SIFMA is also discussing the issue with Congress including possible federal legislation modeled on the NY law while continuing to advocate for the passage of NY state legislation. Notwithstanding those efforts, we continue to advocate for transition to new reference rates such as SOFR consistent with the end 2021 timeline, and the best practice recommendation of the ARRC. There is much to be done in that window, and regulators have made clear that the usage of LIBOR in new transactions

needs to end next year."

New Jersey Appellate Division Holds No Reimbursement of Municipal Taxes for Undisclosed Conservation Easement.

In a decision approved for publication, the New Jersey Appellate Division recently held that the holder of a tax lien who, upon attempting to foreclose on the property, learns that it is encumbered by a previously undisclosed conservation easement, is unable to recoup municipal taxes paid on the property in the absence of bad faith on the part of the Township. *Garden State Investment & Isadore H. May v. Township of Brick*, 2020 WL 7250904 (N.J. Super. Ct. App. Div. Dec. 10, 2020).

Plaintiffs were the purchasers of tax sale certificates on vacant lots in Brick Township. Before purchasing the certificates, the parties "physically inspected the properties and examined the assessment records and tax map," but did not obtain a title search. When the Plaintiffs commenced a tax foreclosure, they discovered that the properties were encumbered by a conservation easement arising out of a 2001 settlement with the Department of Environmental Protection. This easement prevented the "disturbance," and thus, the development, of the property. A deed recording this easement was recorded in the Ocean County Clerk's Office, but the Township's Tax Collector never received notice of the easement, nor was the easement ever indicated on the tax assessment card, nor reflected by a reduction in the encumbered lots' assessed values. Plaintiffs then filed suit "seeking recession of their tax sale certificate purchases and reimbursement of taxes they paid on the properties." On cross-motions for summary judgment, the trial court held that Plaintiffs were not entitled to equitable relief concerning the taxes paid and denied recession of the purchases.

The Appellate Division affirmed. In holding that plaintiffs had no right to rescission of the tax sale purchases, nor the refunding of any municipal taxes paid between the tax sale purchase and the foreclosure action, the Court stated that "[t]he township tax assessor was unaware of the conservation easement. While its existence was ascertainable to all – since deeds containing the easement had been recorded in the County Clerk's Office – plaintiffs, by engaging in this form of investment, had a greater interest in learning of any limitations on the property than the township did." In doing so, the Appellate Division distinguished this case from *Township of Middletown v. Simon*, 193 N.J. 228 (2008), affirming in part, 387 N.J. Super. 65 (App. Div. 2006). In *Middletown*, the Appellate Division allowed the rescission of a tax sale purchase upon a municipality's belated declaration that the property was intended for public use. The New Jersey Supreme Court affirmed and allowed equitable relief as again, the Township filed an action to have the lot dedicated for public use and adopted an ordinance accepting the lot for public use. In Garden State, however, the Township did not "[play] an active role in seeking to deprive [buyer] of his investment." Additionally, "plaintiffs had every reason to uncover all material circumstances about their investments," and their "failure to act more diligently in ascertaining any defects in or limitations on their investments bars their claim for equitable relief, particularly against the township, which acted passively and innocently throughout."

This case is important because it illustrates that the purchase of a tax sale certificate requires some minimum due diligence, and that a title search may be advisable before purchasing any tax sale certificate for a substantial sum. Here, although the encumbrance rendered the property non-developable, and was not disclosed in the municipal tax records, the lack of wrongdoing on the part of the township, as well as the court's judgment of the lienholders as failing to do proper due diligence on their investment, left the certificate holder with a worthless property for its investment.

Riker Danzig Scherer Hyland & Perretti LLP – Michael Crowley, Michael R. O'Donnell and Andrew Raimondi

December 18 2020

TAX - MICHIGAN

City of Grand Rapids v. Brookstone Capital, LLC

Court of Appeals of Michigan - October 29, 2020 - N.W.2d - 2020 WL 6370351

City brought action against housing project developer and housing association limited partnerships, who were otherwise exempt from ad valorem property taxes, for breaches of agreements for payments of a service charge in lieu of taxes and unjust enrichment for defendants' failure to pay the amount of charges billed as required under city's payments in lieu of taxes ordinance.

The Circuit Court granted city's motion for summary disposition on grounds of no genuine issue as to any material fact and denied defendants' motion for summary disposition on ground the opposing party was entitled to judgment. Defendants appealed.

The Court of Appeals held that:

- Michigan State Housing Development Authority (MSHDA) Act preempted subject portion ordinance;
- Doctrine of in pari materia did not apply, and could not reconcile, ordinance and Michigan State Housing Development Authority (MSHDA) Act; and
- Defendants breached contracts between themselves and city.

Section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects requires that plaintiff impose an annual payment of a service charge in lieu of taxes charge to be paid by defendant owners of a subject low-income housing projects calculated for the units occupied by low-income persons or families either pursuant to the default amounts set by subpart of statute, or the amount plaintiff established by ordinance as permitted under the subpart.

Section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects requires that plaintiff impose an annual payment of a service charge in lieu of taxes charge respecting all portions of the subject projects occupied by "other than low income persons or families" equal to the full amount of the ad valorem taxes that would have been required if the projects were not tax exempt, to be paid by defendant owners of the subject projects.

A direct conflict existed between section of Michigan State Housing Development Authority Act (MSHDA) governing tax exemptions and payment of service charges for housing projects and portion of city's payment of a service charge in lieu of taxes ordinance, and thus MSHDA Act preempted subject portion of ordinance, where ordinance required payment in lieu of taxes by a housing project owner in the amount of 4% of annual shelter rent which was defined as the total collections from all occupants of a housing project exclusive of charges for utilities provided to them, but MSHDA Act commanded city to charge fees in lieu of taxes equal to the ad valorem tax for portions of projects occupied by "other than low income persons and families."

Doctrine of in pari materia did not apply, and could not reconcile, city's payments in lieu of taxes

ordinance and section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects, which otherwise preempted the ordinance, since the ordinance, which required payments in lieu of taxes by a housing project owner in the amount of 4% of annual total collections from all occupants of housing project exclusive of charges for utilities, and the MSHDA section, which commanded city to charge fees in lieu of taxes equal to the ad valorem tax for portions of projects occupied by "other than low income persons and families," both lacked ambiguity.

Housing project developer and housing association limited partnerships breached contracts between themselves and city, which provided developer and housing associations the benefits of tax exemption for the low-income housing projects pursuant to section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects in exchange for payment of a service charge in lieu of taxes pursuant to subject section of MSHDA Act, where when billed pursuant to the parties' contracts, developer and housing associations refused to pay the contractually defined amounts required by city.

Bond Lawyers Seek Further Relief for Low-Income Housing Projects.

SUMMARY BY TAX ANALYSTS

The National Association of Bond Lawyers has requested that the timing relief provided in guidance (Notice 2020-53) for qualified low-income housing projects and qualified residential rental projects be extended through December 31, 2022.

FULL TEXT PUBLISHED BY TAX ANALYSTS

December 2, 2020

David J. Kautter
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Re: IRS Review of Regulatory and Other Relief to Support Economic Recovery

Messrs. Kautter, Desmond and Vallabhaneni:

On July 1, 2020, in response to the ongoing outbreak of the novel coronavirus disease (the "COVID-19 Outbreak"), the Internal Revenue Service released Notice 2020-53 to provide relief to bond issuers, operators, owners and tenants of qualified residential rental projects and qualified low-income housing projects financed with exempt facility bonds, and state agencies that have jurisdiction over these projects, from otherwise-applicable federal tax law compliance requirements. On behalf of the National Association of Bond Lawyers ("NABL"), I am writing to request that the time-limited relief set forth in IRS Notice 2020-53 be extended through December 31, 2022, as more specifically set forth below.1

This letter was prepared by an ad hoc task force comprising the individuals listed in Appendix A and was approved by the NABL Board of Directors. NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 2,500 members and is headquartered in Washington, DC.

If NABL can provide further assistance, please do not hesitate to contact Jessica Giroux, Director of Governmental Affairs in our Washington DC office, at (518) 469-1565 or at jgiroux@nabl.org.

Sincerely,

Teri M. Guarnaccia
President, National Association of Bond Lawyers
Washington, DC

Enclosure:
NABL's April 9, 2020 Letter to Congress and the Treasury

cc:
Helen M. Hubbard, Associate Chief Counsel, Financial Institutions & Products, Internal Revenue Service
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Background Relating to Tax-Exempt Bond Provisions of IRS Notice 2020-53

Section 142(d) of the Internal Revenue Code of 1986 (the "Code") generally requires as a condition for tax-exempt bond financing that a qualified residential rental project provide for the set-aside of either (i) 20% of its units for tenants with income that does not exceed 50% of area median income or (ii) 40% of its units for tenants with income that does not exceed 60% of area median income (the "Set-Aside Requirement").

Section 147(d) of the Code generally requires that the proceeds of certain types of tax-exempt qualified private activity bonds, including bonds that finance qualified residential rental projects, may only be spent to acquire an existing building if a minimum amount of money is spent on rehabilitation of the building within two years of the later of (i) the date of bond issuance or (ii) the date the building was acquired (the "Rehabilitation Requirement").

As NABL noted in its April 9, 2020 submission to federal policymakers recommending guidance with respect to the tax-exempt bond provisions of the Code in response to the COVID-19 Outbreak,2 if proceeds of bonds issued pursuant to Section 142(d) of the Code are used to acquire an existing, rented-up residential rental project, the tenant mix at the time of bond issuance and/or acquisition may not satisfy the Set-Aside Requirement. Unless all or a significant portion of existing tenants are evicted immediately, it may take some time until the Set-Aside Requirement is satisfied. Since 2004, with the release of Revenue Procedure 2004-39, the Department of Treasury and the Internal Revenue Service have recognized and addressed this problem by providing a "transition period" of up to one year to comply with the Set-Aside Requirement for bond-financed acquisitions of residential rental projects. NABL's April 2020 submission went on to report that, at that time, residential leasing activities had stopped around much of the country as a result of the COVID-19 Outbreak, and that, in addition, supply chains had been disrupted, which in turn suggested that satisfaction of the Rehabilitation Requirement on a timely basis would be more difficult.

Accordingly, in its April 2020 submission, NABL requested an extension of the "transition period" set forth in Revenue Procedure 2004-39, as well as an extension of time to satisfy the Rehabilitation Requirement.

IRS Notice 2020-53 responded to these concerns, providing relief with respect to acquired qualified residential rental projects that, pursuant to Section 5.02 of Revenue Procedure 2004-39, would have a "transition period" ending on or after April 1, 2020 and before December 31, 2020, postponing the last date of the "transition period" for all such projects to December 31, 2020. The same relief is provided in IRS Notice 2020-53 for purposes of satisfying the Rehabilitation Requirement.3

Recommendation

NABL applauds the Internal Revenue Service and the Department of Treasury for promulgating IRS Notice 2020-53, which has provided much-needed timing relief to bond issuers, to residential rental project owners and operators and to other affected parties. As of the date of submission of this request, however, it is apparent that the timing relief in IRS Notice 2020-53 should be extended beyond the end of 2020.

As you know, there is consistent, broad-based reporting today that the public health challenges presented by the COVID-19 Outbreak are continuing at the end of 2020, at levels that are even higher than they were in April, and that in many jurisdictions around the country, shut-down orders of varying degrees are being imposed or reimposed. In recent weeks, NABL members have reported that owners and operators of residential rental projects described in IRS Notice 2020-53 continue to face severe challenges with respect to achieving compliance with the Set-Aside Requirement and the Rehabilitation Requirement. For example, owners and operators have reported that State or local shut-down conditions have made it extremely difficult or even impossible in some cases to show vacant apartment units and to conduct in-person diligence with respect to the income eligibility of prospective tenants. Moreover, there have been many reports in the press about the scarcity of construction materials and building trades labor to complete construction projects of all kinds.

In light of COVID-19 Outbreak conditions that continue to prevail around the country, we request that the Internal Revenue Service publish guidance supplementing, amplifying or superseding IRS Notice 2020-53, providing that:

1. For purposes of Section 5.02 of Revenue Procedure 2004-39, the last day of a 12-month transition period for a qualified residential rental project that ends on or after April 1, 2020 and before December 31, 2021 is postponed to December 31, 2022; and

2. If a bond is used to provide a qualified residential rental project and if the two-year rehabilitation expenditure period for the bond under Section 147(d) of the Code ends on or after April 1, 2020, and before December 31, 2021, the last day of that period is postponed to December 31, 2022.

We respectfully submit that time is of the essence with regard to the compliance matters set forth in this submission, and we therefore additionally request that that the Internal Revenue Service publish the guidance requested herein on or before December 31, 2020.

APPENDIX A
NABL AD HOC TASKFORCE MEMBERS

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FOOTNOTES

1This request is being submitted in part in response to the November 5, 2020 solicitation of Sunita Lough, Deputy Commission of Internal Revenue, Services and Enforcement, inviting comments from the public regarding regulations and other requirements that can be rescinded, modified or waived to assist business and individual taxpayers with the ongoing economic recovery from the COVID-19 Outbreak. See 85 Fed. Reg. 73252 (November 17, 2020).

2A copy of NABL's April 9, 2020 submission is enclosed for reference; see page 16 of that submission for a discussion of these issues.

3Although the focus of this submission is concentrated on the tax-exempt bond aspects of IRS Notice

2020-53, affecting compliance under Sections 142(d) and 147(d) of the Code, we observe that IRS Notice 2020-53 also provides relief with respect to a number of compliance matters under Section 42(d) of the Code. For example, IRS Notice 2020-53 states that, between April 1, 2020 and December 31, 2020, owners of "qualified low-income housing projects" (as such term is defined in Section 42(d) of the Code) are not required to perform certain income re-certifications or reduce the eligible basis in a building because of the temporary closure of an amenity or common area due to the COVID-19 Outbreak and that state agencies that have jurisdiction over such projects are not required to conduct compliance-monitoring. Additionally, pursuant to IRS Notice 2020-53, between April 1, 2020 and December 31, 2020, owners and operators of qualified low-income housing projects, bond issuers and state agencies are permitted to treat medical personnel and other essential workers providing services during the COVID-19 Outbreak as if they were "displaced individuals" within the meaning of Revenue Procedures 2014-49 and 2014-50, which in turn facilitates the use of qualified low-income housing projects to provide emergency housing for such essential personnel.

END FOOTNOTES

Bond Lawyers Seek COVID-19 Relief Extension.

Public finance attorneys are seeking an extension of pandemic-related economic relief provided by the IRS earlier this year regarding qualified low-income housing projects.

The National Association of Bond Lawyers (NABL), which originally sought COVID-19 relief in April, is asking for an extension of IRS Notice 2020-53, 2020-30 IRB 151, issued July 1.

The notice provides relief to bond issuers, operators, owners, tenants of qualified residential rental projects and qualified low-income housing projects financed with exempt facility bonds, and state agencies with jurisdiction over those projects from otherwise applicable federal tax law compliance requirements, NABL noted in a December 2 letter to the IRS and Treasury.

Although the guidance has provided much-needed relief, the ongoing pandemic makes clear the relief should continue beyond 2020, according to the letter.

"As you know, there is consistent, broad-based reporting today that the public health challenges presented by the COVID-19 Outbreak are continuing at the end of 2020, at levels that are even higher than they were in April, and that in many jurisdictions around the country, shut-down orders of varying degrees are being imposed or reimposed," NABL said.

The group said that owners and operators of residential rental projects described in the notice are still finding it difficult to comply with the set-aside and rehabilitation requirements.

That's why "time is of the essence" in extending the notice, NABL said.

The last day of a 12-month transition period for a qualified residential rental project ending on or after April 1, 2020, and before December 31, 2021, should be postponed to December 31, 2022, NABL said.

If a bond is used to provide a qualified residential rental project, and if the two-year rehabilitation expenditure period for the bond ends on or after April 1, 2020, and before December 31, 2021, the last day of that period should be postponed to December 31, 2022, NABL added.

TAX ANALYSTS

by FRED STOKELD

POSTED ON DEC. 9, 2020

2020 Takeaway For Muni Market Is Resilience: Kazatsky (Radio)

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence: muni market resilience and expense crunches. Hosted by Paul Sweeney and Vonnie Quinn.

Listen to audio.

Bloomberg Radio

December 18, 2020

NYC's Whitney Museum Wins Bond-Market Reprieve From Covid Hit.

- **Refinancing pushes out a $50 million principal payment**
- **Joins borrowers seizing on low rates to soften pandemic's blow**

The Whitney Museum of American Art got a reprieve in the bond market.

The Manhattan art museum, founded in 1931 by Gertrude Vanderbilt Whitney, completed a debt refinancing this week that will prevent a $50 million principal payment from coming due next year by pushing it to 2031 with newly issued bonds, according to Fitch Ratings.
The refinanced bonds were initially sold in 2011 to help finance its new $422 million facility located in the Meatpacking District, which opened in 2015 and features about 50,000 square feet for indoor galleries, outdoor terraces facing The High Line, and a 170-seat theater.

The Whitney, which had to close its doors for about six months in 2020 due to Covid-19, is one of the many borrowers that have rushed to the municipal-bond market to seize on low interest rates to cut debt costs or push payments into the future. Even governments, museums and other agencies hit hard by the pandemic have had little trouble selling debt, with cash flowing into the market on optimism that the rollout of vaccines will set off a recovery next year.

"I think the sale went phenomenally well," said Eric Wild, a managing director at Morgan Stanley who co-leads the bank's nonprofit and higher education team. "The Whitney's credit strength, despite the challenge of the pandemic really came through and resonated with investors."

The $73.3 million deal priced to yield 1.13% for debt due in 2031, about 42 basis points more than AAA rated municipals, according to data compiled by Bloomberg. In 2011, bonds due in 2021 were priced with a 3.7% yield.

The pandemic has been particularly hard on Manhattan cultural institutions that had to close their doors and face the prospect of a tough winter, with New York City Mayor Bill de Blasio warning this week that there could be another shutdown after Christmas. The Whitney, which reopened in

September with capacity limited to 25%, is expecting a cash operating deficit of up to $4.5 million for fiscal 2021, according to bond documents.

The number of visitors has fallen to about 550,000 in fiscal 2020 from 1.19 million in 2019. The museum has had to postpone events like a retrospective of artist Jasper Johns' career, which would have been a boon for attendance, according to the bond documents. It laid off nearly a fifth of its staff in April and had to implement pay cuts.

But donors have also stepped up, with funding from contributions, grants and bequests totaling $11.2 million in fiscal 2020, even though that's slightly less than it expected to raise before the pandemic, according to bond documents. Fitch, which rated the bonds AA, the third-highest level of investment grade, pointed to the stability of the donor base in a report this month.

Since reopening in September, locals have kept the galleries relatively busy, with New Yorkers representing about 75% of visitors, compared with about 31.5% over the same period in fiscal 2020.

The bond deal was three times oversubscribed, helping cut yields by three basis points and adding to the museum's bond investor base, including accounts focused on environmental and socially-beneficial investments, said Luke Hale, director of the municipal syndicate desk at Morgan Stanley.

Beyond big issuers like the city itself or New York's Metropolitan Transportation Authority, "investors are also willing to pay special attention for the diversification benefits of adding a security like Whitney Museum to their portfolio," said Gabriel Diederich, a portfolio manager at Robert W. Baird & Co.

"The pricing is indicative of New Yorker's hunger for tax-exempt income," he said.

Bloomberg Markets

By Amanda Albright and Fola Akinnibi

December 16, 2020, 10:43 AM PST

New York's MTA Forms Underwriting Groups for Debt Sales.

- **Jefferies boosted to senior manager from co-senior manager**
- **Transit agency last updated underwriting pools in 2016**

New York's Metropolitan Transportation Authority implemented a new pool of underwriting firms to work on its bond and note sales as declining revenue and ridership challenge the agency's finances.

The MTA's board approved the new underwriting appointments during its meeting on Wednesday. The agency, the nation's largest mass-transit provider, is a major borrower in the $3.9 trillion municipal-bond market, with $44.6 billion of outstanding debt as of Nov. 27.

Bank of America Securities, Goldman Sachs & Co., JP Morgan Securities, Jefferies, Ramirez & Co., and Siebert Cisneros Shank & Co. will serve as senior managers for the MTA, according to board documents posted on its website.

The MTA elevated Jefferies to the senior manager group from its co-senior managing pool. Citigroup Global Markets will serve as a co-manager, after previously working in the senior manager group,

according to board documents.

Citi, along with 14 other firms, will form the MTA's co-managing pool. Of the 21 businesses in the senior managing and co-managing groups, nine of them are owned by women, minorities and veterans.

The MTA recommends the groups stay in place for three years, or until the agency completes its next request for proposals. The MTA last updated its underwriting group in September 2016.

Bloomberg Markets

By Michelle Kaske

December 16, 2020, 5:00 AM PST Updated on December 16, 2020, 9:29 AM PST

Rich States Uncover Tax Windfall, Undercutting Push for Aid.

- **The pandemic hit states and cities but not as much as feared**
- **People with jobs kept spending online and pocketed stock gains**

It was a shocking, and seemingly improbable, figure.

Eight months into the pandemic — and the brutal economic collapse it triggered — California's budget watchdog said the state was poised to pocket a windfall of some $26 billion. Just as New York and Connecticut had revealed weeks earlier, tax revenue was coming in at a clip no one expected, thanks in part to the booming stock market.

And so it has largely played out across the country this year, albeit to a smaller extent in many of the less well-to-do states. The fiscal apocalypse expected to blow massive holes in state budgets hasn't come — at least not yet.

This in turn is providing fuel to the argument made by some Republicans that additional federal aid for states and municipalities can wait until next year instead of being settled in the relief package that's being heatedly debated in Washington now. Top leaders from both sides in Congress are near a deal for Covid relief of less than $900 billion, including direct stimulus payments but leaving out state and local aid, according to two people familiar with negotiations. That relief has been one of the key sticking points.

"In some ways, U.S. taxpayers have saved some money by the stimulus package being delayed so that they could really get their arms around what revenues look like," said Jennifer Johnston, director of research for Franklin Templeton Fixed Income's municipal bond team.

There are several important caveats to this somewhat rosy picture, to be clear.

For one, many states and cities are still facing large deficits, just not as big as initially forecast. Also, the spike in Covid-19 cases could trigger more economic shutdowns, potentially reversing the nascent recovery that local governments have seen so far. Most of California is back under a stay-a--home order, and New York could be headed toward one. And because of the lag in collecting taxes, states historically struggle with big deficits well after recessions end.

Financial forecasts have improved considerably in recent months, though. In the spring,

congressional Democrats had sought $1 trillion in aid for states and municipalities. Back then, states were expected to report total budget shortfalls of $650 billion through fiscal 2022; now that number is forecast at about $400 billion, according to the Center on Budget and Policy Priorities. And Democrats more recently were pushing for just $160 billion as a first step.

The muni bond market, buoyed by rock-bottom benchmark interest rates, also shows investors are unconcerned about a looming fiscal crisis. States including Pennsylvania, Michigan and California can all borrow for 10 years at rates well below 1%, a historically low threshold. Even a benchmark of near-junk Illinois debt yields just 2.76%, around the level reserved for only the highest-rated borrowers as little as two years ago.

State bond yields retreat to pre-pandemic lows

California is a prime example of the turnaround in fiscal accounts. In May, it girded for a two-year $ 54 billion gap. It now projects only a $5 billion deficit next year after it reaped a $26 billion windfall from raking in more tax revenue and spending less than expected. New York City, once the epicenter of the coronavirus crisis, collected $985 million more revenue than forecast for the first four months of its fiscal year thanks to a banner year on Wall Street.

The surprise underscores the disproportionate impacts of the outbreak and business shutdown. Lower-income workers for such face-to-face industries as restaurants are losing their jobs, while wealthier individuals work from home, buy goods online and sell stock — all generating the income that states rely on to balance their books.

Stock markets have thrived — both because of the Federal Reserve's rate cuts and prospects for an economic rebound in 2021 — and initial public offerings have minted a new class of wealthy Americans, a boost to states such as New York and California that have progressive tax systems.

In California, which gets almost half of its personal income tax collections from the top 1% of earners, three former Stanford University students became billionaires from the IPO of their San Francisco-based food-delivery company DoorDash Inc.

"For those fortunate to maintain employment and income during this pandemic, their financial situation is better than before," economists at UCLA Anderson said in a December report. "These households have been able to accumulate at least an additional $1.6 trillion in savings."

Internet Sales

And many have continued to spend. Because states are permitted to tax internet sales from businesses outside their borders, municipal governments have benefited from people shopping at home. Texas, which garners its largest source of revenue from sales taxes, saw the biggest gains over the past 12 months from the $1.25 billion of collections from online retailers, Comptroller Glenn Hegar said last month. In California, home to some of the most sweeping Covid restrictions nationwide on businesses, sales tax revenue stands at about the same so far as it was in the previous year.

Regions have gone through different experiences given the variance in public health restrictions, with some only now beginning to feel the pain, said Irma Esparza Diggs, director of federal advocacy for the National League of Cities. "This pandemic hasn't hit our state and local governments the same way at every point in time, which has been the difficulty in conveying to Congress this is how much we're losing," she said.

The group in December released a survey that found on average, cities have seen revenues decline

by 21% since the beginning of the pandemic, while additional expenditures such as protective equipment have jumped 17% over the same time period. Chicago closed an $800 million gap in its 2020 budget that was caused by Covid-19 and an even bigger $1.2 billion hole in 2021, 65% of which was related to the pandemic.

The virus has decimated the finances of transit agencies. New York's Metropolitan Transportation Authority, the nation's largest mass transit system, said it will have to slash subways and buses by 40% and chop commuter rail service by half if aid doesn't come from Washington.

And some states have needed to take unusual action to balance their books. New Jersey last month sold $3.7 billion of general-obligation bonds to cover its revenue shortfall. Illinois has tapped the Federal Reserve's emergency lending program.

"Even though the prospects of a vaccine are promising, it's going to take at least a year or two before things go back to some kind of normalcy," said Lucy Dadayan, a senior research associate with the Urban-Brookings Tax Policy Center.

Bloomberg Politics

By Romy Varghese and Amanda Albright

December 15, 2020, 3:53 PM PST Updated on December 16, 2020, 7:34 AM PST

— With assistance by Martin Z Braun, Danielle Moran, Michelle Kaske, Shruti Singh, Laura Litvan, Erik Wasson, and William Selway

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Understanding A Path To Boosting Lower-Income Communities: Qualified Opportunity Zones

Anyone involved in any type of commercial real estate endeavor has by now heard of the qualified opportunity zone program. For those who haven't, the qualified opportunity zone (QOZ) came out of the bipartisan Investing in Opportunities Act of 2017 as a means for investors to defer paying taxes on capital gains after the sale of assets. Eventually, it found its way into the Tax Cuts and Jobs Act of 2017 and was rolled out soon after. In all the pro-and-con media hype around the program, many forget that its underlying purpose was to funnel financial resources toward in-need lower-income communities.

Though the program is still in its early days – it is, after all, a long-term initiative – the following issues should be considered when discussing QOZs: the program's impact on lower-income areas, how qualified opportunity funds (QOFs) can boost economic development and how investors can ensure gains are directed to areas in need. With that said, there are still questions as to whether this community revitalization program is actually being utilized to revitalize communities.

QOZs: A Background

The QOZ program's foundation is found in "Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas," a 2015 report released by the Economic Innovation Group (EIG).

Continue reading.

Forbes

by David Wieland

Dec 1, 2020

Leveraging Development Finance Tools to Attract Opportunity Zone Investment.

Read the CDFA document.

How to Make Communities Part of the Opportunity Zone Equation.

Three years ago, the federal government created Opportunity Zones as a way to encourage private investors to bring an influx of money to struggling urban and rural neighborhoods through tax incentives. The promise of Opportunity Zones to communities? Add affordable housing, boost small businesses owned by Black entrepreneurs and other people of color, and bring solid jobs to local residents, many of whom are living below the poverty level.

But last year, when Angeline Johnson arrived in Wichita, Kansas, as a FUSE executive fellow tasked by the City Manager's Office with encouraging equitable investment in Opportunity Zones (OZs), she discovered that some residents in northeast Wichita had mobilized to share concerns about their OZ designation.

"There was a legitimate fear of gentrification and displacement," Johnson said.

Continue reading.

NEXT CITY

EMILY NONKO DECEMBER 17, 2020

Orrick Webinar: Healthcare Finance: A Look Ahead to 2021

As a challenging 2020 draws to a close, there are many uncertainties heading into 2021. How will the US Supreme Court rule on the Affordable Care Act (ACA)? How will the November 2020 elections affect the federal healthcare legislative agenda? Are there asset monetization strategies than can help healthcare providers weather the rapidly evolving environment? Orrick and the Bond Buyer hosted a webinar which provided an overview of some of the key challenges and opportunities that will affect healthcare borrowers in 2021.

Listen to the Webinar.

The Bond Buyer | December.14.2020

A Public Utility May Not Qualify as a "Public Utility" - Nossaman California Eminent Domain Report

The Refugio Oil Spill in 2015 resulted in not only impacts to a highly diverse stretch of California's coast, but also years of associated litigation. In a recent California Court of Appeal opinion, *State Lands Commission v. Plains Pipeline, L.P., No. B295632* (Nov. 19, 2020), the court held that the judicial doctrine establishing that public utilities do not owe the public a duty to provide their services continuously and without interruption did not apply to Plains Pipeline, L.P. and its affiliates (collectively, "Plains Pipeline") on the ground that despite being a public utility, it did not "deliver essential municipal services to members of the general public."

Background

The burst pipeline that led to the Refugio Oil Spill previously served as a connection between offshore facilities and refineries for a few other oil companies. As a result of the closure of the pipeline, one of the oil companies stopped production, quitclaimed its lease back to the State, and halted its royalty payments to the California State Lands Commission ("Commission"). As a result, the Commission was left with loss of royalties and alleged that upkeep and maintenance costs after the shutdown amounted to recoverable property damage. It therefore brought suit against Plains Pipeline. The trial court agreed with Plains Pipeline's argument that, as a public utility, it was exempt from liability for interruption of service based on the long-standing rule that public utilities owe no duty to provide uninterrupted service, first recognized in *Niehaus Bros. Co. v. Contra Costa Water Co.* (1911) 159 Cal. 305.

Appellate Court Opinion

The California Second District Court of Appeal reversed and instead held that Plains Pipeline was not exempt from liability because the public utility rule was not applicable. In so holding, the Court construed prior case law applying that doctrine to be limited to situations where the "utility directly serves members of the general public."

The Court held that Plains Pipeline did not qualify under the public utility doctrine because it concluded that Plains "does not deliver essential municipal services to members of the general public." This rationale was based upon the Court's belief that Plains Pipeline "transport[ed] oil to a private entity for commercial purposes." In reaching this result, the Court declined to follow a recent decision by the Ninth Circuit applying the same doctrine to bar the same tort-law claims by the oil company that had ceased operations and quitclaimed its lease back to the state. (See *Venoco, LLC v. Plains Pipeline, L.P.* (9th Cir. 2020) 814 Fed. Appx. 318.)

In making such a decision, the Court declined to recognize a blanket immunity to all public utilities for service disruptions. Instead, the Court held that merely being a public utility with rates set by a regulatory agency was insufficient for purposes of asserting immunity against liability for service disruptions – such immunity stems from the provision of "essential municipal services" to the general public.

The dissent warned that "the majority casts doubt on more than a century of cases holding public utilities exempt from liability for interruptions to service," and "gives rise to more questions than it answers." Thus, while seemingly narrowing the public utilities exemption, this opinion may actually result in increased litigation as parties attempt to decipher this new requirement.

Nossaman LLP – Jillian Friess

December 18 2020

Workforce Housing in Opportunity Zones, with Riaz Taplin.

Why should investors consider workforce housing as a stable Opportunity Zone investment strategy? Riaz Taplin is principal and founder of …

CONTINUE READING »

Opportunity Db

December 16, 2020

BDA 2021 Policy Focus.

The BDA is the established advocate and thought leader in Washington, DC for the US bond markets. No other group is as focused or aggressive and below is an example of the BDA's bond market policy focus as we roll into 2021

For more information please visit www.bdamerica.org or contact us at 202-204-7900.

2021 Federal Policy Focus:

- Promote municipal bonds through federal infrastructure legislation
- Ensure the SEC does not resurrect the TCE for MAs
- Corporate syndicate settlement and SEC net capital rule
- BondMarkets 2020 – Comprehensive recommendations for regulation of the US bond markets
- SEC re-evaluation of the MA Rule
- Remote work and review of FINRA and MSRB rules
- Maintain opposition to TRACE Pilot Program as proposed by FIMSAC
- FINRA Rule 4210, including BDA, approved amendments
- Press the MSRB to reform its fee structure and budget

We look forward to representing you in the new year!

Bond Dealers of America

December 16, 2020

Why Chicago Should Start a Public Bank.

Arresting poverty, inequality and the racial wealth gap requires this genuinely transformational tool.

As Chicago contemplates a COVID-19 economic recovery plan, the city cannot afford to think small. For too long, civic and business leaders have relied on corporate philanthropy, tax credits, and market reforms to recover from crises. These tools work only on the margins, which is why they invariably fizzle.

Arresting poverty, inequality and the racial wealth gap requires a genuinely transformational tool: a public bank.

Why do we need a public bank? Banks create money when they lend. This superpower is the cornerstone of economic development. Loans stimulate economic growth, increase property values, and build wealth — and we can harness this power to benefit all communities.

Continue reading.

The Chicago Sun Times

by Daniel La Spata, Matt Martin, Robert Peters and Ameya Pawar

Dec 7, 2020

- IRS Revenue Procedure 2020-44: Floating Rate Fallback Flexibility from the Feds – McGuire Woods
- Fitch: New US Dollar Libor Deadline Doesn't Guarantee a Smooth Transition
- Fall 2020 Issue of The Bond Lawyer: NABL
- SEC Updates Framework for Fund Fair Valuation Practices: Ropes & Gray – Please note that we have highlighted the muni-specific section en bleu. (Would it kill you to learn a little French?)
- S&P U.S. Public Finance 2020 Year In Review: One Like No Other
- Building Back Better – A Virtual Event to Remember! Squire Patton Boggs – **Tomorrow! 12/16!**
- Capital Asset Accounting Series: GFOA Webinar
- And finally, When Cost/Benefit Analyses Attack is brought to us this week by *State v. Alexander*, in which a small town's mayor got himself into a wee bit of trouble for abusing his exalted office. I suppose that's what you've got to expect when you broker a deal between Venezuelan black-market petro smuggers and Columbian narcos using Chechen money-launderers. Oh, that wasn't it? You say he bullied the town clerk into writing a $500 check so he could visit his sister who lives out of town? Well, I suppose that would explain the slap on the wrist. No? As the old saying goes, "Don't do the incredibly petty crime if you can't do the four years of hard labor." I think that's how it goes.

BALLOT INITIATIVE - ARIZONA

Molera v. Hobbs

Supreme Court of Arizona - October 26, 2020 - 250 Ariz. 1330 Arizona Cases Digest 6 - 474 P.3d 667

Opponents of initiative to increase educational funding brought action against Secretary of State and sponsor of initiative to enjoin Secretary from placing initiative on ballot for general election, alleging that 100-word description on petition sheets violated statute governing petition sheets and that petition circulators were paid in violation of statute governing signature collection.

Following a bench trial, the Superior Court rejected signature-based objection, found that description on petition sheets violated applicable statute, and enjoined Secretary from certifying and placing initiative on ballot. Secretary and sponsor appealed, and opponents cross-appealed.

The Supreme Court held that:

- Percentage distribution of new income tax revenues under initiative was not principal provision of initiative and thus did not need to be included in description of principal provisions in petition signature sheets;
- Description stating that initiative would impose 3.5% surcharge on individuals' taxable incomes over specified amounts sufficiently communicated principal provision of raising the marginal tax rate on wealthier taxpayers;
- That increased marginal rate on individual taxable income would encompass business income taxable to individuals was not principal provision of initiative;
- Initiative's proposed statute stating that monies received by schools under initiative did not replace other funding sources was not principal provision of initiative;
- Graduated hourly wage scales did not violate statute prohibiting compensation based on number of signatures collected by a circulator;
- Spin-the-wheel program, which provided for prizes for circulators, did not violate statute prohibiting compensation based on number of signatures collected by a circulator; and
- Opponents were not entitled to preliminary injunction prohibiting initiative from being placed on ballot so that opponents could conduct discovery.

PUBLIC UTILITIES - CALIFORNIA

Communities for a Better Environment v. Energy Resources Conservation and Development Commission

Court of Appeal, First District, Division 4, California - November 20, 2020 - Cal.Rptr.3d - 2020 WL 6817480 - 20 Cal. Daily Op. Serv. 12,071 - 2020 Daily Journal D.A.R. 12,486

Nonprofit environmental groups brought action against Energy Resources Conservation and Development Commission for declaratory and injunctive relief, challenging the constitutionality of a statute that limited judicial review of Commission's decisions on the siting of thermal powerplants.

The Superior Court sustained Commission's demurrer, but that judgment was reversed on appeal. Later, the Superior Court granted groups' motion for summary judgment. Commission appealed.

The Court of Appeal held that:

- Statute that bars certain courts from reviewing Commission decisions conflicts with constitutional provision granting these courts original jurisdiction;
- No other constitutional provision authorizes the statute; and
- Statute that bars judicial review of Commission's findings on questions of fact is an unconstitutional seizure of judicial power.

Statute that bars superior courts and courts of appeal from reviewing Energy Resources Conservation and Development Commission decisions on siting of thermal powerplants is in direct conflict with the state constitutional provision granting these courts original jurisdiction.

State constitutional provision that gives the Legislature the power to establish the manner and scope of review of Public Utilities Commission (PUC) action in a court of record does not authorize the

statute that bars superior courts and courts of appeal from reviewing Energy Resources Conservation and Development Commission decisions on the siting of thermal powerplants, and thus the statute is unconstitutional in light of the state constitutional provision granting these courts original jurisdiction.

Statute that mandates that Energy Resources Conservation and Development Commission findings and conclusions on questions of fact regarding siting of thermal powerplants are final and are not subject to judicial review is an unconstitutional seizure of judicial power.

PUBLIC EMPLOYMENT - LOUISIANA

State v. Alexander

Court of Appeal of Louisiana, Second Circuit - November 18, 2020 - So.3d - 2020 WL 6750116 - 53,449 (La.App. 2 Cir. 11/18/20)

Following a bench trial, defendant was convicted in the District Court of two counts of abuse of office, and sentenced to four years at hard labor, with all but one year suspended, on each count, to be served concurrently. Defendant appealed.

The Court of Appeal held that:

- Insufficient evidence supported first count, and
- Sufficient evidence supported second count.

There was no evidence that dismissal of defendant's possession of marijuana charge was obtained, directly or indirectly, by a knowing and intentional use by defendant of his authority as mayor of neighboring small town, and thus insufficient evidence supported abuse of office conviction; police chief was adamant in her testimony that the decision to dismiss the charge was made in the exercise of her discretion as an officer, not because of anything defendant said or did.

Sufficient evidence supported conviction for abuse of office; town clerk testified that defendant, the town's mayor, told him to write defendant a $500 check for a trip to visit his sister out of state, which clerk stated he did to avoid verbal abuse from defendant, and although defendant disputed that the $500 check written to him from town was for personal travel, his explanation for the purpose of the check was inconsistent.

IMMUNITY - NEW YORK

Castillo v. New York City Transit Authority

Supreme Court, Appellate Division, First Department, New York - November 12, 2020 - N.Y.S.3d - 188 A.D.3d 484 - 2020 WL 6600656 - 2020 N.Y. Slip Op. 06447

Passenger on city bus brought personal injury action against city transit authority claiming that due to bus driver's negligence the bus stopped short causing passenger to fall into fare box.

The Supreme Court granted city's motion for summary judgment and dismissed passenger's complaint. Passenger appealed.

The Supreme Court, Appellate Division held that emergency doctrine excused transit authority from

liability for alleged negligence of bus driver resulting in passenger's tripping and falling.

No evidence indicated that emergency created by car moving into bus's lane of travel was created by bus driver, or responded to by bus driver in unreasonable manner, and thus, emergency doctrine excused city transportation authority from liability for alleged negligence of bus driver resulting in passenger's tripping and allegedly sustaining injury; transit authority submitted bus driver's sworn testimony, written immediately after the incident, that he was obliged to brake because of actions of car suddenly entering into his lane, and passenger offered no evidence, other than speculation, challenging bus driver's account, and passenger conceded he did not see what happened outside the bus because he was looking to find a seat.

PUBLIC UTILITIES - OHIO

In re Complaint of Suburban Natural Gas Company v. Columbia Gas of Ohio, Inc.

Supreme Court of Ohio - November 12, 2020 - N.E.3d - 2020 WL 6600063 - 2020 -Ohio-5221

Natural-gas company sought judicial review of a decision of the Public Utilities Commission, finding that the company failed to prove allegations arising from a competitor's use of energy-efficiency incentives for home builders in areas served by company and from the competitor's expansion of its gas-distribution service.

The Supreme Court held that:

- Commission adequately explained its rejection of claim that competitor violated stipulated agreement;
- Company failed to show error in determination that competitor's tariff schedules authorized energy-efficiency incentives;
- Commission adequately explained its decision not to rely on precedent offered by company;
- Record supported Commission's rejection of company's challenge to competitor's expansion of its service based on purported duplication of facilities;
- Commission did not ignore evidence in rejecting claim that competitor implemented incentives in unfair and anticompetitive manner;
- Company failed to show error in Commission's determination that it should have intervened in prior case brought by competitor; and
- Company failed to show error in Commission's summary dismissal of allegations of various statutory violations.

Supreme Court lacked jurisdiction over natural-gas company's claim that the Public Utilities Commission failed to apply the express terms of a stipulated agreement with a competitor by ignoring the competitor's release and covenant not to sue, which purportedly prohibited competitor from instituting energy-efficiency incentives for home builders in areas served by company, where company did not argue on rehearing that the Commission should have applied the language of competitor's release instead of distributor's, but instead company alleged that the Commission erred when it applied the language of company's release to claims company did not make.

Public Utilities Commission sufficiently explained its order rejecting natural-gas company's claim that a competitor violated a stipulated agreement between them by offering energy-efficiency incentives to home builders to compete in areas served by company; the Commission reviewed the

pertinent language of the agreement, and, because the agreement was unambiguous, the Commission was not required to consider other evidence to refute company's interpretation of the agreement.

Natural-gas company failed to show error in Public Utilities Commission's determination that a competitor's tariff schedules were sufficiently detailed to authorize payment of incentives to builders for construction of homes that exceeded certain energy-efficiency standards, where company did not cite the applicable tariff or point to language, or lack thereof, in the tariff that would support its claim.

Public Utilities Commission did not erroneously conclude that it lacked authority to preclude the duplication of utility facilities, in a proceeding brought by a natural-gas company, challenging a competitor's extension of its gas-distribution service based on a purported duplication of facilities in an area served by company; the Commission merely held that company failed to cite caselaw for the proposition that the Commission had to preclude a natural-gas company from serving new customers if that service would result in duplication of facilities.

Public Utilities Commission adequately explained its decision not to rely on precedent offered by natural-gas company in challenging a competitor's extension of its gas-distribution service based on a purported duplication of facilities in an area served by company; Commission explained that the cases cited by company were inapplicable because they did not involve a natural-gas company being precluded from serving a new customer if such service would result in duplication of facilities, Commission cited longstanding precedent establishing that natural-gas companies were not bound by certified service territories and could serve any customer in any part of the state, and Commission reiterated in its second rehearing entry that the cases cited by company were factually and legally dissimilar, if not wholly irrelevant.

Record supported Public Utilities Commission's decision rejecting a claim by a natural-gas company, challenging a competitor's extension of its gas-distribution service based on a purported duplication of facilities in an area served by company; county's chief deputy engineer testified that he knew of no unnecessary duplication of natural-gas facilities in the county, even with the recent extension of competitor's distribution main, engineer's testimony that he did not specifically consider whether competitor's distribution main duplicated company's main was not affirmative evidence that competitor duplicated company's facilities on a particular road, and company's vice president of system development admitted that a particular home builder was under no legal obligation to select company to serve a home development.

Natural-gas company failed to show error in Public Utilities Commission's decision rejecting company's challenge to a competitor's extension of its gas-distribution service based on a purported duplication of facilities in an area served by company; contrary to company's claims regarding waste of resources, testimony established that some duplication might be inherent and even necessary, evidence showed that a subdivision to be served by competitor was still under development and that no gas company was providing distribution service to the subdivision when competitor extended its gas main, and a county chief deputy engineer's testimony about potential for increased costs to customers concerned the concept of unnecessary duplicate facilities in general, not the merits of company's complaint.

Supreme Court lacked jurisdiction over natural-gas company's contention that a competitor improperly extended energy-efficiency incentives to home builders outside its service territory; company did not seek rehearing of Commission's determination that a particular subdivision to be served by competitor was outside of competitor's service territory, company did not argue on rehearing that competitor's builder incentives were limited to customers already served by

competitor, and company's rehearing application did not mention a statute setting forth a policy of promoting alignment of natural-gas-company and consumer interests in energy efficiency and conservation.

Public Utilities Commission did not ignore evidence that natural-gas company's competitor told a subdivision's developer about energy-efficiency incentives and that the incentives gave competitor an advantage over company, in rejecting company's claim that competitor implemented the incentives in an unfair and anticompetitive manner; Commission found that competitor was authorized to offer incentives to encourage developers to choose competitor and that competitor had an advantage over company as a result of the incentives, but instead the Commission rejected company's claim that the advantage violated a statute forbidding a public utility from subjecting a corporation to undue or unreasonable prejudice or disadvantage, as company could have requested its own energy-efficiency program.

Supreme Court lacked jurisdiction over natural-gas company's contention that the Public Utilities Commission failed to explain its purported departure from its precedent in finding that a competitor did not use energy-efficiency incentives as a competitive-response tool at home development, where the company failed to raise the argument on rehearing before the Commission.

Natural-gas company failed to show reversible error in Public Utilities Commission's determination that company should have intervened in a prior case brought by a competitor to raise concerns about competitor's purported unfair and anticompetitive use of energy-efficiency incentives, in company's subsequent proceeding challenging competitor's use of the incentives; Commission did not find that company forfeited any arguments by failing to intervene, but instead the Commission's order addressed and found no merit to company's claims that competitor used the incentives in an abusive or anticompetitive manner.

Supreme Court lacked jurisdiction to consider natural-gas company's claim challenging the Public Utilities Commission's determination that company raised for the first time on rehearing its issue regarding a competitor's purportedly unfair and anticompetitive use of energy-efficiency incentives, where the company never filed a subsequent application for rehearing and, thus, never alleged error in the Commission's finding.

Natural-gas company failed to show error in Public Utilities Commission's summary dismissal of company's allegations of various statutory violations on the part of a competitor based on the competitor's implementation of energy-efficiency incentives; the Commission's order noted the company's argument that the same proofs purportedly supporting company's other counts, including that the incentives violated a stipulated agreement and that they were used in an unfair and anticompetitive manner, would support the statutory violations, but the Commission rejected the other counts, and company failed to identify an independent legal theory or evidence to support its claim that the statutory violations stood on their own.

PUBLIC PENSIONS - OKLAHOMA

Harrison v. Oklahoma Police Pension and Retirement System

Supreme Court of Oklahoma - November 24, 2020 - P.3d - 2020 WL 6886498 - 2020 OK 91

Retired police officer sought judicial review of order of Oklahoma Police Pension and Retirement System (OPPRS) stating that officer forfeited retirement benefits because officer was convicted of felony committed while in line of duty.

The District Court affirmed. Officer appealed. The Court of Civil Appeals affirmed. Officer petitioned for writ of certiorari.

The Supreme Court held that officer had retirement benefit that was a vested benefit within meaning of statute requiring forfeiture of retirement benefits as result of felony conviction, and thus retirement benefit was not subject to forfeiture.

City police officer had retirement benefit that was a "vested benefit" within meaning of statute requiring forfeiture of retirement benefits from a public retirement system when municipal employee was convicted of felony for crime related to duties of employment when statute became effective, and thus retirement benefit was not subject to forfeiture under statute when officer was convicted, following retirement, of felony committed while in line of duty; officer had 16 years of credited service when statute was enacted and therefore had enough years of service to elect vested benefit.

S&P U.S. Public Finance 2020 Year In Review: One Like No Other

Key Takeaways

- ***The COVID-19 pandemic and sudden-stop recession contributed to unprecedented rating volatility in 2020.*** The record economic expansion ended abruptly in March, replaced with a sharp decline in GDP, surging unemployment, and reduced consumer demand. This has created major revenue and spending challenges across our rated universe. After 10 years of upgrades outpacing downgrades, that shifted abruptly in 2020. The majority of rating actions have been negative outlooks to date (80%).
- ***The challenges associated with the pandemic have been actively managed.*** Most public finance entities steadily improved their financial reserves during the record economic recovery that preceded the pandemic and this provides some financial flexibility to react to budget shortfalls or other unforeseen circumstances in a timely manner. Most have proactively managed their budgets which has lessened the credit pressure.
- ***Federal fiscal and monetary policy provided significant credit support.*** The actions of the federal government were swift and supportive, which bolstered the economy, mitigated some budget pressure and stabilized the municipal market–all of which helped meet the challenges of 2020. The magnitude and duration of the pandemic are testing whether it was enough to bridge to normalized economic and health conditions.
- ***The pandemic and its aftermath will continue to dominate credit conditions in 2021.*** Despite a vaccine in sight, the virus curve is spiking and there is likely to be additional economic damage ahead in the U.S. We expect the aftershocks from 2020 will be reverberate for many years in U.S. public finance and will continue to be felt unevenly by sector and state.

Continue reading.

S&P U.S. State Ratings And Outlooks: Current List

Read the list.

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

View the history.

Fitch: Coronavirus Fallout to Worsen for U.S. Higher Education in 2021

Fitch Ratings-Chicago-08 December 2020: Struggles brought on by the coronavirus pandemic will intensify next year for the U.S. higher education sector, according to Fitch Ratings in its 2021 outlook report for the sector.

The pandemic has taken a heavy toll on fall 2020 enrollment and eroded student fee and auxiliary system revenues that stimulus funds have only partially offset. 'Rising discount rates across the sector continue to pose increasing pressures on net tuition revenue, particularly in a pressured enrollment and unfavorable demographic environment,' said Director Emily Wadhwani.

Universities will continue to grapple with enrollment volatility, pressure on key sources of operating revenue including student fees, auxiliaries, and state support, with renewed student focus on access and affordability. 'More highly selective and flagship research universities will weather these challenges better due to their strong demand profiles, greater revenue diversity and typically larger financial resources,' said Director Emily Wadhwani.

Downgrades and negative Outlooks will likely outweigh upgrades and positive Outlooks in 2021. That said, a few bright spots exist, according to Wadhwani. Student demand for a return to the physical classroom appears strong. Market recovery of most endowment portfolios to date in calendar 2020 has also helped ease some pressure. And while a divided Congress may create obstacles, it is likely some key tenets of President-Elect Biden's platform regarding Deferred Action for Childhood Arrivals (DACA) students and other student debt relief policies may proceed in some form.

'Fitch Ratings 2021 Outlook: U.S. Public Finance Colleges and Universities' is available at 'www.fitchratings.com'.

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Fitch: Strong Bal. Sheets, Fed Subsidies May Cushion Housing in 2021

Fitch Ratings-New York/Chicago-08 December 2020: Fitch Ratings views the tax-exempt housing sector as having an evolving Outlook in 2021. The sector was financially well-positioned in 2020 and housing finance agencies (HFAs) are expected to adequately navigate in an environment of rising single and multifamily delinquencies and loan forbearances. HFA equity ratios have steadily improved yoy with a 23% increase from 2015-2019. Fitch does not expect to see the same level of increases (yoy average of 5%) in 2021, however the challenges going into 2021 do not rise to wide spread financial pressure given the strength of HFA balance sheets. Increases in single-family and multifamily housing delinquency rates in 2020 have been mitigated by stimulus and federal programs that we anticipate will persist in 2021 given the essential need for affordable housing.

The sector's ratings are largely unchanged however, and rating Outlooks changes were more prevalent in 2020 due to the revision of the Outlook to Negative for loan programs with a direct link to the United States' Issuer Default Rating, which Fitch revised to 'AAA/Negative' in July 2020. Aside from prudent management; federal stimulus payments and expanded unemployment benefits have supported the sectors performance so far. Given the lack of supply and greater demand, it remains uncertain how much housing supply will come to the market in 2021. While affordable housing providers operate throughout the nation, rural vs. urban dwelling is not a major concern for the sector, aside from overvaluation of home prices.

The evolving Outlook reflects certain factors that remain to be seen and is contingent upon how key stakeholders, including investors, respond to the essential needs of the sector. Given these factors, Fitch expects to see an evolution of the sector throughout 2021. However, Fitch does not anticipate the sector will experience a significant negative impact based on how these factors evolve.

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S&P: The Opioid Crisis Is A Credit Risk For U.S. Local Governments, Especially After COVID-19

Key Takeaways

- Prescription opioids, illicit opioids such as heroin, and synthetic opioids such as fentanyl, have contributed to the sharp spike in overdoses that have led to a quadrupling of overdose deaths since 2009.
- The opioid epidemic continues to demand spending from local governments that may be struggling to maintain structural budgetary balance amid the pressures resulting from COVID-19.
- Dealing with the opioid crisis can create local government budgetary pressure at the same time it weakens economic metrics.
- We have assigned negative outlooks to municipal entities facing budget stability challenges due in large part to opioid cost drivers, and we expect opioid cost pressures to slow economic recovery post-recession.

Continue reading.

S&P Medicaid Diagnosis: U.S. States' Growing Caseloads Come With Rising Costs

Key Takeaways

- Medicaid is a unique driver of state expenditures during economic downturns, given states' limited remedies to counter rising costs of the co-funded federal-state program, which challenges their ability to sustain balanced-budget requirements.
- Federal spending has stepped in to fill the state Medicaid spending gap, including $33 billion through June 30, 2020 and $49 billion across the entire federal fiscal year 2020. States are estimated to have spent $10.2 billion from state-only resources, or 4.4%, above their fiscal 2019 levels.
- Medicaid enrollment surged between February and July. As spending and utilization catch up they will consume a greater share of state budgets.
- Slow economic growth and a premature federal fiscal austerity could compound Medicaid pressures and cloud state budget forecasts.

Continue reading.

Fitch: U.S. NFP Hospitals Brace for a Tough 2021

Fitch Ratings-Austin-09 December 2020: The latest surge in COVID-19 cases and hospitalizations is

positioning U.S. not-for-profit hospitals for a difficult 2021, according to Fitch Ratings in its 2021 outlook report.

The healthcare sector has responded extremely well to past crises, though the scale of the coronavirus pandemic and nationwide shutdown of elective procedures was unprecedented. Coming off a year of weak margins in 2020, Fitch expects more of the same next year. Taking that into account, Fitch has revised its Sector Outlook to Stable from Negative for NFP hospitals in 2021.

Though COVID-19 hospitalization rates may limit elective procedures, Senior Director Kevin Holloran says that a nationwide shutdown is not likely this time. “Elective procedures, even at a reduced clip, should not hit hospitals as hard financially as the nationwide shutdown that cut top line revenues by around 40% in Spring of 2020,” said Holloran. Hospitals are also better prepared to handle another wave of COVID-19 infections. “It’s a case of ‘been there, done that’ in a sense with hospitals treating COVID-19 patients more efficiently, which is leading to shorter hospital stays,” said Holloran.

That said, hospitals will face continued stress and strain, particularly in the first half of 2021, until a viable vaccine is widely available and utilized. Hospitals will also be contending with an increase in operating expenses in 2021. “Providers will need to secure a mini-stockpile of ventilators, masks, gowns, drugs and certain types of beds, though adequate staffing will be the most critical component,” said Holloran.

Downgrades are once again expected to exceed upgrades with affirmations to remain the predominant rating action for hospitals in 2021. However, Fitch may revise the Rating Outlook of some hospitals to Negative concurrently with some rating affirmations.

‘Fitch Ratings 2021 Outlook: U.S. Not-For-Profit Hospitals and Health Systems’ is available at ‘www.fitchratings.com’.

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Fitch: Stable Outlook for U.S. NFP Life Plan Communities in 2021

Fitch Ratings-New York-09 December 2020: Fitch Ratings expects the general operating environment for not-for-profit life plan communities (LPCs) to remain stable in 2021. “While the coronavirus pandemic has created uncertainty in the sector, the key drivers of fundamental credit quality that have benefited the sector in recent years should remain in place,” said Margaret Johnson, Director and Sector Lead for Senior Living. “We expect continued favorable demographic

trends, healthy residential real estate markets and good access to the capital markets."

Operationally, the coronavirus pandemic could continue to create cost pressures, and capital investments will likely remain heavy as LPCs adjust their amenities and services to meet new market demands. Fitch also expects a continuation, if not an acceleration, of the increased trend in mergers and acquisition and system consolidation activity. The underlying forces driving this need to join with a larger partner, including competitive and cost pressures, are likely to remain present in the sector over the next few years.

The coronavirus pandemic has also accelerated the need for LPCs to utilize digital tools such as websites and social media as their primary marketing strategy since more traditional forms of marketing, especially onsite and offsite events and in-person tours are currently unavailable. As the use of digital marketing tools rises, a competitive gap could develop between LPCs that are sophisticated in their use and those that are less effective or have not made investments in a digital strategy.

'Fitch Ratings 2021 Outlook: U.S. Not-For-Profit Life Plan Communities' is available at 'www.fitchratings.com'.

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Fitch: U.S. Water & Sewer Utilities Stable in 2021

Fitch Ratings-Austin-09 December 2020: U.S. water and sewer utilities remain favorably positioned heading into next year despite the challenges posed by the macro environment, according to Fitch Ratings in its 2021 outlook report.

"With expectations of lower revenue growth than recent years, utilities are working to limit cost escalation and manage through capital spending needs," said Managing Director Doug Scott. "Some increase in sector leverage is expected, but by and large balance sheets are sufficiently robust to

absorb business disruptions arising from the pandemic."

Local government credit pressures arising from the pandemic have the potential to spill over to related utility profiles, although Fitch expects credit impact across the sector will be relatively limited. Utilities may be tapped for certain financial support for their host government, or credit deterioration of the host government may directly affect a utility's own rating in certain circumstances.

The water and sewer industry will be paying close attention to regulatory developments in 2021. In particular, a rule related to lead and copper is expected to be finalized and has the potential to increase annual costs across the sector by over $342 million annually. Other regulations are also being considered for additional contaminants that could add significant costs for the sector over time.

'Fitch Ratings 2021 Outlook: U.S. Water and Sewer Sector' is available at 'www.fitchratings.com'.

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Fitch: Operating and Financial Resilience Key for U.S. Public Power in 2021

Fitch Ratings-New York-09 December 2020: U.S. public power utilities are well positioned financially headed into next year, as lower expenses have helped preserve margins and liquidity in the wake of pandemic-driven declines in electric demand and revenue, according to Fitch Ratings. However, Fitch's 2021 outlook report points to some concerns related to the lingering effects of the coronavirus pandemic and economic contraction, as well as more aggressive climate issues.

The rating outlook for the public power sector is stable. 'The operational and financial resilience exhibited by the public power sector through 2020, together with improving operating fundamentals, support Fitch's stable outlook,' said Managing Director Dennis Pidherny.

Electric demand is expected to stabilize in 2021 as the U.S. economy recovers from recession and achieves pre-pandemic gross domestic product levels. A continuance of low, stable energy prices and interest rates should also help preserve operating margins and affordability. These factors are to expected ease upward pressure on electric rates, support strong cash flow and moderate leverage throughout the sector.

Uncertainty surrounding the lingering effects of the pandemic and the potential for more aggressive environmental mandates, however, could disrupt longer term performance. Greater support from

public power systems may be required by local governments facing pandemic-related fiscal challenges, particularly those facing severe declines in tax revenue.

Additionally, an increased focus on carbon emissions reduction by federal leadership is expected to develop under President-elect Biden, and could lead to more aggressive environmental policies with an evenly divided Senate. While many states continue to forge their own paths to address climate issues, the implementation of a national renewable standard could pressure operating costs, as well as the affordability metrics, at public power systems located in states with no standards or targets, or that have exemptions in place.

'Fitch Ratings 2021 Outlook: U.S. Public Power and Electric Cooperatives' is available at 'www.fitchratings.com'.

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IRS Revenue Procedure 2020-44: Floating Rate Fallback Flexibility from the Feds - McGuire Woods

The IRS recently released Revenue Procedure 2020-44 ("**Rev. Proc. 2020-44**") which provides helpful relief to taxpayers by providing that if a contract referencing an IBOR is modified to incorporate specific ISDA or AARC fallback language for the replacement of IBORs, such modification will not cause certain adverse tax consequences, such as exchange treatment under Section 1001 of the Tax Code, or the legging out or termination of integrated transactions under Treasury Regulation Sections 1.1275-6, 1.988-5(c) or 1.148-4(h).

This is particularly significant for tax-exempt debt instruments with a LIBOR based interest rate that may otherwise be treated as "reissued" for federal income tax purposes as a result of the addition of such language, and any derivative transactions (such as interest rate swaps) that are treated as "integrated" with a debt instrument for tax purposes.

As we wrote about here, to support the transition from IBORs the AARC published fallback language for inclusion in the terms of certain newly issued and outstanding cash products, including floating rate notes, bilateral business loans, syndicated loans, securitizations, adjustable rate mortgages, and variable rate private student loans (the "**AARC Fallbacks**"). The fallback language generally provides a mechanism for determining the replacement benchmark rate that supplants the current benchmark rate.

Likewise, on October 9, 2020 ISDA posted its Supplement number 70 to the 2006 ISDA Definitions

(the "**ISDA Supplement**") to facilitate the inclusion of new IBOR transition fallback provisions in derivative transactions entered into on or after January 25, 2021, and its final ISDA IBOR Fallbacks Protocol to facilitate adoption of the ISDA Supplement by parties to legacy derivative contracts (the "**ISDA Protocol**"). An "**ISDA Fallback**" is the set of terms provided in any one of sections one through six in the Attachment to the ISDA Protocol.

On October 9, 2019, the Treasury Department and the IRS published proposed regulations on the tax consequences of modifying debt instruments, derivative contracts, and other contracts to replace IBORs or add fallback provisions to IBORs (the "**Proposed Regulations**"). The ARRC later recommended guidance on the tax consequences of modifying a contract as provided in the ISDA Protocol and AARC Fallbacks and the Treasury Department and IRS have accepted those recommendations in issuing the interim guidance in Rev. Proc. 2020-44.

Under Rev. Proc. 2020-44 certain reasonably necessary and technical deviations from the specific terms of an AARC Fallback or an ISDA Fallback are permissible.

Rev. Proc. 2020-44 is effective for modifications to contracts occurring on or after October 9, 2020 and before January 1, 2023. A taxpayer may, however, rely on Rev. Proc. 2020-44 for modifications occurring before October 9, 2020.

While this guidance is very helpful in providing taxpayers with certainty upon adding fallback language to a new or existing contract, it doesn't absolve the parties from analyzing the tax consequences of an actual transition from an IBOR to a new rate. At that point taxpayers will need to look to the guidance in the Proposed Regulations (or whatever form the guidance is in at that point) to determine the tax consequences. The Proposed Regulations currently require a new rate to be any one of several rates that are listed in the Proposed Regulations (including SOFR) and if an AARC Fallback or ISDA Fallback results in a new rate that is not on the list there could be adverse tax results.

By Robert A. Kaplan, Emery B. McRill & Kay McNab on December 8, 2020

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Fitch: New US Dollar Libor Deadline Doesn't Guarantee a Smooth Transition

Fitch Ratings-New York/London-01 December 2020: Pushing the Libor transition deadline for the U.S. dollar (USD) market back 18 months would lessen the risk of disorderly outcomes at YE21 but using this extra time productively is the key to a smooth transition, Fitch Ratings says. Primary markets have yet to shift to alternative indices, regulators and legislators might need to facilitate orderly transition for hard-to-fix legacy contracts and liquidity needs to develop in derivatives based on the Secured Overnight Financing Rate (SOFR).

ICE Benchmark Administration Limited (IBA) on Monday announced a consultation that could see the cessation of the widely used one-, three-, six- and 12-month USD Libor reference delayed to end-June 2023. IBA will also consult on ceasing publication of one-week and two-month USD Libor at end-2021, in line with the original timetable.

Additional preparation time should avoid the potential operational and market disruption if all USD Libor settings ceased publication after 31 Dec 2021. As we have previously noted, delays in creating a robust SOFR-based derivatives market and the failure to develop a SOFR term rate sufficiently far

in advance of cessation could materially increase risks to financial institutions arising from transition, while legacy Libor exposure is significant, particularly in structured finance.

The IBA consultation appears part of a coordinated effort by regulators to avoid such disruption. The UK Financial Conduct Authority (FCA), which regulates IBA as Libor's administrator, and the Federal Reserve Board (the Fed) both welcomed the prospect of 'a clear end-date' for USD Libor that left enough time to deal with legacy contracts where amending fallback language remains difficult, partly by reducing the number of affected contracts as most of these would mature before cessation. The backing of U.S. and UK regulators illustrates the magnitude of the transition challenges facing USD market participants.

Addressing legacy contracts also depends on moving primary market activity from USD Libor to SOFR or other alternative indices. SOFR adoption has been uneven and lagged other markets (sterling issuance largely references the Sterling Overnight Index Average), although most recent USD primary market issuance has included Alternative Reference Rates Committee (ARRC) fallback language, which will make the process of switching to SOFR in the future less challenging.

Delaying USD Libor cessation would allow more time for liquidity to develop in the SOFR-based derivatives market that remains a fraction of size of the interest rate derivatives market referencing Libor. This could support ARRC's efforts to build a term reference rate by the middle of 2021, facilitating more primary market issuance referencing SOFR. ISDA has published a protocol to include fallbacks in legacy derivative contracts referencing Libor. A delay would give market participants additional time to make the necessary amendments (adoption is voluntary). It would also leave more time to enact possible state or federal legislation to reduce litigation and operational risks from legacy contracts.

However, an extension would not automatically mean a smooth transition in mid-2023. We believe the slower shift to using SOFR as the benchmark rate for newly originated dollar cash products has reflected a 'wait-and-see' approach from some market participants, as well as SOFR's lack of credit spread and term structure. Proactively embracing workable solutions would reduce, rather than simply delay, disruption.

The 'wait-and-see' approach also reflects a less forceful approach by U.S. banking regulators relative to their UK counterparts, particularly in the transition's early stages, although U.S. regulators have increased efforts to make sure risks are addressed. The Fed, Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation said in response to IBA's announcement that they 'encourage' banks to stop using Libor in new contracts as soon as possible and no later than end-2021.

The Emergency Funding Ideas That Could Help Keep Transit Alive.

As U.S. agencies push Congress for aid, transit advocates are exploring other ways to scrape together funds, from online delivery fees to gas tax hikes.

As transit operators in major U.S. cities plan drastic service cuts to address pandemic budget holes, leaders and advocates are advancing ideas to scrape together new funds, whether or not fresh federal aid arrives.

One proposal to support the New York City Metropolitan Transportation Authority, which faces a $16.2 billion deficit by 2024, is a bill by state assemblyman Robert Carroll to charge a flat $3 fee for

every online purchase delivered in New York City, starting Jan. 1. In an op-ed for the New York Daily News, Carroll estimates that his bill would raise more than $1 billion annually for the MTA from the 1.8 million packages delivered in the city every day.

A related idea appears in the state budget plan passed by the Massachusetts Senate in November — a 7% fee on single-occupancy ride-hailing trips, and a 3% fee for shared trips, up from a 20-cent flat fee. A calculator from the Metropolitan Area Planning Council estimates that the new fees would generate about $72 million annually. Some of that could fund the Massachusetts Bay Transportation Authority, which operates Boston's "T" and faces a budget shortfall as high as $600 million next year.

Continue reading.

Bloomberg CityLab

By Laura Bliss

December 11, 2020, 4:00 AM PST

SEC Updates Framework for Fund Fair Valuation Practices: Ropes & Gray

On December 3, 2020, the SEC issued a release adopting Rule 2a-5 (the "Rule") under the 1940 Act (the "Release").1 The Rule is intended to "address valuation practices and the role of the board of directors with respect to the fair value of the investments of a registered investment company or business development company." The Rule will permit a fund's board to designate the fund's primary investment adviser to perform the fund's fair value determinations, which will be subject to board oversight and certain reporting and other requirements intended to ensure that the board receives the information it needs to oversee the investment adviser's fair value determinations. Most notably:

- The Rule specifies the minimum requirements of a program for determining the fair value of fund investments in good faith for purposes of the 1940 Act.
- The Rule permits a fund's board2 to formally designate the fund's primary investment adviser as its "valuation designee" to perform fair value determinations for the fund.3
- If a fund's investment adviser is designated as the board's fair valuation designee, the Rule provides that the investment adviser will be subject to board oversight and detailed reporting, recordkeeping and other requirements intended to enhance the board's oversight of the investment adviser's fair value determinations.
- The Release rescinds certain previously issued fair valuation guidance, including guidance on the role of a fund's board in determining the fair value of fund investments.
- The Rule defines the criteria for concluding that a market quotation is "readily available," which is currently undefined under the 1940 Act or rules thereunder. The definition will apply ***for all*** 1940 Act purposes, including Rule 17a-7 transactions. As a result, depending on further guidance from the SEC regarding the status of various no-action letters and/or potential revisions to Rule 17a-7, Rule ***17a-7 may no longer be available*** for cross trades in most fixed income securities and other securities without "readily available market quotations" as defined in the Rule beginning no later than the compliance date.

The Rule reflects some modifications from the April 2020 proposing release (the "proposing releas e"), largely to address issues raised regarding more prescriptive elements of the initial proposal. We have noted changes from the proposing release in the footnotes to this Alert.

SUMMARY OF THE RULE

Requirements to determine fair values in good faith. The Rule provides that determining the fair value of a fund's portfolio investments in good faith requires:

1. Periodically assessing any material risks associated with fair value determinations, including material conflicts of interest, and managing those identified valuation risks.
2. Establishing and applying fair value methodologies by performing each of the following, taking into account the fund's valuation risks (a) selecting and applying in a consistent manner an appropriate methodology for determining (and calculating) the fair value of fund investments, including specifying the key inputs and assumptions specific to each asset class or portfolio holding, (b) periodically reviewing the appropriateness and accuracy of the methodologies selected and making any necessary changes or adjustments thereto and (c) monitoring for circumstances that may necessitate the use of fair value. A selected methodology may be changed "provided [the new] methodology is equally or more representative of the fair value of fund investments."4
   Testing the appropriateness and accuracy of the fair value methodologies that have been selected, including identifying the testing methods to be used and the minimum frequency with which such testing methods are to be used.
4. Overseeing and evaluating any pricing services used, including establishing the process for approving, monitoring and evaluating each pricing service provider and initiating price challenges.5

Valuation designee. A fund's board may choose to designate the fund's primary investment adviser as its "valuation designee" to perform the fair value determinations of any or all fund investments by carrying out all of the functions required in items 1–4 above, subject to the board's oversight.6 The definition of valuation designee expressly excludes a fund's sub-adviser.

Oversight and reporting. If a fund's board designates the fund's investment adviser as its valuation designee, the Rule requires the board to oversee the investment adviser with respect to its fair value determinations, and the investment adviser is required to:

1. Inform the board in writing of the titles of the persons responsible for determining the fair value of the fund's portfolio holdings, including the particular functions for which they are responsible and any material changes to the roles or functions of these persons.
2. Reasonably segregate fair valuations from the fund's portfolio management "such that the portfolio manager(s) may not determine, or effectively determine by exerting substantial influence on, the fair values ascribed to portfolio investments."7
3. At least quarterly, provide the board in writing with any reports or materials requested by the board related to the fair value of the fund's investments or the investment adviser's process for fair valuing fund investments, as well as a summary or description of material fair value matters that occurred in the prior quarter, including: (a) any material changes in the assessment and management of valuation risks, including material changes in conflicts of interest of the investment adviser (and any other service provider), (b) any material changes to, or material deviations from, the fair value methodologies employed and (c) any material changes to the process for selecting and overseeing pricing services, as well as any material events related to the investment adviser's oversight of pricing services.
4. At least annually, provide the board in writing with an assessment of the adequacy and effectiveness of the investment adviser's process for determining the fair value of the designated portfolio of investments, including (a) a summary of the results of the testing of fair value methodologies employed and (b) an assessment of the adequacy of resources allocated to the process for determining the fair value of the fund's investments, including any material changes

to the roles or functions of the persons responsible for determining fair value.8

5. Notify the board of the occurrence of matters that materially affect the fair value of the fund's investments, including any significant deficiency or material weakness in the effectiveness of the investment adviser's fair value determination process or material errors in the calculation of a fund's NAV (each a "material matter"), within five business days after the adviser becomes aware of the material matter (or shorter period determined by the board), along with timely follow-on reporting as the board may determine to be appropriate.9 According to the Release, this "standard is similar to that of 'material compliance matter' found in rule 38a-1."10

Recordkeeping. The Release simultaneously adopts companion Rule 31a-4 regarding records related to fair value determinations.11 Rule 31a-4 requires an investment adviser to maintain "appropriate" documentation to support its fair value determinations, as well as the various periodic reports to a fund's board described above.12 Existing Rule 31a-2 already requires a fund to maintain "all schedules evidencing and supporting each computation of net asset value of the investment company shares." However, the Release states that "[w]hile some records currently required to be maintained . . . may be the appropriate documentation to support fair value determinations in some circumstances, they may not always be sufficient to meet that standard." The Release also acknowledged that a separate recordkeeping rule would ensure that a recordkeeping failure does not mean that a board has not fair valued in good faith.

Definition of "readily available." Under Section 2(a)(41) of the 1940 Act, if a market quotation is "readily available" for a portfolio holding, it must be valued at its market value. If market quotations are not readily available, a holding's value is its "fair value as determined in good faith by the board." However, the term "readily available" was not previously defined in the 1940 Act or rules thereunder. To fill this gap, the Rule provides:

> For purposes of section 2(a)(41) . . . a market quotation is readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that a quotation will not be readily available if it is not reliable.

The Release notes that ASC Topic 820 defines level 1 inputs as "[q]uoted prices (unadjusted) in active markets for identical assets . . . that the reporting entity can access at the measurement date" and states that the Rule's definition

> is consistent with the definition of a level 1 input in the fair value hierarchy outlined in U.S. GAAP. Thus, under the final definition, a security will be considered to have readily available market quotations if its value is determined solely by reference to these level 1 inputs. Fair value, as defined in the Act and further defined in rule 2a-5, therefore must be used in all other circumstances.

Thus, for purposes of the Rule, for a quotation to be "readily available," a security's value must be determined solely by reference to level 1 inputs under U.S. GAAP. The Release specifically states that evaluated prices, indications of interest and accommodation quotes would not be "readily available market quotations" for purposes of the Rule. The Release notes that whether a market quotation would be "unreliable" is also informed by U.S. GAAP, noting that "we will generally presume that a quote would be unreliable under [the Rule] where it would require adjustment under U.S. GAAP or where U.S. GAAP would require consideration of additional inputs in determining the value of the security."

Additionally, the Release states that the Rule's definition of readily available market quotations will apply in all contexts under the 1940 Act and the rules thereunder, including Rule 17a-7. The Release recognizes that, as a result, certain transactions that could formerly have been effected in reliance on Rule 17a-7 may no longer be deemed to have readily available market quotations and, therefore, may not be eligible for trading in reliance on Rule 17a-7. The Release cites certain SEC staff no-action letters that permitted transactions involving municipal fixed-income securities in reliance on Rule 17a-7 where market quotations were not readily available and the transaction was effected at a price provided by an independent pricing service.13 The Release goes on to state that the SEC staff is "reviewing these letters to determine whether these letters, or portions thereof, should be withdrawn [and] [s]eparately, consideration of potential revisions to rule 17a-7 is on the rulemaking agenda. We welcome input from the public as we undertake our consideration of rule 17a-7."

Unit investment trusts. The Rule provides that, if the initial deposit of portfolio securities into a UIT occurs after the Rule's effective date, the UIT's trustee or depositor is responsible for carrying out the requirements to determine fair values in good faith (i.e., items 1–4 above). If the initial deposit occurs before the Rule's effective date, and an entity other than the fund's trustee or depositor has been designated to carry out the fair value determinations, that entity must carry out those requirements.

Board oversight. The Release provides extensive guidance on board oversight of the fair value determination process where it designates a valuation designee under the Rule. Following are selected excerpts:

> Where the board designates a valuation designee to perform fair value determinations under the final rule, the board will fulfill its continuing statutory obligations through active oversight of the valuation designee's performance of fair value determinations and compliance with the other requirements of the final rule.
>
> Boards should approach their oversight of the performance of fair value determinations by the valuation designee of the fund with a skeptical and objective view that takes account of the fund's particular valuation risks, including with respect to conflicts, the appropriateness of the fair value determination process, and the skill and resources devoted to it.
>
> The board should view oversight as an iterative process and seek to identify potential issues and opportunities to improve the fund's fair value processes.
>
> We expect that boards engaged in the process would use the appropriate level of scrutiny based on the fund's valuation risk, including the extent to which the fair value of the fund's investments depend on subjective inputs. . . . As the level of subjectivity increases and the inputs and assumptions used to determine fair value move away from more objective measures, we expect that the board's level of scrutiny would increase correspondingly.
>
> [C]onsistent with their obligations under the Act and as fiduciaries, boards should seek to identify potential conflicts of interest, monitor such conflicts, and take reasonable steps to manage such conflicts.
>
> Boards should probe the appropriateness of the valuation designee's fair value processes. In particular, boards should periodically review the financial resources, technology, staff, and expertise of the valuation designee, and the reasonableness of the valuation

> designee's reliance on other fund service providers, relating to valuation.
>
> Boards should also consider the type, content, and frequency of the reports they receive . . . While a board can reasonably rely on the information provided to it in summaries provided by the valuation designee and other service providers in conducting appropriate oversight, it is incumbent on the board to request and review such information as may be necessary to be informed of the valuation designee's process for determining the fair value of fund investments. Further, if a board becomes aware of material matters . . . we believe that in fulfilling its oversight duty the board must inquire about such matters and take reasonable steps to see that they are addressed.

EFFECTIVE AND COMPLIANCE DATES

Rules 2a-5 and 31a-4 become effective 60 days after publication of the Release in the Federal Register.14 The compliance date will be eighteen months following the effective date. The Release provides that funds will have the option of complying with the Rules before the compliance date once the Rules become effective. However, to promote regulatory consistency, the Release states that any fund that elects to rely on Rules 2a-5 and 31a-4 before the compliance date may rely only on those rules, and may not also rely on other SEC guidance and staff letters and other guidance that will be withdrawn or rescinded on the compliance date.

In addition, on the effective date, the SEC will rescind ASRs 113 and 118, various no-action letters and staff guidance identified in the Release, as well as the "Last paragraph of Section III.D.2.(a) and the entirety of Section III.D.2.(b) of the 2014 Money Market Fund Release"15 and "Valuation Guidance Frequently Asked Questions (FAQ 1 only)." The rescinded portions of the 2014 Money Market Fund Release and FAQ 1 contain the SEC and SEC staff's identical assertions that "a fund's board of directors has a non-delegable responsibility to determine whether an evaluated price provided by a pricing service, or some other price, constitutes a fair value for a fund's portfolio security."

OBSERVATIONS

Readily available market quotation definition. The Release states that the Rule's definition of readily available market quotations will apply in all contexts under the 1940 Act and the rules thereunder, including Rule 17a-7. As noted in the Release, "[f]or a fund to engage in a cross trade under Rule 17a-7, the security first must have a 'readily available market quotation' and then the transaction must meet the other conditions of that rule." As noted above, the Release also indicates that evaluated prices, indications of interest and accommodation quotes would not be "readily available market quotations" for purposes of the Rule. This suggests that – depending on further guidance from the SEC, including the results of the SEC's review of the line of no-action letters permitting transactions effected at prices provided by independent pricing services and any revisions to Rule 17a-7 – funds may no longer be able to effect cross trades in most fixed income securities in reliance on Rule 17a-7 beginning no later than the Rule's compliance date. This would have a major impact on the current cross trading practices of many fund complexes.

Separately, through a line of no-action letters,16 the SEC staff has permitted various affiliated persons, at least one of which is a fund, to effect in-kind transactions in which transferred securities are valued identically by the participants for purposes of determining their NAVs (such that neither participant experiences an artificial loss or gain simply due to different valuation procedures). The no-action letters did not exclude securities that were valued for NAV purposes based upon independent pricing services from being transferred in these transactions, and the industry has not

interpreted the no-action letters as containing such an exclusion. It is not obvious why pricing service prices may be relied upon by funds in these affiliated transactions but not in Rule 17a-7 transactions.

Changes in selected methodology. The Rule provides that a fair valuation methodology may be changed "if a different methodology is equally or more representative of the fair value of fund investments." (Emphasis added). In some cases, it may be difficult to conclude with any certainty that a new method will be at least as representative of fair value as its predecessor. The wording of the Rule suggests that, if a new methodology proves inferior, the determinations based on the new methodology could be deemed a violation of the Rule. The Release draws on ASC Topic 820-10-3-, which the SEC describes as "requiring consistent application of valuation techniques, but providing that a change in a valuation technique . . . is appropriate if the change results in a measurement that is equally or more representative of fair value." It is not clear whether a reasonable determination at the time a methodology is changed suffices and avoids ex post criticism and even strict liability.

Segregation of portfolio management personnel. The Release added text to the segregation requirement to clarify that the segregation of portfolio management staff is intended to prevent portfolio managers from exerting undue influence on the fair values ascribed to portfolio investments. Nonetheless, the SEC recognized in the Release that portfolio managers can participate "in the process of fair value determinations because of the unique insights that portfolio management may have regarding the value of fund holdings." Permitting portfolio management to participate in fair valuations, while assuring that that participation does not amount to substantial influence may be difficult, especially if judged in hindsight. This is may be an area where the industry will want to seek clarification from the SEC staff.

Significant deficiency or material weakness. In 2007, following a directive of the Sarbanes-Oxley Act, the SEC adopted a release in which it defined, for purposes of Regulation S-X, the terms " significant deficiency" and "material weakness." The Rule requires an investment adviser to notify a fund's board of the occurrence of matters that materially affect the fair value of the fund's investments, including any significant deficiency or material weakness in the effectiveness of the investment adviser's fair value determination process ("material matter," which the Release states is a standard "similar to that of 'material compliance matter' found in rule 38a-1"), and the Release notes that material matters under the Rule "would generally include, for example, material weaknesses and significant deficiencies as defined in [Regulation S-X] that are related to fair value determinations."

Both defined terms in Regulation S-X concern internal controls over financial reporting and underlie Rules 30a-2 and 30a-3 under the 1940 Act. However, it remains unclear how accounting rules, which apply in the context of preparing financial reports and to a discrete set of fund holdings at the end of a financial reporting period over a period of up to 60 days, translate to the daily calculations of the fair value of a significantly greater number of fund holdings over a much shorter time horizon.17 At a minimum, the expertise of individuals performing daily fair value determinations may differ from the expertise of individuals preparing financial reports and assuring compliance with Rules 30a-2 and 30a-3.

A requirement, not a safe harbor. While perhaps less prescriptive than the SEC's recent liquidity risk management and derivatives risk management rules, the Rule imposes a mandatory, minimum framework for fair valuations. Many commenters had recommended that the proposed rule be recast as a non-exclusive safe harbor or otherwise be reworked to provide greater flexibility but, in rejecting these recommendations, the Release notes that it was "important to establish a minimum and consistent framework for fair value practices across funds." While the Rule was unanimously approved by the SEC's commissioners, Commissioner Hester M. Peirce issued a statement observing

that "[a]long with many commenters, I see value in allowing fund boards the freedom to tailor their valuation assessment processes to their funds' individual needs and circumstances by redrawing the provisions of rule 2a-5 as a non-exclusive safe harbor" and that "[t]he prescriptive nature of the rulemaking could stifle fund boards' and advisers' initiative and innovation."

Fair value policies and procedures. Although the Rule omits the specific provisions in the proposing release that would have separately required that a fund adopt written policies and procedures addressing the determination of fair value, funds and investment advisers will still need to consider changes to existing fair value polices and procedures that are reasonably designed to prevent violation of Rules 2a-5 and 31a-4. The Release notes that, because Rules 2a-4 and 31a-4 are new rules under the 1940 Act with new fair value determination requirements, and given the intrinsic relationship of the Rules to the board's own statutory functions relating to valuation, the fair value policies and procedures must be approved by the board pursuant to Rule 38a-1.

Determining when a market quotation is no longer reliable. As adopted, the Rule changed a requirement in the proposing release to the effect that a fair valuation program must include "criteria for determining when market quotations are no longer reliable." To explain this change, the Release states that "to satisfy the requirement to monitor for circumstances that may necessitate the use of fair value . . . boards and valuation designees would have to take into account the circumstances that may cause market quotations to be no longer reliable." In addition, the Release notes that requiring, in advance, "a list of specific criteria for determining when market quotations may no longer be reliable could limit the board's or valuation designee's flexibility."

* * *

If you would like to learn more about the issues in this Alert, please contact your usual Ropes & Gray attorney contacts.

1. The Release also includes new Rule 31a-4 under the 1940 Act, which addresses recordkeeping requirements relating to the Rule.
2. The Rule provides that "board" means either the fund's entire board of directors/trustees or a designated committee composed of a majority of directors/trustees who are not interested persons of the fund.
3. In a change from the proposing release, a fund's board may not assign fair value determinations to one or more sub-advisers. As adopted, the Rule permits a board to designate, as its "valuation designee," (i) the fund's adviser or (ii) if the fund does not have an investment adviser, an officer or officers of the fund. The definition of valuation designee expressly excludes a fund's sub-adviser. The second option is available only to an internally managed fund. In this Alert, we assume that a board's valuation designee will be the fund's primary investment adviser. Unit investment trusts ("UITs"), which do not have a board or an investment adviser, normally rely on the trustee or depositor to perform fair value functions and, as discussed below, are treated separately under the Rule.
4. This is a change from the proposing release, which did not include the proviso. In another change from the proposing release, the Release omits a requirement that would have required the board or investment adviser to consider the applicability of the selected fair value methodologies to types of investments a fund does not currently own but in which the fund intends to invest.
5. This is a change from the proposing release, which would have required a fund to adopt and implement written policies and procedures addressing the determination of the fair value of fund investments that are reasonably designed to achieve compliance with the requirements described in items (1)–(4). The Rule does not include this requirement. In the Release, the SEC recognized that, with the adoption of the Rules 2a-5 and 31a-4, Rule 38a-1 would require the

adoption and implementation of written policies and procedures reasonably designed to prevent violations of the Rule's requirements.

6. The Rule provides that a board may "designate" a valuation designee (to perform fair value determinations), which is a change from the proposing release's use of the word "assign." In the Release, the SEC stated that "[s]ome commenters believed that the term 'assign' could suggest that the board has completely delegated the entire valuation function and related obligations to the adviser." For internally managed funds, which do not have an investment adviser, the definition of valuation designee permits an officer or officers of the fund to be the valuation designee. In this Alert, we assume that a board's valuation designee will be the fund's primary investment adviser.
7. In a change from the proposing release, the Release added the quoted text because the Release simultaneously deleted "process of making," which preceded "fair market valuations." In the Release, the SEC recognized that portfolio managers may have "unique insights . . . regarding the value of fund holdings" and, therefore, limited the segregation requirement to focus on undue influence. The Release indicates that ascribing fair values to portfolio investments based solely on information provided by the portfolio manager would not satisfy the segregation requirement.
8. The Rule requires that these items be reported annually to a board. This is a change from the proposing release, which would have required quarterly reports of these items. In another change from the proposing release, the Rule clarifies that the annual assessment may contain a summary of testing results and removes a requirement, which appeared in the proposing release, to report service provider changes or price overrides as per se material events related to the investment adviser's oversight of pricing services.
9. This is a change from the proposing release, which specified a maximum of three business days instead of five. The Release acknowledges that the materiality of some matters may not be immediately apparent. The Release provides that the valuation designee should promptly determine the materiality of matters it identifies consistent with its fiduciary duties and then notify the board within five business days after determining that the matter is material. If a valuation designee has not been able to determine a valuation matter's materiality after 20 business days of becoming aware of the matter, the Release indicates that the SEC would expect the designee to then notify the board of its ongoing evaluation of the matter within five business days.
10. The Release states that material matters in this context would generally be matters about which a fund board "would reasonably need to know in order to exercise appropriate oversight of the valuation designee's fair value determination process," including matters that "could have materially affected" the fair value of the fund's investments.
11. In a change from the proposing release, the Release does not specify the newly required records in the text of the Rule. Instead, the SEC adopted Rule 31a-4. If a fund's board does not designate a valuation designee, the fund is required to maintain the appropriate documentation to support its fair value determinations.
12. In another change from the proposing release, the Release states that appropriate documentation does not require detailed records relating to the specific methodologies that a pricing service applied nor the assumptions or inputs used by such pricing service. However, consistent with the proposing release, the Release states that "the requirement to maintain appropriate documentation to support fair value determinations should include documentation that would be sufficient for a third party, such as the [SEC] staff, not involved in the preparation of the fair value determinations to verify, but not fully recreate, the fair value determination."
13. See, *e.g.,* United Municipal Bond Fund, SEC No-Action Letter (pub. avail. Jan. 27, 1995) and Federated Municipal Funds, SEC No-Action Letter (pub. avail. Nov. 20, 2006).
14. As of the date of this Alert, the Release has not been published in the Federal Register.
15. Money Market Fund Reform; Amendments to Form PF, Rel. No. IC-31166 (Jul. 23, 2014) ("2014

Money Market Fund Release").
16. See, *e.g.,* Signature Financial Group, Inc., SEC no-action letter (pub. avail. Dec. 28, 1999) and GE Institutional Funds, SEC no-action letter (pub. avail. Dec. 21, 2005).
17. A similar observation was made in the ABA Comment Letter, which was cited in the Release.

December 9 2020

Ropes & Gray LLP

Wisconsin Public Finance Authority – More Scandal.

In our October issue we featured this Wisconsin bond issuing authority for its assuming authority to approve municipal bond issues for projects in a dozen other states. We addressed this as being an infringement on the sovereignty of other states and questioned the motivation for such action and the ethics of doing so. Note that our attention to this situation was not by accident, but rather, by the fact that a number of these bond issues had defaulted. This was also not the first time we raised the integrity issue about this authority.

In our August 2018 issue, we wrote a front page feature article about a $10.8 million bond issue approved in November 2017 by this Wisconsin authority for a Nevada corporation domiciled in Texas and underwritten by a regional Texas brokerage firm. The company involved called Integrity Aviation Finance was in the jet engine leasing business with an 8 engine inventory. It used $2.5 million of the bond proceeds to pull all of its equity out of the company. Equity which was based on unaudited financial statements. Our attention was drawn to the bonds in 2018 because the trustee was seeking to declare the bonds in default because the company refused to supply audited financial statements. Bondholders ignored the trustee request since the bonds had an 8% coupon and were current on the interest payments. Despite this, bonds started being sold and dropped in price to the mid 30s, unique pricing for a bond that was current on its interest payments and only offense was a failure to file audited financials.

As we warned in 2018, expect to read more about this issue. Things quickly went from bad to worse. Several engines were leased to a Miami leasing firm which has since declared bankruptcy. Now the trustee is scrambling around to assure the engines don't become part of the bankruptcy estate. Also, two engines are held by the Ethiopian airline pending payment for repair work. Added to this is that payments to the trustee were $256,000 in arrears. Any future normal debt service of any sort for these bonds is unlikely.

Bondholders have finally decided to pay attention and have authorized the trustee to accelerate the bonds. This will probably generate a bankruptcy filing by Integrity. Meanwhile, bonds have been trading in October at prices from 4 to 18. I suspect that 4 is a more likely number for eventual recovery.

While the Wisconsin authority cannot be directly blamed for the above events, poor due diligence at the authority level is clearly evident. The principals of Integrity did not have particularly glowing resumes and proved to have little integrity. The Nevada domicile is questionable. The approval without audited financials is negligent. The bond indenture provisions and use of proceeds restrictions were not clear or definitive. At some point it may become clear to the bond market that Wisconsin authorized bonds need to be more closely scrutinized or just avoided, especially when they carry an above market interest rate. We also believe that the states whose bond issuing

authority is being undermined should jointly complain to more responsible individuals in Wisconsin to remove this taint to its standing in the municipal bond market. And in case you think this is a one-off incident, read about the Wisconsin authorized bond for the Nevada Goodwill Industries bankruptcy or the Maryland Proton cancer center.

We note that the authority has moved to now calling itself the "Public Finance Authority" without any mention of Wisconsin. This appears to be either an intentional misleading of bond buyers or an overt attempt to expand their mandate without having to explain away inquiries about defaulted issues. In a recent prospectus the following language explains where the Authority gets its power. " The Authority was established by local government, primarily for local governments, for the public purpose of providing local governments a means to efficiently and reliably finance projects that benefit local governments, and nonprofit organizations and other eligible private borrowers in the State of Wisconsin and throughout the country." In short, 4 Wisconsin counties and one city have given themselves the power to authorize municipal bond issues anywhere in the USA. What hutzpah!

Forbes

Richard Lehmann

Dec 10, 2020

Rent-A-Muni Issuer Scored Market Access for Bond Now at 11 Cents.

- **The PFA in Wisconsin has issued debt for businesses nationwide**
- **After jet-engine leasing deal, company owner accused of fraud**

Long before federal regulators would accuse him of fraud for running a Ponzi-like scheme, Victor Farias decided to raise some cash in the municipal bond market.

Farias, 47, couldn't tap the market without help. His startup jet-engine-leasing business based in the San Antonio, Texas suburbs wasn't exactly the kind of venture normally financed in the safe and stodgy world of state and local government debt. But there was an agency that could do it for him: the Public Finance Authority of Madison, Wisconsin. The PFA was set up a decade ago with the sole purpose of renting out its power to issue municipal debt to businesses all over the country — from real-estate developers and colleges to nursing homes.

It was June 2015 when Farias's business moved to borrow through the PFA, submitting a five-page application that mostly provided contact information. The PFA didn't review Integrity Aviation's financial statements, revenue projections or demand a feasibility study, according to a bond offering statement. Farias, a former bond salesman, had almost zero experience in the aviation business, bond offering documents would later show. A month later, the PFA approved his proposal, and his business issued about $11 million of taxable debt, broken into $5,000 lots, small enough for mom-and-pop investors to buy them.

Today, Integrity Aviation is in shambles. Bondholders have accused Farias of siphoning about $275,000, and a company that leased five of its engines filed for bankruptcy. And the muni bonds are trading for just 10.5 cents on the dollar in secondary markets, a price that indicates traders believe Integrity won't be able to repay the debt when due next year.

Such market blowups are becoming a familiar tale for investors who have flocked to riskier debt in

search of increasingly elusive yields. The economic fallout from the pandemic has exposed the risks from bonds that, like Integrity's, are backed only by a project's revenue.

This has pushed up the number of defaults even in the municipal-bond market, a haven marketed overwhelmingly toward Americans seeking safe and steady returns. There have been 70 so far this year, the most since 2012, according to Municipal Market Analytics.

No issuer has had more of those than than the PFA. Twelve entities that borrowed through the agency have defaulted, according to data compiled by Bloomberg, 10 of them tied to a nursing home chain in the U.S. Southeast. In all, about $180 million in defaulted PFA debt represents 9% of payment defaults by dollar value this year, the fourth-highest by issuer, according to data compiled by Bloomberg.

Farias's saga also puts a spotlight on the practices of local government agencies that generate fees by selling bonds that they aren't on the hook to pay back. Such conduits — and PFA is the most active of those that sell bonds for corporations nationwide — allow borrowers and local governments to avoid the more burdensome federal regulations imposed on those who issue debt in the corporate bond market.

Since 2010, PFA has issued more than $11 billion of bonds for projects in 44 states that qualify because they're deemed to promote social good or economic growth. The agency, which has no staff, generated nearly $30 million in fees between 2014 and 2019, almost all of it for the financial advisory firm that effectively runs it, Walnut Creek, California-based GPM Municipal Advisors, LLC.

"These deals get done because the PFA sells itself, saying you pay our fee and you could use us as an issuer," said Tom Metzold, former co-head of municipal investments at Eaton Vance Corp. who now serves as an expert witness in municipal bond securities cases.

Wisconsin law doesn't require the PFA to perform due diligence on proposed projects, but the agency reserves the right to require an independent study, according to its policies.

In a statement, the PFA said its bond deals finance projects that create jobs, build affordable housing and improve communities, all with no risk to taxpayers. It said it relies on the underwriters and lawyers engaged in the proposed projects to evaluate their financial viability. The fees it generated in 2019 amounted to 21 cents per $100 of bonds issued, the agency said.

"The underwriters, underwriters' counsel, tax counsel, bond counsel, bond purchasers' counsel, and other professionals with whom PFA works on each transaction conduct significant due diligence to determine if a particular transaction is credit-worthy — i.e., the bonds backed solely by the revenues generated on a transaction are highly likely to be repaid," PFA said.

"To the extent there are questions surrounding any specific project," it said, the professionals "involved with the project are in the best position to provide information." PFA's bond issues are subject to rules set by the Municipal Securities Rulemaking Board, the market's self regulatory organization, the agency said.

Mike LaPierre, the general manager of GPM, the advisory firm that works for the PFA, didn't return phone calls and emails seeking further comment. Farias didn't respond to emails and a letter sent to the home address where he was served a court summons in August.

While some conduit issuers perform their own underwriting and due diligence for projects to see if they're viable, others avoid it. A passive approach permits issuers to disclaim future responsibility for the project's performance, according to a 2017 pamphlet by Orrick, Herrington & Sutcliffe LLP,

which helped local government officials in Wisconsin draft the legislation that created the PFA. That approach, which requires less work and staff time, also generates more fees. A spokesperson for Orrick declined to comment.

Two years before Farias turned to the PFA to issue muni-bonds, he began funding his business by selling promissory notes to individual investors in the San Antonio area, many of them retired police officers and other emergency workers, according to a U.S. Securities and Exchange Commission complaint.

Of the $14 million he raised, the SEC said he diverted more than $11.6 million from the company — $6.5 million to pay investors Ponzi-like returns, $2.7 million to invest in a friend's convenience store, $1.6 million into his own bank account and another $800,000 on travel, jewelry, golf and country club expenses. Integrity never purchased jet engines with the money raised from the promissory notes, said the SEC, which sued Farias in July for fraud.

Farias has asked a federal judge in San Antonio for more time to respond to the SEC's complaint and is currently in talks aimed at settling the case, according to a Nov. 4 filing by the SEC. Farias is representing himself in the case.

When Farias pitched the muni-bond deal in 2015, a PFA board made up largely of Wisconsin mayors and county officials approved the application after reviewing a roughly two-page summary from board advisory firm GPM.

According to GPM's report, "affiliates and principals" of Integrity had substantial experience in the manufacturing, overhaul, repair and leasing of aviation assets. The bonds, GPM said, would be guaranteed by a company called Turbine Engine Center Inc., which operated a 70,000 square-foot engine repair station in Miami.

By the time the bonds were marketed to investors, however, prospective buyers were given a somewhat different picture.

According to an offering memorandum, Farias's Integrity Aviation would guarantee the bonds, not Turbine Engine Center. Farias's extensive experience in the business was limited to the purchase and leasing of one engine. Three other employees — two of whom were former securities brokers — had no experience in the industry, the documents show.

Integrity used proceeds of the PFA bond offering to buy at least four engines from a company registered to Matthew Marsenison. Marsenison also served as Turbine Engine Center's chief executive officer and was characterized as a member of Integrity's management team in a document sent to promissory note investors.

Neither Marsenison nor Turbine Engine Center have been accused of any wrongdoing. Marsenison, who no longer owns the company, didn't respond to a letter sent to his address.

Farias also formed a company with the banker who led the deal, Patrick Dertien of National Alliance Securities LLC, three months after the bonds were sold, according to public records. Dertien was fired in September 2018 for unauthorized and undisclosed outside business activities and for failing to respond to inquiries from regulators, according to broker registration records.

The broker records didn't specify the outside business.

Dertien didn't return calls seeking comment. National Alliance received $800,000 to underwrite the bonds, almost 5 times the average for high-yield muni issues in 2015, data compiled by Bloomberg

show.

Fred Bush, National Alliance's chief financial officer, didn't respond to calls and emails seeking comment. Alysse Hollis, who previously worked at Cincinnati law firm Jones Walker and served as both bond counsel and underwriters' counsel on the bond issue, didn't return calls seeking comment.

Farias leased five engines to Odyssey Engines LLC, the parent of Turbine Engine Center. Odyssey filed for bankruptcy in June, allowing it to stay lawsuits from two banks that said the company defaulted on more than $60 million in loans.

In a 2019 lawsuit, Integrity alleged Odyssey hadn't made lease payments and refused to return the engines — two of which were in storage in Ethiopia. Another, the suit alleged, was in pieces in one of Odyssey's facilities.

Odyssey's chief executive officer, David Alan Boyer didn't respond to emails seeking comment. No one answered the phone at Odyssey Engines. In a response to the lawsuit, Odyssey denied Integrity's allegations and said the case should be dismissed because it concerns transactions in Florida that were beyond the Texas court's jurisdiction.

As for the buyers of Integrity's muni bonds, those acting on their behalf filed a secured claim in Odyssey's bankruptcy case for $6.8 million and have also sued to recover $275,000 that Farias allegedly stole from the bond account.

In the five years since the debt was issued, Integrity has never filed audited financial statements, a reflection of the loose disclosure regulations in the muni market. But Integrity did say in a regulatory filing in Feb. 2018 that it generated $1.25 million in revenue in 2017, $2.3 million less than was projected to investors in bond marketing documents.

In April 2018, bondholders including Barnett & Company Inc., a Chattanooga, Tennessee-based wealth management firm, hired National Alliance to examine Integrity's books.

Rob Halder, head of research and special situations at National Alliance, was granted "view only" access to an Integrity bank account set up to receive lease payments and quickly saw there was no money, according to a lawsuit filed on behalf of bondholders that accused Farias of siphoning between $25,000 and $35,000 a month from the business between April and December 2018. Halder didn't return phone calls seeking comment. Christopher Hopkins, a vice president at Barnett & Company who represented bondholders, declined to comment.

In an Oct. 2018 email, Halder asked Farias where the money was, according to the bondholders' lawsuit.

"Now that we have confirmed that all the monies have been moved out of the revenue account despite direction otherwise, can you tell me where the money has been transferred to? When will it be returned?"

Farias never responded, according to the lawsuit.

Bloomberg Markets

By Martin Z Braun

December 8, 2020, 5:00 AM PST

— With assistance by Laurel Brubaker Calkins, and Danielle Moran

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Nashville Stadium Bond Deal Tests Future of Spectator Sports.

- **Local agency selling $225 million of bonds for soccer stadium**
- **10-year debt early offer at 130 basis points over Treasuries**

America's country-music capital is making a bet on the world's most popular sport.

A Nashville, Tennessee agency is selling $225 million of bonds to finance the construction of a 30,000-seat Major League Soccer stadium in Music City, anticipating it could be a boon once spectator sports emerge from the pandemic. Local officials have faith that it will: the Metropolitan Government of Nashville and Davidson County agreed to step in if revenue from the stadium isn't enough to cover the debt payments, insulating bondholders from risk.

The project marks the latest twist in what has been a long-running stadium-building arms race among cities seeking to lure professional sports teams or prevent them from moving away. It will represent a test of whether Americans will embrace soccer, a sport that dominates much of the world but lags football, baseball, and basketball in the U.S.

Eric Kazatsky, municipal-bond strategist for Bloomberg Intelligence, said soccer has proven popular in cities such as Philadelphia and he speculated that the Nashville opening in 2022 may benefit from pent-up desire to return to mass gatherings after the pandemic ends.

"I think that people might be surprised at the attendance that they'll get," he said.

Citigroup is offering the taxable bonds to investors at a top spread of 185 basis points over Treasuries, according to a preliminary pricing wire seen by Bloomberg. Ten-year debt is offered with a 130 basis-point spread.

The pricing is "definitely wide" compared to yields on similar rated securities, said Gabriel Diederich, a portfolio manager at Robert W. Baird & Co. "That's often the case for appropriation bonds for non-essential projects."

The MLS, the men's professional soccer league for the U.S. and Canada, has been expanding its footprint. Since 1999, 20 stadiums have been built or renovated for MLS teams and at least seven more will debut in the coming years, according to league spokesman Dan Courtemanche.

"These soccer stadiums provide a terrific environment for fans of MLS clubs and are an important component of the overall growth of the league," he said in an email. Some of them are privately financed and others feature a mix of public and private funding.

Nashville was awarded an MLS team in 2017 in an effort spearhead by John Ingram, the team's majority owner. But getting the planned stadium off the ground has been mired in controversies, including a dispute this year between the team and Nashville Mayor John Cooper over changes to the terms of the deal. In February, they said the team would cover the full cost of the construction of the stadium through a cash investment, lease payments, and revenues generated at the stadium, something Cooper said would be a good deal for taxpayers.

The Metropolitan Government of Nashville and Davidson County, however, agreed to backstop the

bonds, allowing them to get an investment-grade rating that will reduce the costs of financing. The city-county is pledging non-tax revenues like licenses and fees if the other revenue sources backing the debt, such as the $1.75 ticket tax during the initial years of the project, aren't enough to cover debt-service costs.

Nashville isn't the first city to extend such support. Bridgeview, Illinois, lent its backing to bonds issued for a stadium for the MLS' Chicago Fire Football Club, only to see its own credit rating slashed into junk when the venture fell short of expectations.

The sport has since made inroads, helped by the strength of the U.S. Women's National Team. Nielsen found in a 2019 report that 47% of adults in the U.S. were interested in the MLS, which is up from 37% in 2012.

The Nashville Soccer Club, which is sharing a stadium with the Tennessee Titans football team, played its first home game in February right before the pandemic shuttered activity in the U.S. It attracted more than 59,000 people, marking "the largest crowd for a soccer match ever in the state of Tennessee," according to the club.

Ian Ayre, the chief executive officer of the team, said it "had a very successful year considering everything we have all endured."

"Our fan base continues to grow significantly and the excitement for our club is palpable throughout the city and region," he said. "Our new home stadium is a key part of our growth."

Monica Fawknotson, executive director of the Metropolitan Sports Authority, the agency that's selling the bonds, said in an email that the stadium will be an economic development opportunity for the city. She said interest in soccer is rising in the region.

"Soccer fans tell us they can't wait for opening day," she said in an email.

But the pandemic has cast uncertainty over the future of spectator sports. Anthony Fauci, the U.S. government's top infectious-disease specialist, told Yahoo! Sports that full stadiums are unlikely until at least the summer of next year.

Nashville's bond-offering documents note the risk that Covid-19 may change attitudes toward attending large gatherings.

"The great unknown is how the public will respond after the pandemic, especially in regards to sports that are not ingrained in the American psyche," said Michael Leeds, a sports economist at Temple University.

Bloomberg Markets

By Amanda Albright and Danielle Moran

December 7, 2020, 7:00 AM PST Updated on December 7, 2020, 10:00 AM PST

Do Municipal Bond Exchange-Traded Funds Improve Market Quality?

In this paper, Justin Marlowe of the Harris School of Public Policy at the University of Chicago examines the relationship between exchange-traded funds (ETFs) and the liquidity profiles of

municipal bonds. Like mutual funds, ETFs own the underlying bonds and can create and redeem shares in the fund every day. Unlike mutual funds, investors in ETFs can trade in and out of positions throughout the day because ETFs trade like a stock on an exchange. This makes them attractive to investors who want a degree of liquidity not typically available in fixed income over-th--counter markets. ETFs are, in many ways, an ideal innovation for the municipal bond (i.e. "muni") market. The muni market is fragmented and comparatively illiquid. Unlike publicly-traded corporations, state and local government financial disclosure is largely unregulated, so price-relevant information can be costly to obtain. This lack of liquidity and high search costs are reflected in mark-ups on muni trades that are often orders of magnitude larger than similar trades in corporates or equities. The muni market has high barriers to entry, but ETFs are a comparatively low-cost, well-diversified, and richly-informed vehicle for investors to access it.

But despite these benefits, ETFs also raise concerns for regulators and policymakers. Many of those concerns surround liquidity dynamics. Like with many fixed income ETFs, the bonds held by muni ETFs can be considerably less liquid than the ETF itself. That can create a substantial liquidity mismatch where ETF issuers might need to buy (sell) a particular bond at a considerable price premium (discount) when liquidity is scarce. This mismatch can distort the relationship between the ETF's net asset value and its share price. It can also uncouple the ETF from the market index it is designed to track.

This paper is the first to examine the implications of ETF ownership for individual municipal bonds. Using data on the bond-level holdings of ETFs from 2010-2020, Marlowe finds that bonds held by ETFs tend to trade more often than bonds held by mutual funds, but with little or no impact on price dispersion, returns, or systematic risk. However, these effects vary considerably by the type of bond. Lower credit quality bonds held by ETFs tend to trade much more frequently than those with higher credit quality. Market conditions also matter. During the COVID-19 market dislocation of March 2020, bonds held by ETFs traded far less often. These results have implications for regulators' stated concerns about the liquidity differential between ETFs and their underlying holdings, especially during market downturns. Marlowe's findings suggest that at best ETFs bolster municipal bond liquidity overall, and at worst, bonds held by ETFs are no less liquid than bonds held in mutual funds.

Read the full paper here»

The Brookings Institution

by Justin Marlowe

December 14, 2020

TAX - ALABAMA

Jefferson County Board of Education v. City of Irondale

Supreme Court of Alabama - October 23, 2020 - So.3d - 2020 WL 6235733

County board of education and several public-school employees, who worked either as public-school teachers or support staff, sought to avoid application of an occupational tax imposed by city.

The Circuit Court entered summary judgment for city. County board of education and public-school employees appealed.

The Supreme Court held that:

- Nature of services performed by employees of county board of education was not an adequate basis for excluding them from having to pay city's occupational tax;
- State-agent immunity was not a basis to find that employees of county board of education were exempt from city's occupational tax; and
- City's occupational tax neither violated statutorily mandated salary schedule for employees of local boards of education nor failed to ensure equitable pay for such employees.

Nature of services performed by public-school employees, who worked either as teachers or support workers, was not an adequate basis for excluding them from having to pay city's occupational tax; ordinance applied to all employees working in the city limits, regardless of the person's employer or place of residence, and occupational tax did not create a new or additional requirement for gaining or maintaining employment by the county board of education.

State-agent immunity was not a basis to find that employees of county board of education were exempt from occupational tax imposed by city; ordinance did not affect any government function of the county board of education, payment of the occupational tax was not related to a board employee's government responsibilities, and if the county board of education was unwilling to withhold the occupational tax for its employees, the ordinance provided a procedure for employees to independently comply with the requirements of the ordinance.

Occupational tax imposed by city ordinance neither violated statutorily mandated salary schedule for employees of local boards of education nor failed to ensure equitable pay for such employees so as to preclude occupational tax from being applied to employees of county board of education; despite argument that a difference in net wages occurred based on where employees of county board of education provided services within county, nothing in ordinance prohibited county board of education from paying employees gross wages exactly as required under the mandated salary schedule, and statute in question did not state that employees of local boards of education were otherwise exempt from local, state, or federal taxes.

How To Avoid Stepping Into Hazardous Municipal Bond Issues Caused By Covid-19.

In August I wrote a Forbes column titled, The Lunacy of Using City Streets To Collateralize New Municipal Bond Deals. I received quite a lot of feedback confirming the stupidity of these bonds. I cited two California cities—Torrance and West Covina. Both issued taxable Pension Obligation Bonds (POBs) to plug their unfunded pension liabilities. The bonds were collateralized by the city's streets. I still can't determine how these streets could produce any revenue to make interest payments and maturity redemptions if the city's finances go south.

Fast forward to the present. The city of West Covina, California that issued $204 million of such bonds recently received an audit report from the state of California pointing out significant "deteriorating financial risks that threatens its fiscal stability." In other words, the city is in financial trouble.

The West Covina bonds were rated A+ by Standard & Poor's just five months ago. What changed? Nothing significant as far as I can tell. The rating was simply inaccurate. It is clear S&P failed in their financial diligence. Also, be aware of who pays the rating agencies for their evaluation—the bond issuers themselves.

Look at the ratings of the bonds you own as they appear on your monthly brokerage statement. Find out when the rating agency last looked at the issuer. Many small- to medium-sized municipal bond deals are rated as of the issue date and never again until the municipality issues new bonds. Don't think that AA rated municipal bond you purchased five years ago still has the same credit metrics to warrant that rating today.

You can chose to look at the issuer's financials yourself. Determine if revenues exceed expenses annually. How much cash do they have on hand? Is it enough to cover any shortfall in revenues until maturity? Find out if the rating agency has recently updated their report on the issuer. These can quickly tell you what has changed and why.

If you are investing in municipal bonds yourself, use EMMA as your go-to source for municipal bond financials.

The large general obligation issuers from fiscally responsible states like Virginia and Maryland or hospital revenue bonds like Cedars-Sinai in Los Angeles and Kaiser Permanente, all have readily available current financials.

If your municipal bonds made it out of the pandemic unscathed, then congratulate yourself. If several of your municipal bond positions were downgraded, you just might want to find out why. Maybe whatever happened is survivable but maybe it's time to get out while you still can.

Stay as far away from hinky deals like Torrance and West Covina as possible. Wrap your arms around your municipal bond holdings—it may save you heartache down the road.

Forbes

by Marilyn Cohen

Dec 10, 2020

Using EMMA to Identify Timing of Annual Financial Disclosures.

Why does the Submission Calculator on EMMA® not use the issuer's continuing disclosure agreement due date?

Learn that and more by watching our on-demand webinar, Using EMMA to Identify Timing of Annual Financial Disclosures.

MTA Borrows $2.9 Billion From Fed Before Window Closes.

- **Subway operator is one of just two to tap muni credit line**
- **Agency is using short-term borrowing to cope with revenue drop**

New York's Metropolitan Transportation Authority borrowed $2.9 billion from the Federal Reserve's emergency credit line for states and local governments, marking the second time the transit agency has turned to the central bank as it contends with a steep drop in ridership from Covid-19.

The transit agency sold payroll mobility tax bond-anticipation notes with a 1.33% coupon for those maturing in 2023 to the Fed's Municipal Liquidity Facility, according to data compiled by Bloomberg. Aaron Donovan, a spokesperson for MTA, confirmed the sale in an email on Thursday.

The MTA has turned to short-term borrowings to close the budget gaps created by the pandemic and it seized on the chance to borrow from the Fed before the little-used credit line expires at the end of the month. The agency has warned that it will have to slash subway and bus service by 40% and chop commuter rail service by half if it doesn't receive aid from Washington. Fares and tolls will increase and roughly 9,300 jobs will also be eliminated.

The Fed's $500 billion municipal lending program was designed to serve as a lender of last resort for cities and states to ensure they could still raise cash if the bond-market froze up, as it did in March amid panic about the fallout of the pandemic. But it has barely been used because it charges high penalties, leaving the public market a better deal for virtually all local governments. Three-year benchmark municipal debt yields just 0.13%, according to Bloomberg BVAL.

The MTA — and the state of Illinois, the only other one to borrow from the Fed, based on central bank data last month — is a rare exception. Investors still demand high yields on the MTA's bonds because of the agency's financial strains. Some MTA debt due in 2023 traded at a nearly 2.2% yield on Thursday, about 2 percentage points higher than AAA rated bonds.

Bloomberg Markets

By Amanda Albright, Michelle Kaske, and Danielle Moran

December 10, 2020, 12:19 PM PST

Understanding A Path To Boosting Lower-Income Communities: Qualified Opportunity Zones.

Anyone involved in any type of commercial real estate endeavor has by now heard of the qualified opportunity zone program. For those who haven't, the qualified opportunity zone (QOZ) came out of the bipartisan Investing in Opportunities Act of 2017 as a means for investors to defer paying taxes on capital gains after the sale of assets. Eventually, it found its way into the Tax Cuts and Jobs Act of 2017 and was rolled out soon after. In all the pro-and-con media hype around the program, many forget that its underlying purpose was to funnel financial resources toward in-need lower-income communities.

Though the program is still in its early days – it is, after all, a long-term initiative – the following issues should be considered when discussing QOZs: the program's impact on lower-income areas, how qualified opportunity funds (QOFs) can boost economic development and how investors can ensure gains are directed to areas in need. With that said, there are still questions as to whether this community revitalization program is actually being utilized to revitalize communities.

Continue reading.

Forbes

by David Wieland

Dec 1, 2020

Despite Challenges, Opportunity Zones Provide Much-Needed Capital.

The program has been criticized for a lack of transparency and for being used as a tax dodge, but developers say it is "a great tool to have in the toolbox."

Following a slow rollout of rules governing opportunity zones, a program Congress approved three years ago to encourage investment in low-income neighborhoods, developers have pumped billions of dollars into the zones nationwide, even in the midst of the pandemic.

The program has drawn myriad detractors, including critics who charge investors are using it simply to avoid paying taxes. Others point to a lack of transparency that makes it tough to gauge whether the investments are making a real impact on communities.

The Trump administration has resisted providing much federal reporting or oversight, but some states and cities are using the initiative to help steer investment into their underserved neighborhoods and track how much residents are benefiting from it.

Continue reading.

The New York Times

By Joe Gose

Nov. 24, 2020

Opportunity Zones Working Group Prepares to Provide Feedback on OZ Legislation, Oversight.

The OZ Working Group provides a platform for OZ stakeholders to work together to create consensus solutions to technical OZ incentive issues and to provide recommendations to the government to make the OZ incentive more efficient in delivering benefits to low-income communities.

During the run-up to the election, President-elect Joe Biden released his Build Back Better plan, which included several proposed modifications to the OZ incentive. These proposed changes have since been included in the Biden-Harris transition plan for racial equity and include:

- Incentivizing qualified opportunity funds (QOFs) to partner with nonprofit or community-oriented organizations, and jointly produce a community-benefit plan for each investment, with a focus on creating jobs for low-income residents and otherwise providing a direct financial impact to households within the OZs.
- Directing that OZ benefits be reviewed by the Department of Treasury to ensure these tax benefits are only being allowed where there are clear economic, social, and environmental benefits to a community, and not just high returns–such as those from luxury apartments or luxury hotels–to investors.

- Introducing transparency by requiring recipients of the OZ tax break to provide detailed reporting and public disclosure on their OZ investments and the impact on local residents, including poverty status, housing affordability and job creation.

Additionally, there has been a bipartisan call for data collection and transparency intended to enhance efforts to evaluate OZ policy and guard against abuse. Legislation introduced during the 116th Congress includes:

- S. 2994: Improving and Reinstating the Monitoring, Prevention, Accountability, Certification and Transparency Provisions of Opportunity Zones, introduced by Sen. Tim Scott, R-S.C.
- S. 2787: Opportunity Zone Reporting and Reform Act, introduced by Sen. Ron Wyden, D-Ore.
- H.R. 4999: Opportunity Zone Fairness and Inclusion, introduced by Rep. Henry Johnson, D-Ga.
- H.R. 5011: Opportunity Zone Accountability and Transparency Act, introduced by Rep. Ron Kind, D-Wis.

During 2021, the OZ Working Group will continue to foster opportunities for its members and continue to provide a platform where industry stakeholders can discover how best to implement the OZ incentive into their business strategy. The group will also continue to maintain a leadership role within the OZ industry by keeping abreast of emerging issues and providing input for shaping proposed legislation and rulemaking. With the likely change in administration, the group will turn its immediate focus to the following regulatory and legislative initiatives:

Administration Oversight

- Revisiting the final OZ regulations and identifying ways the regulations could be improved to enable the OZ incentive to better meet policy objectives, such as additional incentives to encourage affordable housing and other mission-driven investments.
- Reviewing and commenting on policy recommendations for data collection and transparency, including ways in which Treasury can use the Community Development Financial Institutions (CDFI) Fund to help carry out its policy objectives.
- Reviewing the impact of the 2020 U.S. Census and making recommendations on how modifications to census tracts should affect or not affect OZs.
- Reviewing and commenting on proposed rules under the Community Reinvestment Act (CRA) to ensure that CRA serves as a robust incentive to invest in OZs.

Legislative Activity

- Commenting on legislative efforts to provide greater community impact that use targeted incentives or disincentives for specific types of business that create more jobs or meet other policy goals.
- Reviewing and making recommendations for fair transition rules should some higher income or contiguous census tracts be determined to be ineligible as OZs.
- Providing recommendations on the types of information that should be collected from QOFs, qualified OZ businesses and investors to enable Treasury the ability to assess the OZ incentive’s impact on community outcomes while at the same time protecting taxpayer privacy.

Conclusion

The leadership of the OZ Working Group has contributed greatly to the success of the OZ incentive during the first three years of implementation and there is still more work to do to successfully transition the incentive under a new administration and to maximize its potential to transform distressed communities. The OZ Working Group is excited to flip the calendar to a new year where

we will continue our work of helping to shape the implementation of the OZ incentive toward the maximum efficiency and effectiveness in transforming communities. Parties interested in joining the OZ Working Group can contact John Sciarretti at John.Sciarretti@novoco.com.

Novogradac

Published by Jason Watkins, John Sciarretti on Wednesday, December 2, 2020

Fall 2020 Issue of The Bond Lawyer.

The Fall 2020 issue of The Bond Lawyer® is now available. Download and view the online document here.

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

Building Back Better – A Virtual Event to Remember! Squire Patton Boggs

We can all agree that the year 2020 has been incredibly polarizing. Never have the authors of this blog fought with family members over politics, what to do or not do during the COVID-19 outbreak, and who should or should not be invited to Christmas Eve dinner more than we have this year. However, one thing that all Public Finance professionals can agree on is that this country's infrastructure plan is vital to our industry.

A lot of our industry is curious about what Joe Biden's infrastructure "Build Back Better" plan will include. He plans to launch "a national effort aimed at creating the jobs we need to build a modern, sustainable infrastructure now and deliver an equitable clean energy future."

In partnership with the Association of Public Finance Professionals (APFP) of the District of Columbia, Maryland, and Virginia, Squire Patton Boggs is hosting a virtual event on December 16, 2020 at 4 pm eastern. The event will feature insights from our colleagues, former Congressman Joe Crowley (D-NY), former Congressman and former Chairman of the House Committee on Transportation and Infrastructure Bill Shuster (R-PA), and former Secretary of Transportation Rodney Slater. Some of the questions to be addressed include:

- How would the Biden Administration overcome the challenges that have stalled infrastructure development for the last four years under the shadows of a global health crisis?
- How would the need for funding to develop infrastructure be balanced against the fight against COVID-19 and economic recovery?
- What role does infrastructure development play in economic recovery during and post-COVID-19?
- What could be some of the most attainable goals for the Biden Administration working with a divided Congress?

Squire Patton Boggs partner Alethia Nancoo will provide opening remarks, and our partner (and incoming Public and Infrastructure Finance Practice Group Leader) Bob Labes will moderate the discussion. Craig Robinson, the President of APFP, will provide the concluding remarks.

We hope to see you there! Click here to register for the event!

By Taylor Klavan on December 10, 2020

The Public Finance Tax Blog

Squire Patton Boggs

New York City Is Selling Bonds. Fitch Ratings Just Downgraded Its Credit.

New York City is planning to sell $1.5 billion of bonds next week to refinance maturing debt. And two ratings firms have warned about the city's credit ahead of the sale, citing the potential for long-term fallout from the coronavirus pandemic.

The bonds, which will be sold with maturities from one to 16 years, are being issued to refinance existing debt. The sale is happening at a vulnerable time for the city, as Covid-19 cases start to rise and officials weigh closures of schools and businesses.

Declining sales and tax receipts are responsible for a 9.1% decline in the city's revenue forecast for 2021, about $6.5 billion less than it expected before the pandemic began, according to marketing documents for the Dec. 16 sale. Notably, property taxes are expected to only be about 1% below original projections and real estate taxes made up about 47% of the city's tax revenue in 2020.

"The city has sound independent legal ability to adjust property tax rates and a variety of fees and charges to offset the modest revenue declines expected in a typical economic downturn," Fitch Ratings said in a note downgrading the credit late Tuesday. Still, "rates for other important revenue sources (mainly income and sales taxes and state aid) are not within management's independent control."

Fitch cut the city's credit rating by one notch, to AA- from AA, leaving it with its fourth-best rating, and six tiers above junk. The move reflects the firm's "expectation that the impact of the coronavirus and related containment measures will have a longer-lasting impact on New York's economic growth than most other parts of the country."

That move follows S&P Global Ratings' decision on Tuesday to assign a "Negative" outlook to the city's bonds, though it kept its AA rating on the securities.

New York City is also under pressure because of the potential for mass-transit service reductions, according to S&P. The Metropolitan Transportation Authority has said it might need to cut service and lay off workers if it doesn't receive federal aid, but it isn't clear when such a relief package might be passed. The MTA is tapping the Federal Reserve's municipal liquidity facility—closing at the end of this year—to help cover a sizable budget deficit this year and next.

The outlook implies a "one-in-three chance" that the rating will be downgraded over roughly the next two years, S&P said in its note.

"The negative outlook reflects our opinion of uncertainties, such as a recent uptick in the virus transmission rate that could negatively affect the city's financial forecast, the trajectory for global tourism trends and additional federal stimulus funding for state and local governments, service reductions at the [MTA] that could affect the economic recovery within the region, and weakness in

property tax values that will not be evident until fiscal 2023," S&P analyst Nora Wittstruck said in a statement.

Barron's

By Alexandra Scaggs

Dec. 9, 2020 4:11 pm ET

Last-Minute Opportunity Zone Strategies for 2020, with Ashley Tison.

With just a few weeks left in the year, what are some last-minute strategies and options to keep in mind for Opportunity Zone investors?

Ashley Tison is an Opportunity Zone consultant and attorney based in Charlotte, North Carolina. Along with Jimmy Atkinson, he is co-founder of OZ Pros, an Opportunity Zone advisory firm.

Click the play button below to listen to my conversation with Ashley.

Opportunity Db

By Jimmy Atkinson

December 9, 2020

Capital Asset Accounting Series: GFOA Webinar

January 12-20, 2021 | 1 p.m.-3 p.m. ET

Credits: 12.00

Prerequisite: Accounting and financial reporting professionals with at least two years of public sector experience

Details:

Virtually all state and local governments use capital assets, some of which are essentially unique to the public sector. Properly accounting for these different assets can pose a real ongoing challenge for accounting and auditing professionals. The training will furnish participants with the basic information needed to properly account for capital assets and report them in financial statements prepared in conformity with generally accepted accounting principles (GAAP).

Each session will run from 1:00pm to 3:00pm Eastern on each class day.

- Session 1 – January 12, 2021: Basic accounting for capital assets, the major asset classes, capitalizable costs, and valuation
- Session 2 – January 13, 2021: Depreciation/amortization, impairments, and sale/disposal/transfer of capital assets

- Session 3 – January 19, 2021: Leases, public-private and public-public partnerships, and subscription-based information technology arrangements
- Session 4 – January 20, 2021: Financial statement presentation and disclosures, inventorying, system design, and best practices and policies

Learning Objectives:

- Identify the major capital asset classes and the specific types of capital assets properly included in each
- Determine the value at which capital assets should be reported and the proper depreciation or amortization for each
  Identify and calculate impairments
- Prepare financial statements that conform to the display and disclosure requirements of generally accepted accounting principles (GAAP) for capital assets
- Identify the essential elements of system design for the management of capital assets, including specific policies related to capital assets.

Member Price: $280.00
Non-member Price: $560.00

Register.

Illinois's Bond-Market Penalty Hits Lowest Since Pandemic Crash.

- **10-year yields hover around 2.8%, down from over 6% in March**
- **Lowest-rated state benefits from hunt for higher yield debt**

No state is reaping the bond-market benefits from the promised end of the pandemic more than Illinois.

The state, whose bonds tumbled early this year on speculation it would become the first stripped of its investment-grade credit rating, has since seen its bonds rally back as investors plow into higher-yielding debt on speculation the financial blows of the shutdowns won't be as bad as once feared. That's driven down the yield on Illinois's 10-year bonds from more than 6% in March to about 2.8%, reducing the yield penalty investors are demanding to the smallest in nine months, according to Bloomberg's BVAL indexes.

The drop reflects the broader optimism among investors and shows how the Federal Reserve's promise to keep interest rates low has cut the financing costs for governments. Connecticut's and California's yields have drawn closer to the benchmark, too, as their tax collections stand to gain from this year's stock market surge. Even the water utility of the still bankrupt territory of Puerto Rico borrowed $1.4 billion this week for yields of 3.2% on those due in five years.

"During the spring when the pandemic hit, Illinois got hurt worse than other states because they have less margin for error with their budget," said Daniel Solender, director of the municipal bond group at Lord, Abbett & Co. LLC, which holds Illinois debt as part of $31 billion in municipal assets. "Of the states, Illinois is benefiting the most from the recovery of the lower quality part of the municipal bond market."

The expected rollout soon of vaccines in the U.S. has helped buoy optimism that an economic

recovery is on the way even as an impasse in Congress over another stimulus measure threatens to withdraw support that has helped states to weather the slump.

In Illinois, the state increased its revenue estimates for the current fiscal year by about $2.3 billion as sales- and income-tax collections outstrip previous expectations, according to a November report by the Commission on Government Forecasting and Accountability.

But Illinois still has a bond rating just one step above junk, partly due to its persistent budget deficits. It has a $141 billion unfunded pension liability, a $7.9 billion bill backlog, and is the only state that has turned to the Fed's emergency lending program for governments that are facing high interest rates in the public market.

Gabe Diederich, a portfolio manager at Robert W. Baird & Co., said the drop in Illinois's bond yields shouldn't be interpreted as a sign that investors think the state has addressed its financial challenges.

Investors searching for yields "are forced to cast a wider net" to issuers such as Illinois and New Jersey, said he said.

Recent deals by the Puerto Rico Aqueduct and Sewer Authority and Fortress Investment Group-backed passenger railroad Brightline Holdings LLC bonds also show "demand for spread," he said. It "feels like there is a recovery trade taking place."

Bloomberg Markets

By Shruti Singh

December 11, 2020, 11:13 AM PST

Fortress Returns to Muni Market, This Time For Florida Train.

- **Firm's $950 million offering follows $2.4 billion failed sale**
- **Planned buyback is helping to lift prices of existing bonds**

Less than two months after failing to sell $2.4 billion of unrated municipal debt for a Las Vegas tourist train, Fortress Investment Group is back in the market — this time with a smaller deal for its inaugural rail in Florida.

Through its company Brightline Holdings LLC, Fortress on Thursday is planning to sell $950 million of unrated tax-exempt debt, with proceeds financing the train's extension to Orlando from West Palm Beach. Last year, it sold $1.75 billion for the country's first new privately financed intercity passenger rail in a century, launched in 2018 along Florida's east coast.

The train missed passenger and revenue forecasts even before the coronavirus pandemic forced it to suspend operations in March. But in this offering, the company touts its plans for a new station at Walt Disney World property near Orlando and three more in the works along its initial line from Miami to West Palm Beach. And it says more revenue is likely from fees paid by Miami-Dade County, which wants to use the corridor for a separate commuter service.

It projects 9.9 million passengers and $792 million in revenue in 2024, its first full year of complete operations, or almost four times the average revenue per passenger seen in 2019.

This sale comes after Fortress in late October pulled the deal for its proposed rail to Las Vegas that failed to attract enough interest following weeks of investor pitches even after it was downsized from $3.2 billion. The postponement was a “positive” for the Florida train, said John Miller at Nuveen LLC, which holds 80% of the bonds sold for it. Before Fortress offered the bonds for the Las Vegas venture, Miller had said he had wanted to see the $950 million deal converting short-term securities sold in 2019 into long-term debt first.

The new bonds maturing in 2049 were being offered with a 7.375% coupon, a 7.75% yield and a price of about 95.73, according to a preliminary pricing wire viewed by Bloomberg Tuesday. That’s higher than the 94 cents on the dollar reached by an existing bond on Dec. 4, according to data compiled by Bloomberg.

The Florida train still has potential after the coronavirus pandemic is over and the full line is running, said Miller, head of municipal investments at Nuveen, which holds about $1.4 billion of the bonds sold for the project under the name of Virgin Trains USA.

“This is essentially a construction project until it’s finalized,” Miller said. “The long-term popularity of the route, which will be seen in 2023, the long-term popularity of Florida for both a destination and increasingly a place to live, the long-term traffic trend — those are all unchanged.”

Fortress has also dangled a sweetener for investors: it’s willing to buy back $250 million of the existing Florida bonds at par, contingent on this week’s deal getting completed. It had tried that with the Las Vegas deal without success, but after this buyback offer was made last week, prices of some of the thinly-traded bonds rose to the highest since March.

Heavy Demand

The $950 million deal, which comes amid heavy demand for high-yield securities, will test how far investors will go for juicier returns. In 2019, buyers of the Fortress bonds weighed more typical risks such as whether passenger estimates would materialize and construction would proceed as planned. Now, investors have those risks, plus uncertainty over whether and when tourism will bounce back after the Covid vaccine, said Terry Goode, a senior portfolio manager at Wells Capital Management.

“In this particular environment, there’s probably even more uncertainty around whether that ridership will be there and how soon it will be there,” Goode said.

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. In an online presentation, the company said it had “strong momentum” and was on track to carry 2 million passengers this year before Covid.

The train is expected to reopen for service in the third quarter next year, bond documents show. Construction of the 168-mile extension to Orlando International Airport has continued amid the pandemic, and service is slated to start in 2022. The station at Disney Springs, a retail and entertainment complex a mile from the theme park, is projected to open in 2023.

Second Run

While he’s a “bit skeptical” about the train’s latest forecasts, Jason Appleson at PT Asset Management said the company “has made some very good improvements.” The buyback offer shows Fortress is “willing to stand behind the project,” said Appleson, who helps manage about $2.5 billion in municipal debt, including Fortress bonds.

Success in Florida could facilitate a second run at issuing bonds for the Las Vegas venture. California Treasurer Fiona Ma said she expects Fortress to return in the first quarter next year to request a smaller amount of bonding authority from the state.

“The focus on Vegas was too early,” Miller said. “At some point next year, I think they would have a better chance of parlaying that success story in Florida into a new issue.”

Bloomberg Markets

By Romy Varghese

December 9, 2020, 4:00 AM PST

— With assistance by Danielle Moran, Natalia Lenkiewicz, and Bert Louis

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Municipal Funds-Of-Funds Are Not A Slam Dunk.

Summary

- With hundreds of open-end and closed-end funds in the tax-exempt sector figuring out the best allocation is a daunting task.
- Funds-of-funds, or funds that hold other municipal funds, are attractive in providing a way to quickly gain exposure to a basket of funds and eliminate an element of bad luck.
- Overall, however, the performance of municipal FOFs has been underwhelming nearly across the board, though for different reasons, depending on the FOF.
- XMPT does provide some advantages such as a low fee, broad exposure to the tax-exempt CEF sector, a tilt away from high-premium CEFs at the cost of mild long-term underperformance.

Continue reading.

Seeking Alpha

Dec. 8, 2020

- NFMA White Paper on Best Practices in Cybersecurity Risk Disclosure for State & Local Governments in Municipal Offerings.
- Governmental Accounting, Auditing, and Financial Reporting 2020 Edition.
- What US Municipal Securities Issuers Should Know About LIBOR Transition: Norton Rose Fulbright
- Signals or Noise in November for LIBOR Transition? – McGuire Woods
- S&P: SOFR Emerging As Alternative To LIBOR In U.S. Debt Markets
- LIBOR Termination May be Postponed to 2023: Day Pitney
- PRAC Releases Agile Toolkit.
- Wall Street Muni Underwriters Poised for Record Year in 2020.
- Wall Street Diverges on Muni Sales as Citi Sees $550 Billion.
- Financial Reporting Model Improvements: GASB Webinar
- And finally, Like Ya’ Do is brought to us this week by *Upper Pond Creek Volunteer Fire*

Department, Inc. v. Kinser. We're gonna go way out on ye olde limb here and posit that something has gone horribly wrong – or spectacularly right – when none other than the Supreme Court of Kentucky describes the start of your day thusly, "When the trooper arrived on the scene, he found Ronnie Kinser lying beside his car, with his right arm pinned beneath the car's front tire. Kinser was conscious and explained that he had been beneath the car all night, though he could not explain how he had become trapped." Godspeed, Ronnie Kinser. Godspeed.

PUBLIC UTILITIES - CALIFORNIA

State Lands Commission v. Plains Pipeline, L.P.

Court of Appeal, Second District, Division 6, California - November 19, 2020 - Cal.Rptr.3d - 2020 WL 6791510 - 20 Cal. Daily Op. Serv. 11,871 - 2020 Daily Journal D.A.R. 12,329

California State Lands Commission and insurer brought action against owner of ruptured pipeline, claiming that when owner's negligent maintenance of pipeline resulted in disrupting the flow of oil, it also disrupted the payment of royalty income to the Commission, and caused damage to improvements on the Commission's land.

The Superior Court sustained pipeline owner's demurrer without leave to amend, and Commission and insurer appealed.

The Court of Appeal held that:

- Even assuming it was a public utility, oil pipeline owner was not entitled to immunity from liability for its negligence which resulted in pipeline rupture;
- Commission sufficiently alleged damage to property to preclude application of economic loss rule; and
- Special relationship existed which allowed Commission to recover purely economic damages.

Even assuming it was a public utility, oil pipeline owner was not entitled to immunity from liability for its negligence which resulted in pipeline rupture; pipeline owner did not deliver essential municipal services to members of the general public, but rather its task was to transport oil to a private entity for commercial purposes, and its rates were set by Federal Energy Regulatory Commission (FERC) and did not include compensation for liability.

California State Lands Commission sufficiently alleged damage to property to preclude application of economic loss rule to negligence claim against owner of oil pipeline which ruptured and leaked oil, where Commission alleged that it had succeeded to oil and gas well owner's property such that the damage from the inability to transport oil continued, and it was required to spend substantial amounts for repairs and maintenance to keep the oil and gas well property in a safe condition.

Special relationship existed between California State Lands Commission and owner of ruptured oil pipeline which allowed Commission to recover purely economic damages stemming from owner's negligent maintenance of the pipeline; purpose of the pipeline was to transport oil taken from the Commission's land so that the Commission, among others, could make a profit, it was entirely foreseeable that Commission would lose royalties if the pipeline failed, there was a high degree of certainty that Commission was injured, there was an immediate and direct connection between owner's conduct and the Commission's injury, owner's conduct was both negligent and criminal, and damages would encourage pipeline operators to avoid future harm, including immense environmental damage caused by oil spills.

PUBLIC UTILITIES - CALIFORNIA

Mahon v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - November 20, 2020 - Cal.Rptr.3d - 2020 WL 6817061 - 20 Cal. Daily Op. Serv. 12,107

Electric utility customers brought class action against city challenging undergrounding surcharge, collected by utility from customers pursuant to franchise agreement with city, as an illegal tax obtained without voter approval under Right to Vote on Taxes Act.

The Superior Court granted summary judgment for city. Customers appealed.

The Court of Appeal held that surcharge was valid franchise fee rather than a tax subject to voter approval.

Undergrounding surcharge that electric utility collected pursuant to franchise agreement with city from its customers with electric utility service within city's boundaries was valid franchise fee rather than a tax subject to voter approval under Right to Vote on Taxes Act; surcharge was compensation validly given in exchange for franchise rights.

City's failure to deposit revenues from undergrounding surcharge collected by electric utility from its customers pursuant to franchise agreement with city into city's environmental growth fund did not demonstrate that surcharge was a tax subject to voter approval under Right to Vote on Taxes Act rather than a valid franchise fee; city charter provision establishing environmental growth fund did not serve same object as did test for franchise compensation, and any error in not depositing surcharge revenue into fund might well have resulted from inadvertence, negligence, or even malfeasance that was entirely distinct and unrelated to city's determination of whether surcharge constituted a charge for franchise rights.

City was not required to present a valuation analysis of franchise rights in order establish that the amount of undergrounding surcharge that electric utility collected from its customers pursuant to franchise agreement with city bore a reasonable relationship to value of franchise rights, to show that surcharge was a valid franchise fee rather than a tax subject to voter approval under Right to Vote on Taxes Act; city could establish value of franchise through bona fide negotiations surrounding the franchise.

EMINENT DOMAIN - ILLINOIS

Tzakis v. Maine Township

Supreme Court of Illinois - November 19, 2020 - N.E.3d - 2020 IL 125017 - 2020 WL 6788163

Landowners whose property flooded brought action against township, city, and water-reclamation district for negligence, negligent nuisance, negligent trespass, statutory duty to maintain property, duty to remedy dangerous plan, and taking of real and personal property.

The Circuit Court granted township's, city's, and district's motions to dismiss based on the public duty rule, and reinstated the dismissal after reconsideration based on the Supreme Court's subsequent abolition of the public duty rule. Landowners appealed. The Appellate Court affirmed in part and reversed in part. Township, city, and district's petition for leave to appeal was allowed.

The Supreme Court held that:

- The Supreme Court case that abolished the public duty rule did not apply retroactively;
- The public duty rule barred landowners' negligence-based and duty-based claims; and
- Landowners failed to allege that water flowing onto their property was the intended or foreseeable result, as required for takings claims.

Supreme Court case that abolished common-law public duty rule, Coleman v. East Joliet Fire Protection District, 46 N.E.3d 741, did not apply retroactively, and thus public duty rule applied to landowners' complaint against local public entities regarding property flooding; case established new principle of law by overturning decades of existing precedent, judgment would have been final and appealable well prior to Supreme Court's case if public entities had obtained dismissal when they first raised issue, and public entities relied upon public duty rule throughout 11-year course of litigation that related to actions going back 60 years, during which time public duty rule existed.

Public duty rule, despite being abolished prospectively, applied to bar landowners' negligence-based and duty-based claims against township, city, and water-reclamation district arising out of flooding allegedly caused by municipal stormwater system; to the extent that landowners alleged that township, city, and district failed to provide adequate public services in design, maintenance, improvement, or operation of the stormwater system, that duty ran to public at large and not to individual members of public such as landowners.

Landowners failed to allege that water flowing onto their property causing flood damage was the intended or foreseeable result of authorized government actions by township, city, or water-reclamation district, as required for a viable takings claim; landowners merely alleged that township, city, and district had caused properties to become partially or totally uninhabitable by their actions or inactions.

IMMUNITY - KENTUCKY

Upper Pond Creek Volunteer Fire Department, Inc. v. Kinser

Supreme Court of Kentucky - November 12, 2020 - S.W.3d - 2020 WL 6735854

Motorist who had been rescued by members of volunteer fire department from beneath the vehicle under which he was pinned, but who allegedly sustained significant injuries as result of firefighters' actions, brought cause of action to recover from fire department for its alleged failure to properly train or supervise and negligent hiring.

Fire department filed motion to dismiss on government immunity grounds, and the Circuit Court denied motion, and appeal was taken. The Court of Appeals dismissed appeal, and discretionary review was granted.

The Supreme Court held that circuit court order denying volunteer fire department's motion to dismiss, on governmental immunity grounds, the negligent failure to train or supervise and negligent hiring claims against it was not immediately appealable.

Circuit court order denying volunteer fire department's motion to dismiss, on governmental immunity grounds, the negligent failure to train or supervise and negligent hiring claims against it by individual who had sustained significant injuries due to volunteer firefighters' alleged lack of care in extricating him from beneath vehicle under which he was pinned, but without resolving question of whether fire department's training, supervising, and hiring were governmental functions, for

which it was entitled to immunity, pending further discovery on issue, was in nature of interlocutory order that was not immediately appealable.

EMINENT DOMAIN - NEW HAMPSHIRE

State v. Beattie

Supreme Court of New Hampshire - November 19, 2020 - A.3d - 2020 WL 6788764

Landowners appealed from decision of the Superior Court, dismissing, with prejudice, their preliminary objection challenging the State's taking of 0.93 acres of their land in fee simple, as well as permanent and temporary easements.

The Supreme Court held that:

- Standard of review in eminent domain case involving condemnation of land for alteration for state highway is governed by Eminent Domain Procedure Act, and not by the enabling statute;
- De novo is the appropriate standard of review under Eminent Domain Procedure Act for trial court's review of preliminary objections that challenge necessity, public uses, or net-public benefit; and
- Application of de novo standard of review for trial court's review of preliminary objections that challenge necessity, public uses, or net-public benefit under Eminent Domain Procedure Act does not impermissibly enlarge condemnee's substantive rights.

TAX - NEW JERSEY

Metz Family Ltd. Partnership v. Township of Freehold

Tax Court of New Jersey - October 20, 2020 - 32 N.J.Tax 69

Taxpayer appealed township's assessment of its local retail shopping center with warehouse component to the rear.

Township filed motions seeking orders for joinder of county board of taxation and Director of the Division of Taxation.

As matter of first impression, the Tax Court held that joinder of board and Director, as parties, was warranted.

Joinder of county board of taxation and Director of the Division of Taxation, as parties, was warranted in taxpayer's appeal from township's property tax assessments, where board and Director approved assessor's initial application to perform annual reassessment, allegedly monitored assessor's progress, and apparently verified assessment as qualifying on Director's list for implementation of Revaluation/Reassessment; board and Directors should explain and defend their process and explain why there was no average ratio for assessments, for only they could provide such information.

EMINENT DOMAIN - NORTH DAKOTA

Montana-Dakota Utilities Co. v. Behm

Supreme Court of North Dakota - November 19, 2020 - N.W.2d - 2020 WL 6791506 - 2020 ND 234

Condemnor, a utility company, brought an eminent domain action against landowner to acquire an easement across landowner's property for a 3,000-foot natural gas pipeline to service a railroad switch which was required to be heated to keep it operable during winter months.

District Court dismissed action. Parties cross-appealed, and the Supreme Court reversed and remanded for a trial on eminent domain damages. Landowner petitioned the United States Supreme Court for writ of certiorari, which was denied. On remand, the parties stipulated to the valuation of the easement, and the district court adopted the stipulation and awarded landowner attorney's fees and costs. Landowner appealed.

The Supreme Court held that:

- Law of the case doctrine and the mandate rule precluded consideration of landowner's various arguments about the constitutionality of eminent domain proceedings;
- Attorney's fees which landowner incurred in unsuccessful petition for writ of certiorari to the United States Supreme Court were unreasonable; and
- Appeal was frivolous and warranted award of attorney's fees to condemnor.

Law of the case doctrine and the mandate rule precluded consideration of landowner's various arguments about the constitutionality of eminent domain proceedings, where the issue of the necessity of the taking and whether the taking was for a public use were previously tried and appealed, case was remanded by Supreme Court for a trial on damages, and arguments about the constitutionality of the eminent domain proceedings and whether a jury should have determined certain issues could have been raised in the district court before the prior appeal and to the Supreme Court in the first appeal.

MUNICIPAL ORDINANCE - OHIO

State ex rel. Ohio Patrolmen's Benevolent Association v. Warren

Supreme Court of Ohio - November 25, 2020 - N.E.3d - 2020 WL 6930025 - 2020 -Ohio-5372

City police officers filed petition for writ of mandamus seeking to compel city to promote officers, or allow them to sit for competitive promotional examination, pursuant to state civil-service law to positions city asserted were abolished by attrition under ordinance.

The Eleventh District Court of Appeals denied officers' motion for partial summary judgment, granted city's motion for judgment on the pleadings, and dismissed the petition. Officers appealed, and city filed motion for oral argument.

The Supreme Court held that:

- City was not entitled to oral argument, and
- City was authorized to enact ordinance to reduce police force by prospectively canceling legal authorizations for positions upon retirement of incumbents.

City was not entitled to oral argument, in police officers' appeal of determination in mandamus

action that abolishment of senior positions in police department to which officers sought promotion did not violate state civil-service law, though city asserted that oral argument might be helpful to Supreme Court in making its decision and would allow the Court to ask questions of counsel on any aspect of the case, where city failed to indicate that case involved matter of great public importance, complex issues of law or fact, substantial constitutional issue, or conflict among the Courts of Appeals.

A city council, without violating the civil-service statutes governing promotion of police officers and removals, reappointments, and demotions in police departments, is authorized to enact an ordinance to reduce a police force by prospectively canceling the legal authorization for certain positions upon the retirement of the incumbents.

PUBLIC PENSIONS - OHIO

Sherman v. Ohio Public Employees Retirement System

Supreme Court of Ohio - October 22, 2020 - N.E.3d - 2020 WL 6163923 - 2020 Employee Benefits Cas. 408,701 - 2020 -Ohio- 4960

Public employment retiree who returned to public employment brought action against Ohio Public Employees Retirement System (OPERS), alleging a violation of Ohio's Equal Protection Clause based on OPERS's practice of reducing health insurance subsidies for retirees reemployed in OPERS-covered positions, while not reducing the subsidy for retirees reemployed in non-OPERS-covered positions.

The Court of Common Pleas granted OPERS's motion to dismiss for failure to state a claim upon which relief could be granted. Retiree appealed. The Court of Appeals reversed and remanded. OPERS appealed.

The Supreme Court held that:

- Retiree's allegations were sufficient to negate OPERS's justification based on cost of identifying all retirees in non-OPERS-covered positions, and
- Additional costs purportedly incurred only with respect to retirees reemployed in OPERS-covered positions did not constitute rational basis requiring dismissal of retiree's claim.

Rational-basis test applied to determination of whether a public employment retiree, who was reemployed by a public employer within the Ohio Public Employees Retirement System (OPERS) network, stated a claim against OPERS for violation of Ohio's Equal Protection Clause based on its practice of reducing health insurance subsidies for retirees reemployed in OPERS-covered positions, while not reducing the subsidy for retirees reemployed in non-OPERS-covered positions.

Allegations of former state employee, who received a health insurance subsidy from the Ohio Public Employees Retirement System (OPERS) in connection with his OPERS pension, and whose subsidy was reduced after he was reemployed by a public employer within the OPERS network, that it was administratively feasible to require OPERS retirees reemployed in non-OPERS-covered positions to send a form notifying OPERS of a retiree's reemployment, as was required for retirees reemployed in OPERS-covered positions, and that OPERS regularly requested information from OPERS retirees, were sufficient to negate OPERS's proffered justification for not reducing health insurance subsidies of retirees reemployed in non-OPERS-covered positions, namely, the cost of identifying all reemployed retirees, and thus retiree stated a claim for violation of Ohio's Equal Protection Clause.

Additional costs incurred by the Ohio Public Employees Retirement System (OPERS) when its retirees were reemployed in OPERS-covered positions that allegedly were not incurred when its retirees were reemployed in non-OPERS-covered positions did not provide a sufficient rational basis to require dismissal of state retiree's claim for violation of Ohio's Equal Protection Clause based on OPERS's practice of reducing health insurance subsidies for retirees reemployed in OPERS-covered positions, while not reducing the subsidy for retirees reemployed in non-OPERS-covered positions; if an employer in the OPERS network did not hire an OPERS retiree, the position would still need to be filled, but it was unclear whether the costs OPERS incurred administering an employee's pension equaled or exceeded the costs OPERS incurred administering a retiree's contributions.

LABOR - WASHINGTON

Lincoln County v. Public Employment Relations Commission

Court of Appeals of Washington, Division 3 - November 3, 2020 - 475 P.3d 252

County and workers' union both appealed from Public Employment Relations Commission (PERC) decision which found both parties to have committed unfair labor practices (ULP).

The Superior Court affirmed the PERC, and both parties appealed.

The Court of Appeals held that:

- Hearing examiner did not abuse its discretion by excluding evidence that purported to show a connection between county's resolution, that required all collective bargaining to be conducted in public, and anti-union group;
- The legislature, by exempting collective bargaining from the Open Public Meetings Act (OPMA), did not impliedly preempt resolutions such as county's; but
- Neither county nor workers' union had the authority to impose its preferred procedure on the other;
- County and workers' union both committed ULPs; and
- Status quo doctrine did not apply when parties were unable to agree on a permissive subject of bargaining.

TAX - VIRGINIA

International Paper Company v. County of Isle of Wight

Supreme Court of Virginia - September 17, 2020 - 847 S.E.2d 507

Corporate taxpayer, which had successfully obtained tax refund judgment for prior tax years, filed application for correction of new county machine and tools tax assessment, claiming the assessment was non-uniform, invalid, and illegal.

The Isle of Wight Circuit Court granted county's motion to strike, and taxpayer appealed.

The Supreme Court held that:

- Machinery and tools tax plan did not improperly interfere with corporate taxpayer's vested right to tax refund judgment;
- County had the statutory and constitutional authority to impose taxes on corporate taxpayer's

machinery and tools property as well as authority to execute tax relief program;
- Taxpayer provided prima facie evidence sufficient to show that tax relief program payments were integrated into the taxation process and had the same effect as partial tax exemptions; and
- Taxpayer provided prima facie evidence that county machinery and tools tax assessment was non-uniform, invalid, and illegal.

County's machinery and tools tax plan did not improperly interfere with corporate taxpayer's vested right to tax refund judgment, although tax plan may have "clawed back" the money paid to taxpayer under refund judgment, where taxpayer received the money it had a vested right to receive, county had authority to increase the tax rate, and tax increase did not retroactively alter the prior tax rates or interfere with the paid judgment.

County had the statutory and constitutional authority to impose taxes on corporate taxpayer's machinery and tools property as well as authority to execute tax relief program, even if the practical effect was to "claw back" tax refunds paid to taxpayer for prior years; county did not revise previous assessments, but instead increased tax rate for subsequent years, and tax relief program was to help businesses negatively impacted by the adjustment to the tax rate.

Corporate taxpayer's assertion that county's machinery and tools tax "assessment is otherwise invalid or illegal" because it is not uniform was sufficient to state a constitutional uniformity claim.

Corporate taxpayer provided prima facie evidence sufficient to show that county machinery and tools tax relief program payments were integrated into the taxation process and had the same effect as partial tax exemptions, and thus that taxpayer's machinery and tools tax assessment was non-uniform, invalid, and illegal, as required to survive motion to strike; stated purpose of tax relief program was to relieve liability for tax rate increase for certain class of taxpayers whom county deemed to be "harmed" by the rate increase, county structured the program to directly exempt certain tax liability and payments from the program directly offset tax liability, program factually correlated with tax rate increase and was funded predominantly by the tax rate increase, and relief payments were calculated by using tax figures.

Corporate taxpayer provided prima facie evidence that county machinery and tools tax assessment was non-uniform, invalid, and illegal; tax relief formula treated taxpayers differently based upon whether the county had lawfully owed that taxpayer a refund on taxes overpaid in prior years, which created a sub-class of taxpayers, refund and relief payment were negatively correlated, only taxpayers who had received a refund were required to pay the tax assessment increase, and net tax rates paid by taxpayers, given the payments made to some taxpayers by the tax relief program, were not uniform

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Wall Street Muni Underwriters Poised for Record Year in 2020.

- **Pace of new muni-bond sales poised to surpass 2016 peak**
- **Refinancing wave a boon for BofA, Citigroup, JPMorgan**

Wall Street's muni-bond underwriters are having a banner year.

Driven by waves of refinancing, state and local governments have already sold $424 billion of bonds this year, leaving the pace poised to easily exceed the previous peak of about $426 billion in 2016, according to data compiled by Bloomberg.

This surge reflects the steep drop in interest rates this year and shows how steady the $3.9 trillion municipal market has held up despite the pandemic-triggered recession, which dealt a financial hit to governments, airports and public transportation operators. While debt sales dried up after the virus' first wave triggered a mass exodus from state and local government bonds, that proved short-lived as prices rallied back from a record-setting drop in March as the Federal Reserve promised to step in and lend if needed.

"It is a testament to the resiliency of the market," said Eric Kazatsky, a Bloomberg Intelligence municipal strategist. "Issuers still need to sell bonds to keep the lights on in their towns and cities. That still needs to get done whether the virus has impacted tax collections or not."

The debt-selling spree has been a boon for big banks including Bank of America Corp., Citigroup Inc. and JPMorgan Chase & Co., which together underwrote more than one third of this year's municipal-bond issues.

With interest rates so low, over $130 billion of the borrowing was done through taxable bonds, roughly twice as much as was sold in 2019, allowing governments to avoid federal restrictions that come with traditional tax-exempt bonds. That helped ease the pressure on the market by expanding the base of buyers to those who don't typically buy tax-exempt securities, like investors overseas who are seeing near zero or negative yields in their home countries.

Citigroup Inc. municipal-bond analyst Vikram Rai anticipates that issuance will continue to be high next year as governments contend with the financial fallout of the coronavirus shutdowns. State and local governments are projected to face large budget shortfalls, and so far there has been no new aid to emerge from Congress since March.

There will be borrowing to paper over some of those deficits as a result, Rai said. At the same time, interest rates are expected to remain favorable for issuers, and the U.S. continues to have massive infrastructure needs.

"If you see what's happening over the last 10 years, the municipal supply has been on an upward trend," Rai said. "We're expecting that next year supply will be even more."

Bloomberg Markets

By Fola Akinnibi and Danielle Moran

December 1, 2020, 10:55 AM PST

Wall Street Diverges on Muni Sales as Citi Sees $550 Billion.

- **Supply forecasts range from $375 billion to $550 billion**
- **States and local government budgets pressured by pandemic**

Wall Street banks don't have a consensus on how much municipal bond business they'll have next year.

Strategists that cover the $3.9 trillion state and local government debt market have 2021 supply forecasts that range from $375 billion to $550 billion. Low borrowing rates and issuance to bolster pandemic-induced deficits will lead to a record year of sales, according to some firms, while others

believe that states and cities whose budgets were hammered by the coronavirus pandemic will refrain from selling bonds for new projects. State and local governments have sold $421 billion of long-term bonds so far this year.

Citigroup Inc. analysts led by Vikram Rai had the highest forecast, projecting governments will sell $ 550 billion in municipal bonds next year. “We are convinced of extremely robust municipal supply next year,” the group wrote in a Nov. 2 note. “Municipal issuance will be utilized by public agencies and state and local governments to rebuild their respective budgets and economies (and infrastructure) as the nation recovers from the pandemic.”

Tom Kozlik, head of municipal strategy and credit at Hilltop Securities, said he expects issuance to fall to about $375 billion next year, the smallest among the nine firms which provided forecasts. He said many deals were pulled ahead into this year and that governments will issue less for infrastructure projects because of revenue uncertainty and balance sheet concerns.

“State and local governments and other municipal bond issuers are likely going to approach 2021 cautiously,” Kozlik wrote in a note dated Nov. 19. “We think there is still a significant amount of uncertainty about what revenues could look like for the rest of FY21 and for the beginning of FY22.”

The range in forecasts illustrates the uncertainty that grips the state and local government debt market amid political debates over additional stimulus aid and the longevity of the coronavirus pandemic.

“It’s a mixed bag at the state and local level which makes it hard to make a macro prediction,” said Natalie Cohen, president at National Municipal Research Inc., a consulting firm. While some local governments are contracting and may be cautious of taking on new debt, others are seeing a population surge and will need to sell bonds to finance infrastructure, she said. “You can’t just look at one side of the contraction and not look at the growth that is going on in a lot of communities,” Cohen said in an interview.

The market would need about $440 billion of supply to meet current demand, according to Bloomberg Intelligence analyst Eric Kazatsky. His outlook is based on the latest muni-fund flows and bondholder reinvestment data.

Bankers have already seen a surge of sales this fall as governments rushed to market in October, selling a record $71 billion worth of debt as they sought to get in the market ahead of any election-related volatility.

Nearly a third of the $421 billion of long-term muni sales so far this year were subject to federal income taxes, a 130% increase from the same period last year. Rates held near record lows for much of 2020, allowing governments to realize savings by refinancing outstanding debt with taxable securities.

Analysts at UBS said that taxable munis are likely to maintain a “meaningful market share” in the coming year as issuers are “likely to continue to take advantage of refinancing opportunities through the taxable muni market.”

Key Insights

- State and local financial conditions in 2021 are likely to be closer to those seen in the second half of this year compared to 2019 leading to a “similar performance in the primary market calendar,” wrote Matt Fabian and Lisa Washburn at Municipal Market Analytics in a research note published Nov. 16. They forecast about $500 billion in total sales with about 30% taxable.

- Bank of America's Yingchen Li and Ian Rogow expect sales to reach $470 billion next year, $170 billion of which will be federally taxable. Even with the expected uptick in sales, they said market demand will outweigh supply. The group expects overall municipal returns to be 3.5% in 2021.
- Morgan Stanley strategists project $520 billion in gross-supply in 2021, driven by taxable advanced refundings that will shift net issuance from the tax-exempt market, the team led by Michael Zezas wrote in a note. "We expect the impact of supply to be muted relative to macro drivers," the group wrote, saying the supply uptick is unlikely to pressure performance.
- Analysts at Oppenheimer and Barclays both forecast a range of $420 billion to $440 billion in total sales. Supply will be lower than 2020 as municipalities "will likely be cautious about funding new projects in an uncertain economic environment, as well as issuers' having pulled deals forward into this year," Barclays analysts led by Mayur Patel wrote in a Nov. 10 research note.
- UBS analysts led by Thomas McLoughlin said that new issuance is expected to move lower as issuers are cautious about financing new projects in an uncertain economic environment. Bond ballot proposals were "relatively light" in November, which could depress future issuance, he said. The outlook could increase by a "meaningful amount" if Congress approves an infrastructure bill in the first half of 2021.
- RBC estimates total sales to reach $425 billion next year, below the firm's 2020 projection, according to a research note by Christopher Mauro, the bank's municipal desk analyst. "We anticipate that refunding activity will decline next year because we estimate that the pool of eligible refunding candidates in 2021 will be smaller than it was this year," he wrote. Still, taxable advanced refundings will continue at a "brisk pace."

Bloomberg Markets

By Danielle Moran

November 24, 2020, 10:56 AM PST Updated on November 24, 2020, 12:51 PM PST

— *With assistance by Amanda Albright*

PFN Releases Advance Refunding Myth Buster: NABL

The Public Finance Network, a coalition of bipartisan organizations, has released a new report, the Advance Refunding Myth Buster, an FAQ on advance refunding municipal bonds.

Among other things, the document says the following: *"All segments of the municipal bond market in rural and urban areas, including but not limited to: school districts, nonprofits, hospitals, higher education, transportation authorities, water and electric systems, airports and other core infrastructure providers used advance refunding as a tool to reduce interest costs. Despite the limitation to only advance refund bonds one time on a tax-exempt basis, state and local governments have generated hundreds of billions of dollars of interest cost savings over time. The savings derived from the advance refunding structure have directly funded infrastructure and governmental activities by reducing the interest payments state and local government issuers make to bond owners."*

If you are having conversations with members of Congress or their staff over the holiday season, we would encourage you to discuss the merits of reinstating this very important tool as a component of any future infrastructure package when Congress convenes in 2021.

NSAA Requests Single Audit Extension.

NSAA recently sent a letter to the U.S. Office of Management and Budget requesting extension on single audits for fiscal year 2020.

PRAC Releases Agile Toolkit.

The Pandemic Response Accountability Committee has released a toolkit established to help agency management and other key stakeholders increase transparency around emergent concerns, such as the disbursement of federal funds.

Agile products highlight issues requiring immediate action for oversight officials or Congressional stakeholders and others who have requested reviews of high risk areas. The toolkit is designed to aid federal Offices of Inspectors General (OIGs), state, and local agencies that conduct quick reviews as part of their duties to provide expeditious oversight of federal funds.

The guidelines in the toolkit pertain to reviews related not only to the effects of COVID-19 on federal operations (e.g., Coronavirus Aid, Relief, and Economic Security Act expenditures), but also to reviews of other emergent or ongoing challenges external to COVID-19, such as threats to health, safety, and the environment.

Learn more about the toolkit.

In Blue States and Red, Pandemic Upends Public Services and Jobs.

As a standoff over federal aid persists, state and local governments are making deep budget cuts. “Everything’s going to slow down,” one official said.

The coronavirus pandemic has inflicted an economic battering on state and local governments, shrinking tax receipts by hundreds of billions of dollars. Now devastating budget cuts loom, threatening to cripple public services and pare work forces far beyond the 1.3 million jobs lost in eight months.

Governors, mayors and county executives have pleaded for federal aid before the end of the year. Congressional Republicans have scorned such assistance, with the Senate majority leader, Mitch McConnell of Kentucky, calling it a “blue-state bailout.”

But it turns out this budget crisis is colorblind. Six of the seven states that are expected to suffer the biggest revenue declines over the next two years are red — states led by Republican governors and won by President Trump this year, according to a report from Moody’s Analytics.

Continue reading.

The New York Times

By Patricia Cohen

Dec. 4, 2020

Nobody Is Going to Conventions. Convention Centers Are Growing Anyway.

The pandemic is intensifying the competition among cities, which are rushing to build bigger, more alluring event spaces.

After 20 years of trying, Indianapolis finally landed the American Dental Association convention. Last December, the group agreed to gather there in 2026, promising Indianapolis tens of thousands of visitors and tens of millions of dollars for the local economy.

But there's a catch: The dentists can back out if the convention center complex does not complete a $550 million expansion: 143,500 square feet of new event and ballroom space as well as two privately financed hotels.

That helps explain why, in the depths of a pandemic that has left many convention centers empty or repurposed into field hospitals or homeless shelters, a 25-member board in Indianapolis voted unanimously in September to add up to $155 million to the public debt.

"We see convention tourism racing back in 2023," said Chris Gahl, senior vice president of Visit Indy, the nonprofit that markets the Indiana Convention Center and attractions like the Indianapolis Motor Speedway. "When the green flag drops, we're going to be on the competitive edge."

For decades, cities large and small have turned to gleaming convention centers and cavernous expo halls to revitalize downtown neighborhoods and perk up local economies. The pitch sounds like a win-win: Conventioneers — often traveling on the company dime — will fill hotels, pack restaurants and spend in stores. And the debt taken out to finance construction can be repaid with taxes targeted at the travelers, so locals don't have to foot the bill.

Normally, there are more than a quarter-million conventions and trade shows in the United States each year, ranging from the huge CES technology trade show in Las Vegas to smaller expos for janitorial supplies or antique-toy enthusiasts. In 2016, those events drew 84.7 million people, who spent a total of $110.4 billion, according to the latest survey by the Events Industry Council. The economic impact of these events can vary widely, however, depending on their size and whether they draw big-spending international visitors.

To keep its slate of shows — and steal others from rival cites — a convention center must frequently upgrade, expand or remodel. And the arms race keeps accelerating, even with most experts predicting that it could be at least two more years before attendance fully bounces back from the coronavirus pandemic.

"This is a perverse world, where market realities do not affect city decision-making," said Heywood T. Sanders, a professor at the University of Texas at San Antonio who studies the use of convention centers as urban-renewal tools.

The financial wounds caused by the pandemic have been grievous. In Irving, Texas, the public finance authority behind a year-old convention-center hotel has already defaulted on $37 million of municipal bonds. In Seattle, one plan to finance an expansion failed to meet a legal requirement because hotel-tax revenues have dried up. And in Milwaukee, the pandemic threatened to throw the downtown Wisconsin Center into insolvency.

The convention center in Savannah, Ga., plans to double the size of its exhibition hall.Credit...Getty Images
But none of that has slowed a building spree meant to attract hordes of middle managers, car aficionados and coin collectors.

Georgia budgeted $70 million in July to help Savannah double its convention center's exhibition hall. In Cleveland, officials are seeking $30 million to upgrade an underused health technology center and add it onto the Huntington Convention Center. And in Terre Haute, Ind., where the foundation for a $32 million convention center is half poured, the county Capital Improvement Board just began working on a plan for a $20 million hotel nearby.

If anything, fewer events have made the competition more intense: The Indianapolis center upgraded its cleaning and air filtration systems this year and poached six basketball tournaments and a candy trade show — the Snacks & Sweets Expo — away from Chicago, where conventions remain forbidden.

"It's all about putting heads in beds," said Marty Brooks, the chief executive of the Wisconsin Center, which borrowed $270 million this summer for work intended to meet the demands of the discerning conventioneer: open spaces, pop-up meeting rooms and panoramic windows. Without those improvements, Mr. Brooks said, Milwaukee would lose ground to cities like St. Louis, Nashville, Louisville and Indianapolis.

At the time, the Wisconsin Center was a few months from defaulting on $150 million in debt. But here, the economic destruction of the coronavirus actually helped. The Federal Reserve has cut already low interest rates to rock-bottom levels, so the center could not only stave off a default by refinancing but could borrow even more.

Low borrowing costs have been a lifeline for the Greater Columbus Convention Center in Ohio, which lost events like the North American Bridge Championships and "The Arnold" — the Arnold Fitness Expo, a trade show for bodybuilding equipment, workout clothing and vitamin supplements. The event, named for Arnold Schwarzenegger, is the center's biggest of the year. With an associated bodybuilding competition, which went on this year but barred most spectators, the event normally draws 200,000 people and fills 18,000 hotel rooms.

In September, the center refinanced roughly $202 million of debt, including for a 28-story hotel tower now under construction and a 2014 overhaul that expanded the center's event space, upgraded its furnishings and added a glass atrium.

"We were trying to take advantage of lower interest rates," said Don Brown, the chief executive of the Franklin County Convention Facilities Authority, which owns the Columbus center. "Second, we were trying to deal with the impact of the pandemic on our primary revenue streams, which are hotel occupancy taxes."

Right now, the center is hosting events that don't produce much revenue: ad hoc traffic and eviction courts, along with a smattering of events like mock tailgate parties for Ohio State University home football games and a socially distanced screening of "The Rocky Horror Picture Show" on Halloween.

"We've also had yoga and exercise classes, and dance competitions," Mr. Brown said.

The loss of hotel-tax revenue has caused "a crisis" in Seattle, said Matt Griffin, a principal of the Pine Street Group, which is the developer of a $1.8 billion expansion underway at the Washington State Convention Center there. The center's borrowing capacity is limited, by law, to the value of

recent hotel-tax revenues. That meant the last round of borrowing to complete the work couldn't go through.

"We need another $300 million of financing to finish this project, and if we don't have a plan by the end of the year, we're going to have to shut it down," Mr. Griffin said. The assistance could come from the county or the city, he said, but more likely the state government.

"There's various ways they could do it," he said. "It's not straightforward."

Even in the best of times, convention centers are loss leaders, said Mr. Sanders, the Texas professor. But the convention business has faced severe boom-bust cycles over the past two decades, with steep downturns after the terrorist attacks of 2001, the financial meltdown of 2008 and now the pandemic.

On Tuesday, the organizer of BookExpo, the country's largest publishing trade show, canceled the 2021 event and said it would rethink its format for the future, suggesting that it would include both " in-person and virtual offerings." In recent years, BookExpo was held at the Jacob K. Javits Convention Center in Manhattan.

If enough events go away, local taxpayers could end up paying back debt that centers took on to expand, Mr. Sanders said. "You've made a very large bet in an environment of enormous risk and uncertainty," he said. "And once you place it, you can't undo it."

And that drives cities to keep building. Consider the chain reaction caused when the National FFA Organization sought greener pastures.

The group, once known as the Future Farmers of America, is prized for the tens of thousands of conscientious teenagers it brings to town. After 1998, it spurned Kansas City, Mo., its host city for 70 years, despite offers of cash, a free building and other incentives. The FFA was growing fast, and Kansas City wasn't keeping up: Event space was tight, and local hotels sold out, forcing some teenagers to sleep 60 miles away in Topeka, Kan.

The group decamped to Louisville, Ky., where the fairgrounds were expansive. But soon the hotel crunch was even worse: Some attendees were booking rooms 90 miles away. That was when Indianapolis pounced, landing the 2006 convention with the promise of more hotel rooms and donations from local businesses to hold down registration fees.

But no sooner did Indianapolis bag the future farmers than it lost the Performance Racing Industry Trade Show, which took its business to Orlando, Fla. — where there was more space.

"This isn't Chicken Little," Fred Glass, then the president of Indianapolis's Capital Improvement Board, said at the time. "The sky really is falling. We're in danger of losing all of our large convention customers."

So Indianapolis set to work on its fifth expansion since the center opened in 1972. When it was done in 2011, Performance Racing came back. But by 2017, another big client, Gen Con, was bursting at the seams. Up to 70,000 tabletop gaming enthusiasts descend on Indianapolis for four days of Dungeons and Dragons, Magic: The Gathering, cosplay and more.

"We take over the convention center itself, the vast majority of hotel ballrooms downtown, and we've been moving into the football stadium as well," said David Hoppe, Gen Con's chief executive.

He told Visit Indy that the gamers might have to leave, and asked what the city could do to make

them stay.

Now, expansion No. 6 is coming — and, if all goes according to plan, so are all those dentists in 2026.

The New York Times

By Mary Williams Walsh

Dec. 2, 2020

A Framework for Analyzing Municipal Climate Risk.

Most ESG investors would agree that climate change risk is at or near the top of their list of sustainability issues. According to the US SIF Foundation's biennial ESG "Trends Report" released Monday, climate change remains the top ESG issue for money managers, who incorporate climate change risk factors to $4.2 trillion in assets.

The long-term economic consequences of climate change span the financial, housing and infrastructure, agriculture, and geopolitical security sectors, to name a few. A 2018 report from the Intergovernmental Panel on Climate Change (IPCC) estimated that with just a 1.5°C warming of the planet, by the year 2100 economic losses globally would total $54 trillion – the combined total annual GDP of the U.S., European Union, and China.

As with most forms of extreme event risk, it is impossible to predict the exact timing, magnitude, and cost of the next catastrophe. Unlike black swan events, however, which are completely unexpected, climate risk is more of a "known unknown." While no individual natural catastrophe can be directly attributed to climate change, increasing temperatures globally create conditions that are more conducive to a higher frequency or severity (or both) of a multitude of perils, including hurricanes, severe storms, floods, wildfires, and droughts.

Continue reading.

ETF Trends

By Nick Erickson & John Sama, Sage Advisory

NOVEMBER 19, 2020

State of Local Government Survey of U.S. Cities and Counties Reveals Trends Around COVID, Remote Work, and Digital Infrastructure Investments.

REDWOOD CITY, Calif., Nov. 25, 2020 /PRNewswire/ — Today OpenGov, the leader in modern cloud ERP software for our nation's cities, counties, and state agencies, launched the annual "State of Local Government Survey".

Questions cover a broad range of pandemic-era topics, from revenue impact to technology and training needs. The 501 respondents include 113 elected officials and administrators, 238 public finance leaders, and 149 public finance staff.

Results show how governments are making needed investments in the face of significant revenue impact. A third anticipate a 4-8% decrease in revenue and another third foresee an over 8% hit. In response, over 60% are using grants (e.g., CARES Act funding) or considering this approach to upgrade their technology and better serve their community and workforce.

Over half of respondents are modernizing processes and technology to enable remote work and virtual meetings. A third are also adopting cloud-based workflows in areas like permitting, licensing, code enforcement, and grant management to protect revenue streams and keep their local economies open for business. Despite all this activity, gaps persist between local government needs and initiatives.

Analysis of responses to the report's 44 questions show that while demand is strong for technology that enables access to data, process automation, and integrations to enable cross-functional collaboration, few are looking to close these gaps with investments in digital infrastructure. Additionally, the survey reveals significant training and recruitment gaps required to upskill and backfill key talent.

Based on feedback from local government leaders on the success of the survey, OpenGov plans to launch this report annually. The report can be downloaded here.

"OpenGov customers have taught me about the kinship among public servants in local government. Their work is critical to residents across the U.S., but also unique to their profession. We're humbled and honored to publish this report in hopes of fostering candid conversation and even greater strategic alignment within local governments about how best to navigate the challenges of our communities," says Matt Singer, OpenGov CMO.

Methodology: On behalf of OpenGov, independent polling and research firm Zogby Analytics conducted an online survey of 501 local government finance leaders across the US. Titles ranged from elected officials, administrators, and managers to finance directors, managers and accountants. Each answered 44 questions about their needs, as well as their government's initiatives and investments.

About OpenGov
OpenGov is the leader in modern cloud ERP software for our nation's cities, counties, and state agencies. On a mission to power more effective and accountable government, OpenGov serves more than 1,000 agencies across the U.S. Built exclusively for the unique budgeting, financial management, and citizen services needs of the public sector, the OpenGov ERP Cloud makes organizations more collaborative, digitizes mission-critical processes, and enables best-in-class communication with stakeholders.

OpenGov

Nov 25, 2020

Muni Bonds Battered by Covid Rally With Market Eyeing Recovery.

- **Junk-bonds backed by airlines see month's biggest gains**
- **New Jersey deficit bonds jump after debt sale last week**

Some of the $3.7 billion of bonds New Jersey sold last week to plug the budget shortfalls caused by

the economic slowdown have gained in secondary trading, driving the yields on 12-year securities to as little as 1.75%. Bonds issued by New York's Metropolitan Transportation Authority have been little changed despite the escalating cash squeeze caused by the drop in subway and bus ridership. Even junk debt backed by airlines has surged, delivering bigger gains this month than any other high-yield sector, according to Bloomberg Barclays indexes.

The shift has been driven by encouraging news around three Covid-19 vaccines and signs that states and local governments' tax collections haven't been hit as badly as anticipated, in part because of federal aid.

"The best news muni credit has heard in a long time is this vaccine news the last couple of weeks," said Thomas Graff, head of fixed-income for Brown Advisory, which oversees $4 billion of municipal debt and has bought bonds sold by the MTA and airports.

The shift in sentiment shows that investors are starting to focus more on the long term even with the virus currently raging and uncertainty about whether Congress will enact an economic stimulus bill before President-elect Joe Biden takes office on Jan. 20.

High-yield municipals, which finance everything from malls to senior living spaces, could be big winners from the vaccine. Bank of America Corp. strategists said in a report Friday that they're moving to a "market weight" on high-yield municipals, forecasting returns of 7% because of the more optimistic outlook.

Lind Capital Partners, which invests in high-yield debt, said in a note to clients that parts of the market, like higher education, had fallen more since March than was justified.

With the promising news about vaccines, junk-rated municipal bonds backed by airlines have rallied, driving an index of them to a gain of 3.28% this month, more than any other segment of the high-yield market. The yield on some Delta Air Lines Inc. muni debt due in 2045 has dropped to 3.5%, down from 4.55% when the debt was sold in September.

Burton Mulford, a portfolio manager at Eagle Asset Management, said his firm is buying bonds issued by large airports and large, multi-site hospital systems that were stung during the pandemic.

"There certainly is light at the end of the tunnel," he said.

Not all segments of the muni market will be completely out of the woods with a vaccine or an economic recovery. For state and local governments, the financial pain from Covid-19 may not be over yet given that tax collections tend to remain depressed well after recessions end.

UBS Global Wealth Management cautioned clients on being too exuberant about the vaccine, noting that they expect more credit-rating downgrades than upgrades in the muni market next year. And Morgan Stanley strategists said in a report last week that the firm is more cautious on local governments even if Congress delivers aid to cover their budget shortfalls.

Yet even after a credit-rating downgrade and as Covid-19 cases spike in the Garden State, New Jersey had little trouble borrowing. Its bonds priced at lower yields than initially marketed to investors, with those due in 2032 yielding 2.25%. It fell as low as 1.82% Monday.

Graff, the investor with Brown Advisory, said he's more cautious on financially-teetering local governments given it could take time to recover from the impact of public health shutdowns. There are also longer-term concerns facing the continuing-care retirement sector, which also raises funds in the muni market and has been hard hit by the virus.

But more broadly, he's upbeat and says more buyers in the market are, too.

"People are inching their way in," he said. "There's still a lot of hesitancy, but it's turning around."

Bloomberg Markets

By Amanda Albright

November 23, 2020, 10:38 AM PST

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3 Reasons Why The Senate Race Matters For Municipal Bonds.

Summary

- With the odds against the Democrats winning both Senate seats in the Georgia runoff, the Biden administration will likely have to work with a Republican Senate majority to navigate various tax policy issues in the coming year.
- Infrastructure seems to be the one topic that a potentially divided government may be able to agree on.
- While Biden will likely not be able to enact the entirety of his tax plan with a divided Congress, he could use the power of the executive order to raise taxes in specific areas or to reinterpret regulations tied to the 2017 Tax Cuts & Jobs Act.

Continue reading.

Seeking Alpha

Dec. 4, 2020

Fitch: U.S. States' Path to Economic Recovery (Declining Fiscal Support, Slowing Employment Revival and Resurging Coronavirus Expected to Extend Road to Recovery)

Fitch Ratings-New York-03 December 2020: The slowing labor market recovery, significantly reduced pandemic-related state and federal government transfers, and a resurging wave of coronavirus infections and hospitalizations will slow the pace and challenge the durability of economic recovery of many U.S. states according to Fitch Ratings. Fitch anticipates the vast majority of states are well positioned to manage budget pressures at current rating levels.

The continued withdrawal of direct fiscal support to individuals may further slow state economic recovery in the coming quarters. 'The expiration of significant levels of pandemic-related government transfers has occurred while employment losses from the pandemic are still significant in many states and may take several years to return to pre-pandemic levels,' said Fitch Senior Director Olu Sonola.

Concerns around weakened economic activity and an employment recovery that continues to level off, has led most states to forecast revenues to underperform not only in fiscal year 2021, but also in

fiscal year 2022. In response, states have already made budget adjustments, with more belt tightening likely. While revenue collections data indicate more positive results in recent months than initially anticipated, significant uncertainty remains.

Making matters worse are coronavirus cases and hospitalizations, which are surging again and appear to have a broader geographical scope than the spring and summer waves with all regions significantly affected. Governors across the country have announced new restrictions on activity in an effort to control the spread of the virus and protect healthcare system capacity.

'This will likely further slow the pace of labor market recovery in the fourth quarter and well into 2021, particularly if lockdowns are re-imposed by state governments,' said Sonola.

Read the Fitch Special Report.

Powell Questions Treasury Actions: Discussion of Stimulus Resurfaces

Following Treasury's announcement of the closure of serval emergency lending facilities at years end including the Municipal Liquidity Facility (MLF), Fed Chairman Jay Powell has continued to publically rebuke the action.

Yesterday, testifying alongside Treasury Secretary Mnuchin during a Senate Banking Committee hearing, Powell stated:

"The risk of overdoing it is less than the risk of underdoing it," he said. "People are always worried about doing too much, and you look back in hindsight and say, 'Well, we didn't do too much. We might've done a little more and a little sooner."

While Mnuchin defended his action stating that he was following the CARES Act guidelines, the two agreed that the economy needed further Congressional action to stave off another downturn, including Powell urging additional funding for state and local governments.

Congressional Leaders Discuss Stimulus

Following news of a bipartisan stimulus package emerging from a group of lawmakers over the Thanksgiving holiday, both House Speaker Nancy Pelosi and Senate Majority Leader Mitch McConnell expressed their desire to pass additional funding prior to year's end.

However, both parties are still miles away from an agreement and McConnell immediately shot down the prospects of passing the $900 billion compromise package.

The Senate remains focused on a narrowly tailored package, while the House is adamant that the package needs to be larger and include some funding for state and local governments.

It appears that Majority Leader McConnell plans to attach the narrow stimulus measures to the must-pass government funding measure in the coming days in an effort to force Speaker Pelosi to accept the package or accept blame for a government shutdown.

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

Bond Dealers of America

December 2, 2020

States and Cities Plead for More Time to Spend Federal Covid Aid.

Local governments are using stimulus funds for safety-net needs like rental and food aid. With demand surging, they're scrambling to spend it before the deadline.

States and municipalities are calling for an extension of a year-end deadline to spend federal pandemic aid as demand surges for government assistance amid the worsening pandemic.

As part of the Cares Act in March, Congress sent $150 billion to states, large cities and counties for unbudgeted costs related to the pandemic. Those funds must be used for expenses incurred by Dec. 30, according to the Treasury Department. But state and local officials are lobbying for an extension to give government agencies and nonprofits that received the money more time to spend it, a step they say is crucial with the outlook for additional aid uncertain.

An extension would ease pressure on organizations like the Miami Valley Community Action Partnership, a Dayton, Ohio-based non-profit, which received 76 applications for assistance in a single morning this week. It's already paid out close to $6 million in rental aid in 2020, compared with $138,000 in 2019, and its 130-member staff is working nonstop to process claims and dole out the group's share of Ohio's federal stimulus aid in the next four weeks, said CEO Lisa Stempler.

"We're really terrified," Stempler said, adding that the Miami Valley partnership saw its budget more than double to $22 million this year thanks to the Cares Act. "We know we're going to be looking at an eviction crisis if this money is not extended. That's our biggest fear. Somebody sitting in our queue waiting for assistance and they get evicted before we can do anything to help them."

A coalition of attorneys general from 43 states, Washington, D.C. and five U.S. territories, sent a letter this week to congressional leaders urging an extension of the deadline to at least Dec. 31, 2021. Setting up standards and procedures to distribute the money takes time and the need for such aid has only grown, the attorneys said. When the deadline was set in March, the outlook for the pandemic looked much different than it does today, the attorneys argued.

"The pandemic will continue to challenge communities well beyond December 30, 2020 — a deadline that now seems unreasonable," according to the letter dated Nov. 30 and signed by Democratic and Republican attorneys general across the country. The National Association of Attorneys General, which sent the letter, said it hadn't yet received a response from congressional leadership.

The request comes as a bipartisan group of lawmakers from the House and Senate proposed a $908 billion package this week. State and local aid has been a major point of contention between Republicans and Democrats during the negotiations over Covid-19 relief.

A full accounting of how much of the state and local aid has been spent won't be publicly available until January, according to a newly created U.S. Department of Treasury tracker. Despite the bill's March passage, the U.S. Department of Treasury did not clarify guidelines on spending until late April, and smaller governments did not receive direct payments at all, leaving them waiting for pass-through allocations from states.

In Alaska, $1.04 billion of the total $1.25 billion the state received from the Cares Act has been distributed, but not all of those funds have been spent, according to Neil Steininger, director of the

state's Office of Management and Budget.

Grant programs like rental assistance, food assistance and others had to be created to give out some of the funds, and the smaller municipalities facing budget pressure couldn't plan programs until the funds were received from the state, said Nils Andreassen, the executive director of the Alaska Municipal League.

"The pressure is on for sure," Andreassen said. "Everybody would have liked to have more time. An extra six or 12 months would've lent itself to a more measured approach."

In Iowa, about $325 million of the state's $1.25 billion Cares Act allocation hasn't been spent yet, though some of those funds have been allocated to agencies, according to a summary provided by Iowa Attorney General Tom Miller's office. Another $75 million remains unallocated. Miller signed the letter requesting an extension. A spokesperson for Governor Kim Reynolds, who has called for more aid, said the funds will be spent by the deadline.

Like Iowa, municipalities that still have funds to use will find a way to spend the funds before the deadline, said Emily Swenson Brock, director of the federal liaison center at the Government Finance Officers Association.

The need for aid has not abated. The U.S. posted an all-time daily high in reported Covid-19 deaths of 2,836 on Wednesday, according to Johns Hopkins University. As cases climb, governors and mayors are enacting restrictions and economic shutdowns again. State and local governments' finances face $480 billion to $620 billion in shortfalls through fiscal 2022, according to the Center on Budget and Policy Priorities.

But federal stimulus money from the Cares Act can't be used for budget holes, another reason that governors and local officials are asking Congress for more aid in 2021.

Wisconsin will need at least $466 million in the first quarter of 2021 to pay for ongoing expenses related to the Covid-19 pandemic, money the state doesn't have, Governor Tony Evers said Thursday.

Evers, a Democrat, sent a letter Thursday to his state's congressional delegation, urging its members to push for an additional federal Covid-19 relief bill. Evers said his state simply doesn't have the money to pay for the ongoing disruptions to the state's economy caused by the pandemic after Dec. 31.

Wisconsin received $2.26 billion in Cares Act funds, which it has used for grants to farmers, small businesses and for rental and mortgage assistance. Additional Cares Act money will be spent on grants to 663 hospitality operators, Evers said.

"Having aid that helps states and localities fight the virus end when the virus is spreading is a terrible idea," said Michael Leachman, vice president for state fiscal policy at the CBPP. "It's kind of a no-brainer to help states and localities avoid the additional layoffs and cuts that would make that double dip recession more likely."

Bloomberg CityLab

By Fola Akinnibi

December 4, 2020, 8:51 AM PST

— With assistance by Stephen Joyce

Powell, Mnuchin Embrace New Stimulus After Fed Lending Rift.

- **Powell says small businesses at risk in virus second wave**
- **Fed chair provides no hint of policy action later this month**

Federal Reserve Chair Jerome Powell and U.S. Treasury Secretary Steven Mnuchin both backed more fiscal stimulus to bridge the economy through the next few months of the pandemic as the promise of Covid-19 vaccines looms.

“Some fiscal support now would really help move the economy along” and guard against downside risks, particularly to small businesses, Powell told the Senate Banking Committee Tuesday during a joint appearance with the Treasury chief. “The risk of overdoing it is less than the risk of under doing it.”

Mnuchin said he is speaking with the Republican leadership including President Donald Trump, about further stimulus, adding “I urge Congress to pass something quickly.”

Washington has gridlocked for months over providing additional fiscal aid, though a bipartisan group of lawmakers unveiled a new proposal Tuesday to break the stalemate. Rising virus cases threaten to restrain economic activity and slow the recovery at a time when millions of Americans are out of work and businesses struggle to hang on.

Powell gave no indication how the central bank may respond to the risk of fading economic momentum when it meets Dec. 15-16, though he reiterated that it would use all of its tools to help the economy recover.

“We do have a long way to go,” Powell said, pointing out that about 10 million people remain out of work. “We will use our tools until the danger has well and truly passed, but it may require help from other parts of the government as well, including Congress.”

The bipartisan group of senators proposed $908 billion of support, including $300 billion of forgivable loans for small businesses, $240 billion for state and local government and $180 billion to extend unemployment benefits. Neither Republican nor Democratic leadership has signed on to the plan.

Fed Programs

Powell and Mnuchin’s joint hearing was their first since they disagreed last month over the expiration of several emergency loan programs set up after the pandemic hit in March.

Fed officials including Powell had pushed for the extension of all the central bank’s lending facilities, saying they served as critical backstops and restored market confidence. Most of the funds are scheduled to expire Dec. 31.

Some of the programs have been sparsely used. These include the Main Street Lending Program, which supports bank lending to mid-sized companies, as well as facilities to aid the corporate bond market and the debt of cash-strapped municipalities.

Powell said no central banker would want to remove backstops in the midst of an emergency. He said facilities could be re-established with the Treasury’s Exchange Stabilization Fund serving as backstop against loss if necessary.

He was echoed later on Tuesday by Mary Daly, president of the San Francisco Fed.

“Those lending powers can’t be overlooked as being valuable to the economy,” Daly told reporters on a conference call. “ “Even when take-up of our facilities is low, it doesn’t mean that our facilities aren’t effective. They provide effective insurance.”

Mnuchin announced last month that those Fed programs must sunset at the end of December, and asked the central bank to return unused funding authorized for the programs by Congress.

The Fed responded — in a rare public fracture between the two institutions — that it “would prefer that the full suite of emergency facilities” remain as a backstop “for our still-strained and vulnerable economy.”

Even with the disagreement, Mnuchin praised Powell during the hearing and said the two had been speaking “constantly.”

Powell noted that the lowest paid were experiencing double-digit unemployment.

“These are not people with a lot of savings, or a lot of resources, or a lot of opportunities right now,” he said. “There are parts of the economy that really will need help, or that might need help, to get that last span of the bridge in place to get to the other side of the pandemic.”

Bloomberg Economics

By Craig Torres and Christopher Condon

December 1, 2020, 11:03 AM PST Updated on December 1, 2020, 12:21 PM PST

— With assistance by Steven T. Dennis, Erik Wasson, Steve Matthews, Saleha Mohsin, and Catarina Saraiva

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What US Municipal Securities Issuers Should Know About LIBOR Transition: Norton Rose Fulbright

The UK Financial Conduct Authority has warned that the London Interbank Offered Rate (LIBOR for short) is not likely to be published after 2021. What will happen to LIBOR-based municipal securities, loans, and derivatives that extend beyond 2021 if and when LIBOR goes away? The contracts could be remediated by pending New York and possible federal LIBOR relief legislation. For new contracts, municipal securities issuers and conduit borrowers may be asked to incorporate a new “hard-wired” fallback rate recommended by ARRC or ISDA. For existing (or legacy) contracts, they may soon be asked to enter into bilateral amendments or, in the case of derivatives, to adhere to a recently announced ISDA remediation protocol. What should they do to protect themselves?

Read the Norton Rose Fulbright article.

Signals or Noise in November for LIBOR Transition? - McGuire Woods

Several remarks and releases by public officials and significant regulatory bodies in the first weeks

of November garnered significant attention by financial institutions trying to discern next steps in the wind-down of USD LIBOR.

Fed Support for Synthetic USD LIBOR?

First, at a November 10 Senate Banking Committee hearing, Federal Reserve Board Governor Randal K. Quarles, who also serves as the Board's Vice Chair for Supervision, answered questions from legislators about how the Federal Reserve plans to address so-called "legacy" LIBOR-based contracts that are not due to mature until after the end of 2021, which is the presumptive end date for the publication of LIBOR by the ICE Benchmark Administration ("IBA").

In particular, in response to a question from Senator Toomey (R-PA), Governor Quarles explained that the Federal Reserve was working on "a mechanism that would allow those so-called legacy contracts, the great bulk of them, to mature on their existing basis without having to be re-negotiated and shifted to a new rate." He added that the Federal Reserve had been discussing such a "mechanism" with private banks, UK regulators, and the Financial Stability Board, an international body that monitors and makes recommendations about the global financial system. Governor Quarles did not reveal anything about the mechanism itself, however, other than to say that a "variety" of options were being considered. Our informal rendition of his exchange with Sen. Toomey, from the hearing video, is in the margin.[1]

Two days later, in testimony before the House Financial Services Committee, Governor Quarles gave a similar answer in response to questions from Rep. Patrick McHenry (R-NC), namely that that the Federal Reserve was working on "a way to allow those legacy contracts to … mature on their existing terms," and that it expected to "publicly define the way forward to address that" within the next few months. Governor Quarles added that while legislation might "ultimately" be required to deal with legacy contracts, the Fed at the moment was trying to "allow those contracts to mature before we have a legislative solution for the so-called hard tail.[2]

Finally, at the same House hearing, Governor Quarles agreed with Rep. Brad Sherman (D-CA) that there would be "significant disruption" if there is "no solution at all … when LIBOR stops." But he repeated his belief that "there is a way that we can combine current measures that allow the bulk of the existing contracts to mature on their existing terms and then save legislation for the hard tail when we've had time to think about it."[3]

Those comments sound a bit like the notion of "synthetic LIBOR", which was advanced a few years ago by the UK Financial Conduct Authority ("FCA") as a way to deal with Sterling LIBOR in difficult-to-transition holdover contracts – essentially establishing a credit spread over a substitute rate (SONIA in the case of Sterling) published on the same "screen" as Sterling LIBOR (such that contract references to the IBA screen for Sterling LIBOR would land on SONIA + a margin). The FCA has pushed forward with this idea to clean up and deal with laggard contracts, and under legislation currently pending in the UK, the FCA would have broad authority to implement synthetic LIBOR as the fix for Sterling LIBOR contracts.

This works for Sterling LIBOR because its successor (SONIA) has a well-established forward swaps market (over half of the $18 trillion notional value of Sterling swaps in the first half of 2020 were SONIA linked), but would have significant obstacles for US Dollar LIBOR, with less than 1% of the $ 63 trillion in US Dollar forward swaps traded in the same period linked to SOFR (the presumptive USD LIBOR successor). Given that problem, market participants spent the week or so following his comments wondering what sort of Fed remedy those comments implied.

Not surprisingly, that was one of the first questions put to David Bowman, Sr. Advisor to the Board

of Governors of the Federal Reserve, in the November 20 ARRC "office hours". He (appropriately) declined to read those tea leaves for the call participants.

Legislative Solution Back in the Foreground?

Fed Governor Quarles' comments on LIBOR transition legislation also highlight a recent uptick in activity on a "legislative fix" in the New York State legislature and the US Congress. While buzz around legislative solutions seemed largely dormant for much of the year, ARRC favored legislation was finally introduced in the New York State Senate on October 28, and it has been reported that a similar draft bill is also circulating in Congress. Check back in coming weeks for highlights on the substance of those legislative items.

IBA Consultation

Adding to the noise this past week was the November 18 announcement by the IBA of a consultation on its plan to terminate publication of all LIBOR tenors denominated in Sterling, EURO, Swiss Franc and Yen after December 31, 2021. US Dollar LIBOR was conspicuously absent from this list, which could be read to suggest that the demise of US Dollar LIBOR may not take place concurrently with those other currencies. This was also raised during the November 20 ARRC office hours call and (again appropriately) no speculation as to motive was offered. It should be noted, however, that the IBA have reiterated their warning that market participants should not expect US Dollar LIBOR to continue to be published beyond December 31, 2021.

So do these comments and announcements signal a shift in US Dollar LIBOR transition timing, or potential US Dollar LIBOR remediation options, or both? Or are they just understandable noise in a lengthy, complex and technically difficult process along the currently plotted path? Likely the latter but the timing and substance of US Dollar LIBOR transition continues to evolve.

McGuireWoods is continuing to monitor the evolving developments regarding legacy contracts and other LIBOR-transition subjects.

[1] The exchange with Sen. Toomey begins at about the 48:30 mark at the hearing video:

> Sen. Toomey: "I'm mostly concerned about orphan contracts, those contracts that have existed in some cases for years and extend into the future, and they assume a LIBOR index is available for ongoing payments. What are we going to do about these orphan contracts … [that] don't end until after the date on which we expect LIBOR to no longer be operative?"
>
> Gov. Quarles: "I think we need to consider a mechanism that would allow those so-called legacy contracts, the great bulk of them, to mature on their existing basis without having to be re-negotiated and shifted to a new rate … . I think there are a variety of ways to do that. The banks have been discussing that, we've been discussing it with banks. It's an international issue as well [so] we've been discussing it through the F[inancial] S[tability] B[oard] and directly with the U.K. which has a special responsibility for LIBOR, and that within the next month or two we should have a plan to share to address that."

[2] The exchange with Rep. McHenry begins in the hearing video at about the 51:45 mark.

> Rep. McHenry: "We want a clear understanding of the path forward on LIBOR. … Can

you give us some assurance of your process going forward?"

Gov. Quarles: "… The issue you raised is an important one from a stability point of view, which is that there are a lot of legacy contracts that currently rely on LIBOR that we need to define a path forward for after the end of 2021. The transition for new contracts is going pretty smoothly. The legacy contract is the big issue there … I think finding a way to allow those legacy contracts to continue for at least some period, to allow the bulk of those legacy contracts to mature on their existing terms without a significant change would probably be the best way forward, and we are working on a method to do that. There are a variety of different ways that one could do that, but I would expect over the next couple of months to be able to publicly define the way forward to address that."

Rep. McHenry: "Do you have a legislative request, or a need for legislative action by the Congress?"

Gov. Quarles: "I think the ultimate transition will ultimately require a legislative element, but at this point I think the answer would be no because I think what we want to try to do is find a way to allow those contracts to mature before we have a legislative solution for the so-called hard-tail."

[3] The exchange with Rep. Sherman begins in the hearing video at about the 1:15:30 mark.:

Rep. Sherman: "What would be the consequence of simply not having any regulatory or legislative solution, would this result in a lot of class action lawsuits, etc.?"

Gov. Quarles: "If there were no solution at all, yes, when LIBOR stops there'd be significant disruption. I think there is a way that we can combine current measures that allow the bulk of the existing contracts to mature on their existing terms and then save legislation for the hard tail when we've had time to think about it."

By Donald A. Ensing, Susan Rodriguez, Jennifer J. Kafcas & Joseph J. Reilly on November 25, 2020

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LIBOR Termination May be Postponed to 2023: Day Pitney

On November 30, 2020, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency issued a joint statement (the Joint Statement) on LIBOR transition. The purpose of this statement was to encourage banks to transition away from U.S. dollar LIBOR (USD LIBOR) as soon as practicable while providing sufficient time for many USD LIBOR-based contracts to mature before USD LIBOR experiences disruption.

- *Extension of USD LIBOR.* ICE Benchmark Administration, in its capacity as administrator of USD LIBOR, will consult on its intention to extend publication of USD LIBOR (other than one-week and two-month tenors) by 18 months. Instead of discontinuing publication on December 31, 2021, USD LIBOR (other than one-week and two-month tenors) would continue to be published until June 30,

2023.

- *LIBOR Phase Out.* Even though USD LIBOR would continue to be published through June 30, 2023, the Joint Statement calls on banks to cease entering into new contracts that use USD LIBOR as a reference rate by no later than December 31, 2021, and if practicable, as far in advance of that deadline as possible. Should banks enter into new contracts before that deadline that use USD LIBOR as a reference rate, those banks are encouraged to include clearly defined alternative reference rate provisions.
- *Avoiding Market Disruption.* The Joint Statement notes that extending the publication of certain USD LIBOR tenors for an additional 18 months would allow most legacy USD LIBOR contracts to mature in accordance with their terms without disruption.
- *Impact on Documentation.* Financial institutions are already including USD LIBOR replacement language in their contracts, so this extension should have little impact on documentation of new contracts. However, this extension could help avoid an onslaught of amendments to legacy contracts at the end of 2021 that would overwhelm borrowers and lenders alike.

Day Pitney Alert

December 1, 2020

Day Pitney Author(s) Michael W. Kaufman, Namita Tripathi Shah

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S&P: SOFR Emerging As Alternative To LIBOR In U.S. Debt Markets

Key Takeaways

- SOFR has emerged as the leading rate to replace dollar LIBOR, which is now scheduled to phase out for new-issue transactions by December 2021 and for most legacy transactions with active maturities by June 2023.
- Based on data from the Federal Reserve Bank of New York and earlier repo transaction data since the late 1990s, SOFR has been tracking closely with dollar LIBOR.
- The historical time series analysis between the two benchmark rates shows a positive average and median of LIBOR over SOFR.
- Because only daily SOFR rates currently exist, compounding is typically used for this new rate and helps smooth out most of the volatility in daily rates.

Following the July 2017 announcement by the U.K.'s Financial Conduct Authority that the London Interbank Offered Rate (LIBOR) cannot be assured following 2021, there has been significant discussion around replacement benchmark rates in financial markets. A recent consultation published by the ICE Benchmark Administrator and supported by the U.S. Federal Reserve has proposed to continue dollar LIBOR quotes for the most actively used maturities on legacy transactions until June 2023. Furthermore, U.S. bank regulatory agencies have recently stated that banks should stop using dollar LIBOR in new contracts "as soon as practicable" and, in any event, by Dec. 31, 2021. For U.S. debt instruments (including structured finance securities) with dollar LIBOR exposures and maturities beyond 2023, this will mean changes to benchmark interest rates. While market participants are working to build provisions for alternative benchmarks in new transactions, one source of continued uncertainty centers around legacy transactions where fallback language varies widely.

In the U.S. the Federal Reserve Bank of New York ("the Fed") has developed, and is now publishing

on a daily basis, the Secured Overnight Financing Rate (SOFR). Although there are a number of differences with LIBOR, this near-risk-free rate has been viewed by many as the leading replacement rate in U.S. financial markets for dollar LIBOR, similar to how the Sterling Overnight Index Average Rate (SONIA) has been a replacement rate for Sterling LIBOR in the U.K. While SOFR has been published since April 2018, the Fed has released a longer time series, from August 2014 to March 2018, with modeled pre-production estimated data on SOFR that now underlie the official rate publication. Outside the U.S., central banks and financial market authorities have also been charting courses toward new replacement benchmarks set to become active by 2021.

Continue reading.

4 Dec, 2020

S&P U.S. Not-For-Profit Private College And University Fiscal 2019 Median Ratios: Changing Landscape Leads To Weakening Credit Measures

S&P Global Ratings' key median indicators for U.S. not-for-profit private colleges and universities in fiscal 2019 saw credit quality deteriorate, reflecting the sector's increasing challenges and vulnerability to a changing higher education landscape. A variety of stresses, including increased competition for a shrinking pool of students and a heightened focus on affordability, contributed to the declining metrics. Generally, most demand metrics, such as retention and graduation rates, declined year over year, which is consistent with overall industry trends. The only exception was student quality as measured by SAT scores, which improved slightly. Full-time equivalent (FTE) enrollment saw an overall decline in medians for our rated universe, although the 'AA' rating category increased due to certain rating movement in the category. Similarly, operating margins remained compressed year over year, although the sectorwide median operating margin remained positive along with a decline in median available resource ratios.

Although the fiscal 2019 medians do not reflect financial stress from COVID-19, we expect that the repercussions associated with the pandemic, which have 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 and even more so in fiscal 2021.

Continue reading.

24 Nov, 2020

S&P: U.S. Public College And University Fiscal 2019 Median Ratios Remain Generally Stable Although Operating Stress Looms

The key median indicators for U.S. not-for-profit public colleges and universities were generally stable in fiscal 2019. The trend of mounting pressure on lower-rated entities continued; however, higher-rated institutions mostly maintained their overall enrollment, demand, and financial profiles. The fiscal 2019 metrics were recorded before the unprecedented disruption that the COVID-19 pandemic has caused in the sector. We expect to see the effects of operational and financial challenges related to the pandemic reflected beginning with the fiscal 2020 median credit metrics, with more pronounced changes likely in fiscal 2021. Although U.S. not-for-profit higher education

entities faced increasing operational and financial challenges even before the pandemic, we believe fallout related to COVID-19 will both accelerate and amplify these pressures.

Due to the duration of COVID-19 and the gradual, uneven economic recovery, public colleges and universities face increasing challenges in many, if not all of their revenue streams. When colleges and universities sent students home in spring 2020, refunds were for services such as housing, dining, and parking. In addition, some states responded to budget pressures with end-of-year cuts to operating appropriations. This operating pressure was offset by management teams cutting discretionary spending, pausing or reevaluating capital projects, instituting layoffs or furloughs, and the receipt of federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funding. While fiscal 2020 budgets were undoubtedly affected, we expect to see an even more pronounced effect on operating margins in fiscal 2021, with many institutions forecasting pressured net tuition revenue (due to lower enrollments, limited tuition increases in fall 2020, more financial aid, and a higher number of in-state students), a lower level of state support (as states grapple to balance budgets as a result of suppressed economic activity due to the pandemic), lower auxiliary revenues (due to de-densified campuses and deferral or cancellation of athletic and campus events), and potential for sluggish fundraising in light of economic uncertainty. In recognition of this pressure, we revised our rating outlooks on a number of higher education institutions (both public and private) to negative in April 2020 (see “Outlooks Revised On Certain U.S. Not-For-Profit Higher Education Institutions Due To COVID-19 Impact,” published April 30, 2020, on RatingsDirect). We also recently published a mid-year update that reflects our view of the pressures the sector faces (“Not-For-Profit Higher Education Mid-Year Sector View: Fall 2020 Enrollments will Drive Credit,” Aug. 18, 2020).

Continue reading.

24 Nov, 2020

Fitch: CDC Coronavirus Vaccine Priorities Positive for Senior Living

Fitch Ratings-New York-03 December 2020: Centers for Disease Control (CDC) guidance that skilled nursing facility (SNF) residents and employees should receive the coronavirus vaccine in the initial rollout is a credit positive for the sector, Fitch Rating says. The 14-member CDC advisory panel recommended to prioritize workers and the elderly in nursing homes to receive the first batches as part of Phase 1a of vaccine distribution. The CDC director, Dr. Robert Redfield, still needs to approve the recommendation, which is expected to be broadly followed by state governors.

The federal government expects 40 million doses of the coronavirus vaccine, enough for 20 million people, to be available by the end of the year. According to a report recently released by the American Health Care Association and the National Center for Assisted Living, coronavirus cases and deaths are rising in nursing homes, reaching levels not seen since reporting began in May.

The availability and distribution of the vaccine would be an immediate stabilizing factor for SNFs, which experienced a decline in occupancy since March, pressuring operating budgets. Lower occupancy is driven by a number of factors, including a reduction in post-acute care referrals from hospitals, beds being kept offline for the isolating or quarantining of coronavirus positive residents, and patients avoiding SNFs due to concerns such as family members not being able to visit.

The vast majority of SNFs that Fitch rates are part of the larger Life Plan Communities (LPCs) that offer a continuum of care that includes independent living (IL), assisted living/memory care and

skilled nursing. Fitch rates approximately 160 LPCs. We revised our Outlook on the LPC sector to Negative in March and since then downgraded two LPCs and moved five Outlooks to Negative as a direct result of the effects of the coronavirus. This compares with YTD total rating actions of 20 downgrades, 11 Outlook revisions to Negative, and two credits placed on Rating Watch Negative. There have been no upgrades during this time.

Despite the stress on skilled nursing occupancy, the overall financial performance for LPCs remained largely stable due to steady levels of IL occupancy and a marked increase in IL sales in third-quarter 2020. The Coronavirus Aid, Relief and Economic Security Act funding directed at SNFs helped offset the effects of lower SNF occupancy on revenues. Skilled nursing occupancy has shown signs of recovering as referrals increased for post-acute care services as hospitals resumed elective surgeries, although this may subside somewhat with the surge in coronavirus cases. The vaccinations for SNF residents and staff should provide further velocity to financial recovery by increasing safety and confidence, and therefore admissions, in SNFs, as well as by reducing employee expenses related to quarantining or coronavirus-positive employees.

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Fitch: New No Cruise Order Would Be Neutral for US Cruise Lines, Ports

Fitch Ratings-Chicago/New York-04 December 2020: Reimplementation of the Centers for Disease Control and Prevention's (CDC) No Sail Order would not result in immediate credit profile pressure on cruise operators and ports with sizable cruise operations, given we currently assume cruise operations will not meaningfully resume until 2H21, says Fitch Ratings. However, cruise operator and port credit profiles will become vulnerable to further deterioration if delays extend beyond this period and liquidity becomes an issue.

The CDC's previous No Sail Order that suspended cruise operations in the US from March 14 to Oct. 20 has expired. However, lawmakers reportedly began urging the CDC to reinstate the expired No Sail Order after several people on a Seadream Yacht Club cruise to the Caribbean tested positive for coronavirus last month.

A Framework for Conditional Sailing Order, which includes phases and milestones cruise lines must reach to resume operations in a way that mitigates the risk of spreading the coronavirus, replaced the No Sail Order at the end of October. This framework remains in effect until the earliest of a government declaration that the coronavirus is no longer a public health emergency, a CDC recension or modification of the order, or Nov. 1, 2021.

Major operators, including Norwegian and Royal Caribbean, voluntarily extended their suspension on some or all cruises this week, in part to provide time to comply with the conditional sailing order. Norwegian suspended nearly all voyages through March 2021. Royal Caribbean's extensions vary by geography and date with some into April 2021. Carnival announced extensions on certain cruises last month, suspending some seven-day or longer cruises until November 2021.

We believe the cruise industry revenue recovery to the 2019 base line level will be among the slowest in the hard-hit travel and leisure sector, due in large part to the health-related risks of occupying close quarters. Global and domestic travel restrictions will also have an impact, as most cruise passengers travel to reach the cruise port. We do not envision a secular decline in demand for cruising, as the industry has successfully navigated prior, more localized health-related incidents, but anticipate the time to return to pre-pandemic profitability levels will be lengthy.

Credit profiles for Fitch's universe of cruise operators and ports with significant exposure to the cruise industry have deteriorated due to the virtual standstill of cruising. Our forecasts for cruise operators and ports assume cruise travel does not begin to meaningfully pick up until 3Q21. Credit profiles are currently supported in part by liquidity positions but reinstatement of the No Sail Order that extends beyond our expectations and leads to cash burn could add pressure.

Cruise operators have minimal liquidity headroom, even after significant capital access and some delaying of the delivery of new ships to conserve cash. We estimate roughly 10 to 17 months of cash on hand for the three major cruise operators, after servicing upcoming debt maturities. Two of the three have become fallen angels due to the effects of the pandemic, with operators' revenue projected to be down 84% in 2021 over 2019.

Fitch-rated ports have strong liquidity and most have cargo operations that provide an offset to declines in cruise revenue. However, given uncertainty for the industry, minimal cruise activity is assumed through 2Q21 and we are forecasting 2021 revenue at only 34% of 2019 levels. Downside risk from coronavirus-related disruptions has resulted in multiple negative rating actions. Canaveral Port Authority's Outlook was revised to Negative from Stable in April and ratings subsequently downgraded to 'A-'/Negative from 'A'/Negative on Nov. 10 due to the severe deterioration of cruise revenues and resulting decline in financial performance. Port Miami's (A/Negative) and Broward County's (A/Negative) Outlooks were also revised to Negative.

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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.

Here's What the Water Sector Wants from Congress and President-Elect Biden.

In a letter to President-elect Joe Biden last week, the American Water Works Association (AWWA) urged the incoming administration to prioritize COVID-19 relief for water utilities and investment for the overall water infrastructure sector.

The letter, authored by association president Melissa Elliott, cites AWWA research that revenue shortfalls at U.S. drinking water utilities may reduce economic activity by $32.7 billion and cost 75,000 to 90,000 private-sector jobs. Drinking water utilities are expected to see revenues from customer payments drop by nearly $14 billion, according to AWWA estimates. This is the result of the elimination of water shutoffs for non-payment, increased late payments due to high unemployment, reductions in non-residential water demands, and the addition of fewer new customers due to economic stagnation.

The letter explains that while the CARES Act passed earlier this year did provide funding relief to state and local governments, the act also carried a provision prohibiting the use of those funds to offset lost local utility revenues. AWWA says many utilities, particularly those serving small to medium-sized communities, are at risk resulting from diminished operating revenues. Not only do these lost revenues mean local communities are less able to renew, repair, and sustain aging infrastructure and treatment facilities, but some are feeling the effects in their ongoing operating finances, which may result in the loss of operators who are needed to ensure the utility is in regulatory compliance, the association says.

The letter calls on the president-elect and Congress to work together on the next COVID-19 relief package and urges that it include:

1. Funding to help low-income customers pay their water bills during the current pandemic emergency;
2. Funding to help those local water utilities that have suffered significant revenue losses due to the pandemic, so that they can continue to operate and provide safe water services; and
3. A definitive limitation to any mandated moratorium on disconnection of water service for non-payment, if such as moratorium is included in a legislative package.

Finally, the letter from AWWA also urged President-elect Biden to take up water infrastructure investment as a priority in his administration, recommending the following:

1. In the 2021 budget, seek fully authorized funding for the WIFIA and SRF programs.

2. Work with Congress to strengthen the effectiveness of WIFIA in this manner
3. Reauthorize WIFIA and increase authorized funding.
4. Authorize an increase in WIFIA staff to help get loans out the door more quickly.
5. In negotiating changes to the tax code, ensure that the tax-exempt status of municipal bonds is protected, and that the tax advantages of advanced refunding of these bonds is restored.**Water Sector Calls on Congress to Assist Low-Income Customers Amid Pandemic**

Meanwhile, as the COVID-19 pandemic persists in the United States, AWWA and other water sector groups including the Water Environment Federation (WEF), the Association of Metropolitan Water Agencies (AMWA), National Association of Clean Water Agencies (NACWA), National Rural Water Association and WateReuse Association, are calling on Congress for increased funding. Similar to the recommendations to the incoming Biden administration, the groups say utilities need more help to rebound from the pandemic and invest in critical infrastructure, as well as to assist low-income customers pay bills. The organizations' goals were laid out in a joint letter to Congressional leaders.

On the subject of assistance to low-income customers, the letter notes two versions of the HEROES Act approved by the House of Representatives this year (H.R. 6800 and H.R. 925) contained language to establish a $1.5 billion Low-Income Household Drinking Water and Wastewater Assistance program, which would provide funds to local water and wastewater utilities to offset water rates charged to low-income customers during the pandemic.

Water systems report that delinquent residential water accounts have increased dramatically over the past several months – especially among low-income customers – so this type of targeted assistance is vital to getting these vulnerable customers back on track while also providing a needed stream of operational funds to water and wastewater systems. The associations request that this or a similar low-income customer assistance program is maintained in any pandemic relief package.

Click here to read more from the full joint statement from the water sector to House Speaker Nancy Pelosi (D-Calif.) and Senate Majority Leader Mitch McConnell (R-Ky.).

WATER AND FINANCE MANAGEMENT

BY WFM STAFF

NOVEMBER 23, 2020

Federal Relief Proposals Aren't Enough to Thwart Some of the Worst Transit Cuts.

As Congress debates proposals to give public transit half of what was sought, officials warn of cuts that would gut regional economies.

Officials at some of the largest public transit systems in the U.S. say that sweeping cuts to service and staffing are in store if a second federal pandemic relief package does not arrive soon. And the transit aid proposals currently being considered in Congress may not be enough to prevent drastic changes that would be difficult to reverse in several big cities, leaders and advocates say.

That includes in Congress's own backyard, where staffers, interns, Capitol Hill service workers and a tiny handful of lawmakers are normally some of the most reliable users of the Washington, D.C., Metro. Now rail ridership on the second-most-used rail transit network in the U.S. is down nearly 90

%, and WMATA faces an approximate $500 million budget gap starting in FY 2022.

To close it, WMATA general manager and chief executive officer Paul Wiedefeld laid out a plan on Monday that would transform the system from metropolitan lifeblood to anemic last resort. It includes eliminating weekend rail service, reducing weekday rail service to 30-minute headways, closing the rail system at 9 p.m. and shuttering 19 stations entirely, and eliminating more than 30% of the bus routes that existed before the pandemic. This would be on top of 1,400 positions that are already in the process of being eliminated, in order to close a $167 million budget hole in FY 2021, Wiedefeld said.

D.C.'s proposed changes are not inevitable. A swift vaccine distribution and accompanying economic recovery could be cause for dialing back some of the cuts, Wiedefeld said, as would the prompt arrival of a second relief package from Congress.

On Tuesday, a bipartisan group of senators outlined a $908 billion stimulus that includes $15 billion for public transit — less than half of what public transit advocates say is needed. That amount may be the best-case scenario for federal transit funding. In a major concession, Democratic leaders have backed the bipartisan proposal, but Senate Majority leader Mitch McConnell rejected it and is pushing instead a version of a bill he previously failed to pass that includes no funding at all for transit.

Transit leaders say that $15 billion in aid would be better than nothing. Chad Chitwood, a spokesperson for the American Public Transportation Association, which is calling for $32 billion in transit funding, called it a "promising step in the right direction."

But officials stressed that it would not be enough to return to full service levels, or even to avoid some of the harshest cuts currently taking shape. Assuming that his agency received the same portion from a $15 billion relief fund as it did from the CARES Act in March, San Francisco Municipal Transportation Agency director Jeffrey Tumlin said it would fail to prevent the nearly 22% reduction in workforce and dramatic service cuts that the agency projects will be necessary to close the $600 million in losses it faces over the next two years.

"It's good but it's worse than our worst-case scenario that is leading us to 1,200 layoffs," he said of the possible relief funding, explaining that $15 billion would not put the agency over the threshold for aid that it says it requires to avoid those cuts.

In an SFMTA board meeting on Tuesday, Jonathan Rewers, a senior budget manager at the agency, clarified what would be necessary. "Only at the highest amount — the amount in the HEROES Act — do we have a chance at closing the deficits we project over the next two years," he said. That earlier more robust HEROES Act proposal would have funded transit at the requested $32 billion.

The $15 billion figure in the stimulus agreement represents a middle ground between proposals from both sides, according to a spokesperson for Senator Mark Warner, a Virginia Democrat who represents areas served by WMATA and is one of the authors of the compromise. WMATA's proposed cuts "will have a dramatic effect on the functions of the federal government as well as for constituents across the tristate area," Warner said at a press conference Tuesday. "So we made, I think, the right kind of investment in public transit."

The distribution of those funds will also be important, advocates said. The CARES Act distributed $25 billion to public transit agencies and has enabled many systems to continue operating this far. But those resources were never designed to last forever, and for big-city agencies with budgets that rely heavily on passenger revenues, they dwindled faster.

For example, New York City's Metropolitan Transportation Authority — far and away the largest transit operator in the U.S.— received $3.9 billion in CARES relief, or slightly more than 15% of the available aid. Yet it carries 34% of the nation's metro rail and bus trips, according to APTA data, and the money lasted just four months. The agency now warns it will need to cut subway and bus service by 40% and commuter rail by 50% and lay off more than 9,000 workers if the federal government fails to allocate $12 billion.

"We need to get the size of the pot right and the distribution right to save America's cities," said Danny Pearlstein, the policy and communications director at Riders Alliance, an advocacy group in New York City. To highlight what he called the inadequacy of the $15 billion figure, he added: "There would only be $3 billion left once MTA gets its twelve."

In Washington, D.C., Wiedefeld said that his agency would need more than $700 million to return to normal levels of operation and reverse all staffing and service cuts. In addition to the exact amount, timing matters, too, with more than 10% of the agency's workforce already hanging in the balance, Wiedefeld said.

"If we don't get a significant amount from Congress, or it doesn't come until late in the first or second quarter of the year, it will be hard to pull this back," he said. "If money came immediately to pull back 1,400 jobs, I'd do that. But if that does not occur until April or May, they're already gone. Then I'm trying to save jobs for the next fiscal year."

At the current trajectory, the agency projects ridership to return to 34% of its 2019 levels by June 2022 and to take years to fully rebound.

Until then, "we have to live under a balanced budget with no other resources to turn to," Wiedefeld said. "This is the reality of what we're up against."

The impact of the proposed cuts on the D.C. economy would be difficult to overstate. The transit system outlines the region's future, with one 2015 study estimating that 78% of the next 15 years in planned commercial, residential and retail construction would occur within a half-mile of a Metro station. It's not clear what would become of those blueprints if service was gutted. In addition to weekday commuters, the D.C. rail system is also a mode of choice for millions of annual visitors to the region's monuments and museums; cuts to weekend service would stymie the return of that tourism.

"Anyone who comes here from around the globe uses our system, so it does reflect at a national leve l," Wiedefeld said. "What does this reflect when the nation's capital can't provide a fundamental service that major metropolitan areas provide worldwide?"

Yet these challenges reflect similarly grim forecasts in other U.S. cities. In the New York City region, the MTA's proposed cuts would result in an estimated loss of $65 billion in gross domestic product annually and cost 450,000 jobs in the area by 2022, according to a report by the NYU Rudin Center for Transportation Policy and Management and New York-based consulting firm Appleseed.

The changes will make it difficult for the MTA to bring back riders to its network of subways, buses and commuter trains as other transportation options will become more attractive, Pat Foye, the agency's chief executive officer, said in an interview last month with Bloomberg TV.

"Cutting it back also will cause some of our customers to say, 'you know what, it's not worth it,'" he said. "We won't get their revenue. We won't get their service and that's just a terrible place for any transit agency to be."

Meanwhile, D.C. buses have continued to serve roughly 200,000 daily riders, or about 40% of normal ridership, which is a much larger portion than the rail system has seen. Ron J. Thompson Jr., a transit equity organizer at the advocacy group Greater Greater Washington, said that cuts could strand low-income bus riders from jobs, school, groceries and healthcare. As the region pulls itself out of the Covid-19 recession, he said, "you're setting us up for one of the most uneven recoveries, ever, in our nation's history."

Bloomberg CityLab

By Laura Bliss

December 3, 2020, 3:24 PM PST Updated on December 4, 2020, 2:21 PM PST

— With assistance by Michelle Kaske

The MTA Could Be the Last to Tap the Fed's Muni Facility. Wall Street Watchers Fret Its End.

New York's Metropolitan Transportation Authority is on track to grab one last slug of federal pandemic aid before it and other public authorities lose a key source of relief at year's end: the Federal Reserve's municipal lending program.

The MTA said it plans to sell nearly $3 billion in bonds by the end of the year to the Fed's Municipal Liquidity Facility, a move that will help the agency cope with a plunge in ridership and close a $1.1 billion budget deficit this year, according to a presentation from CFO Robert Foran at a Nov. 18 board meeting.

Five Fed programs will expire at the end of this year, even as Covid-19 cases soar and some state governments impose partial shutdowns to control the virus' spread. The programs were created or revived earlier this year to provide a financial bridge for a wide range of institutions affected by the pandemic.

Several facilities were designed for the large banks, bank trading desks, and money-market funds that were squeezed during the short-term rush for cash in the early stages of the pandemic. Yet the programs that are closing mostly cover borrowers that could face financial pressure over a span of years, such as large corporations, midsize businesses, nonprofits, and state and local governments.

Municipal-market and Wall Street strategists have argued that the MLF in particular should be extended, because it can take months or even years for state and local governments to experience the full impact of recessions on their budgets from trends such as declines in property values. Municipalities are required to file 30 days in advance before they tap the facility, meaning that any other eligible state or local government that wants to borrow from the Fed has until Nov. 30 to file their own notice of interest.

"We still don't know what the next three, four, five, or even six months will look like. It makes sense to me that they extend it just in case there are high levels of shutdowns or something unexpected happens," said Tom Kozlik, head of municipal strategy and credit with Hilltop Securities. "I think [the municipal lending] program was set up for such an event. And it should be extended."

It wasn't. In a letter last week calling to Fed Chairman Jerome Powell to let the programs expire and

return unused funds, Treasury Secretary Steven Mnuchin said that he believes the Fed's programs were successful, citing declines in yields on highly rated municipal bonds. And in a response published Friday, Powell said that the Treasury does have the option of using existing funds for "any Federal Reserve lending facilities that are needed to maintain financial stability and support the economy."

Still, muni bonds haven't rebounded to prepandemic levels, unlike corporate debt markets. The iShares National Muni Bond exchange-traded fund (ticker: MUB) has climbed about 15% since the end of March, compared to the iShares iBoxx $ Investment Grade Corporate Bond ETF's (LQD) roughly 30% rally.

Citigroup strategist Vikram Rai, another vocal supporter of extending the MLF, said in a Nov. 23 note that he thinks the Treasury made the wrong call. "For now, the markets have largely brushed off the announcement, which is expected. But it would be easier to trigger weakness and volatility. For [example], say a high-profile deal faces weak demand," he wrote. "It could be enough to have a ripple effect and fan investor fears—this in turn could cause volatility spikes."

Mnuchin also pointed out that only two state and local governments had used the facility as of Oct. 31: The MTA and the state of Illinois. Their borrowing combined adds up to a combined $1.7 billion, though that sum will rise to $4.6 billion after the MTA's next planned use of the facility. That is indeed small compared to the broader market, which totals $3.9 trillion.

But strategists say that the MLF didn't need to be used extensively to provide a backstop to the market.

"The importance of the MLF was always the fact that it was there, even if it wasn't going to be used," said Tom McLoughlin, fixed-income strategist at UBS. "As a consequence, it calmed a lot of nervous investors that there was this opportunity to borrow as a last resort."

Barron's

By Alexandra Scaggs

Nov. 24, 2020 6:30 am ET

From Service Cuts to Budget Shortfalls: What Is in Store for American Transportation Agencies?

With a continued historic decline in ridership numbers and no additional federal help in sight, American transportation agencies are facing some serious fiscal challenges.

These transit agencies, once considered the backbone of metropolitan economies and moving a large number of passengers to and from work, are now running virtually empty with no real solution in sight for the foreseeable future. Although the recent news about a COVID-19 vaccine provided a glimmer of hope for many local and state economies, transportation agencies still have a long way to go before reaching their pre-pandemic ridership numbers and getting back to some state of normalcy. Furthermore, given the vital role transportation agencies play in metropolitan mobility, shutting down isn't an option for any of them.

In this article, we will take a closer look at the current challenges for American transportation

agencies and what the future holds.

Continue reading.

municipalbonds.com

by Jayden Sangha

Nov 25, 2020

‘Existential Peril’: Mass Transit Faces Huge Service Cuts Across U.S.

Reeling from the pandemic, transit agencies are grappling with drastic reductions in ridership and pleading for help from Washington.

In Boston, transit officials warned of ending weekend service on the commuter rail and shutting down the city’s ferries. In Washington, weekend and late-night metro service would be eliminated and 19 of the system’s 91 stations would close. In Atlanta, 70 of the city’s 110 bus routes have already been suspended, a move that could become permanent.

And in New York City, home to the largest mass transportation system in North America, transit officials have unveiled a plan that could slash subway service by 40 percent and cut commuter rail service in half.

Across the United States, public transportation systems are confronting an extraordinary financial crisis set off by the pandemic, which has starved transit agencies of huge amounts of revenue and threatens to cripple service for years.

The profound cuts agencies are contemplating could hobble the recoveries of major cities from New York to Los Angeles and San Francisco, where reliable transit is a lifeblood of the local economies.

Trains and buses carry the office workers, shoppers and tourists who will help revive stores, restaurants, cultural attractions, hotels and other key businesses that have been battered by the outbreak.

The financial collapse of transportation agencies would especially hurt minority and low-income riders who tend to be among the biggest users of subways and buses.

For months, transit officials around the country have pleaded for help from the federal government, but with no new lifeline forthcoming and many systems facing December deadlines to balance their budgets, agencies have started to outline doomsday service plans that would take effect next year.

A glimmer of hope emerged in recent days, when a bipartisan group of lawmakers in Congress proposed $15 billion for public transit agencies as part of a $908 billion framework for a pandemic-relief package.

The plan, which President-elect Joseph R. Biden Jr. has said he supports, would provide nearly half of the $32 billion that transit leaders have lobbied for in recent months and that is intended to provide short-term relief.

But it has yet to be endorsed by Senator Mitch McConnell of Kentucky, the Republican majority

leader, who has proposed a smaller stimulus plan that contains no financing for public transit. On Friday, Nancy Pelosi, the House speaker and a Democrat, expressed optimism that a compromise deal could be achieved before the end of the year.

Even if they receive some aid, transit agencies in some large cities have experienced such severe financial losses that officials say they will be forced to pare back service to save operating funds while serving riderships that are far below normal levels.

It is unclear whether ridership will ever fully return to pre-pandemic levels even after effective vaccines become widely available. Some commuters may end up working from home permanently; others may abandon public transit if cuts cause service to deteriorate.

“This is existential peril,” said Ben Fried, a spokesman for TransitCenter, an advocacy group.

“The economic rationale for cities is that people are in close proximity and can do a lot of things without spending a lot of time traveling from place to place,” Mr. Fried said. “If the transit network is seriously diminished in a dozen or so cities that are a focal point for a large share of the nation’s economic output, then that’s going to have severe impacts on the national economy.”

Since the pandemic swept across America in the spring, bringing urban life to a standstill and ushering in new work-from-home norms, nearly all of the sources of money that public transit relies on have been pummeled.

Ridership, and fare revenue along with it, vanished practically overnight after lockdown orders were enacted. As the economy slid into recession, the sales and income tax revenue used to finance many transit networks plunged. And cities and states sunk into their own financial crises, threatening government subsidies for public transit systems.

New York City’s transit agency, which is grappling with the biggest losses of any system in the country, forecasts a $6.1 billion deficit next year. Officials in Boston are dealing with a $600 million budget hole, and Chicago’s agency anticipates a $500 million shortfall.

By September, nationwide ridership on mass transit had crept back to nearly 40 percent of its pre-pandemic levels from a low of 19 percent in April, according to the American Public Transportation Association, a lobbying group.

But the numbers have plateaued in recent weeks as the virus surges throughout the country, making this the longest and most severe period of suppressed ridership for any of the nation’s public transit systems.

In New York, ridership is at 30 percent of pre-pandemic levels, while on rail lines in Washington and San Francisco, it is below 15 percent of its usual levels.

“The effect on ridership in each of our agencies — subway, buses, Metro-North, Long Island Railroad — is dramatically worse than even in the Great Depression,” said Patrick J. Foye, chairman of the Metropolitan Transportation Authority, which runs New York City’s subway and buses and two commuter railroads.

Many big city systems rely on fare revenue more heavily than their counterparts in smaller cities and rural areas and have tended to get a smaller share of federal support relative to their size.

Fares contribute 70 percent of the operating budget in San Francisco, 40 percent in New York and Washington and about 33 percent in Boston.

There is no legislative text yet for the bipartisan proposal that Republican and Democratic Senators are now negotiating, nor are there specifics for how the transit aid would be divided among agencies.

“This is not limited to big, urban cities and states — lots of rural areas depend on buses that also get federal funding — so it has some degree of bipartisan support,” Senator Chuck Schumer of New York, the Democratic minority leader, said in an interview. “But there are some who have never wanted any federal help for mass transit and that’s who we are up against.”

The stimulus package that is being negotiated is likely to face opposition from some liberal lawmakers who consider it insufficient and some conservatives who are unwilling to add to the national debt.

“The real answer to the economic problems is to get rid of what causes the economic problems and they’re caused by economic dictates from governors that forbid commercial activity,” Senator Rand Paul, Republican of Kentucky, told reporters on Tuesday. “I’m not for borrowing any more money.”

When transit agencies have faced financial shortfalls in the past, they have typically turned to city and state governments or they have lobbied elected officials for new sources of revenue like dedicated taxes.

But many municipal and state governments are grappling with their own financial problems, forcing transit agencies to look to Washington.

“Unlike some other transit properties, we don’t have our own revenue source, we have two sources of revenue, it’s either the farebox or the subsidies from our local and state government,” said Paul J. Wiedefeld, the general manager of the Washington Metropolitan Area Transit Authority. “They are both under tremendous financial distress right now, so where do we turn?”

Many urban transit systems have exhausted the money they got from an earlier federal stimulus bill and have also imposed service cuts.

In New York, overnight subway service has been suspended since May. In Los Angeles, bus service has been slashed nearly 30 percent and rail service has also been cut. And the Bay Area Rapid Transit rail system in San Francisco has ended late night service and pushed wait times for trains from 15 to 30 minutes.

The cuts have helped stabilize operations and allowed them to continue providing at least limited service. But officials warn that the cutbacks could become permanent and that more could be added at the beginning of next year, a devastating prospect for the essential workers and low-wage riders who continue to rely on public transit.

Around 2.8 million American workers in essential industries like health care, grocery stores and pharmacies used public transit to get to work in 2018, according to an analysis of census data by the TransitCenter. That was 36 percent of all transit commuters in the U.S. work force that year, the group said.

“We have been the ones that have kept the economy of this country afloat because we do not have the luxury to work from home,” said Mayra Romero, 43, a restaurant worker in Boston who travels by bus from her home in nearby Chelsea, Mass. “We have been the ones who have been risking our lives and exposing ourselves.”

Margaret Dunn, who lives in Clinton, Md. and works at a hotel in Washington, used to work until midnight before she was laid off in March. Now, as she waits for a call to return to her job, she

worries that service cuts could leave her with few travel options once her shift ends.

“We direly need some help.” she said, adding that she may have to rely on Uber or her husband to drive her.

In Washington, transit officials say that if the system receives sufficient federal assistance they will revive service as much as possible to help coax riders back as vaccines are distributed and the cadence of normal life begins to return.

But in other cities, additional federal aid may not guarantee the return of service. In Boston, New York and San Francisco, transit officials have said they plan to recalibrate service to match what they expect to be long-lasting, depressed levels of ridership.

“With the first tranche of money we got, we immediately put it in place to plug the budget gap because there was so much uncertainty, but as a consequence that money will run out this fiscal year,” said Steve Poftak, the general manager of the Massachusetts Bay Transportation Authority, which serves the Boston area. “We want to do as much as we can in this period of low ridership so we have a reserve in place that we can apply to fiscal year 2022.”

“That’s been our approach,” he added. “Preserve our service now, but also keep an eye toward the future.”

Transit experts worry that with more cuts public transportation agencies could plunge into a “death spiral,” where increasingly unreliable service keeps riders away, pushing systems deeper into financial distress.

With public health officials expecting the distribution of vaccines to begin early next year, agencies could wind up cutting service just as riders return to their commutes.

“Transit is not going to be there for people at the exact moment they are ready for transit again,” said Nick Sifuentes, executive director of the Tri-State Transportation Campaign, an advocacy group. “We are looking at millions of people getting ready to head back to their workplaces and the thing they relied on to get there won’t be reliable anymore.”

The New York Times

By Christina Goldbaum and Will Wright

Dec. 6, 2020

Fitch: Coronavirus Muddies 2021 Outlook for U.S. Transportation Infrastructure

Fitch Ratings-New York-02 December 2020: U.S. transportation infrastructure faces a mixed outlook for 2021 with some segments returning to pre-pandemic levels quicker than others, according to Fitch Ratings in its 2021 outlook report for ports, toll roads and airports.

Fitch’s 2021 Sector Outlook for U.S. transportation infrastructure is Improving, while Fitch’s 2021 Rating Outlook is Negative. The Sector Outlook reflects Fitch’s expectation for improved performance in 2021 as compared to 2020 for the two largest sectors – Airports and Toll Roads. “Toll

roads and cargo ports are expected to recover to 2019 levels by 2022," said Senior Director Emma Griffith. "By contrast, airports and cruise ports face a more uphill battle with recovery not likely to materialize until 2024 or perhaps even later." The Negative Rating reflects 57% of U.S. transportation ratings carrying Negative Outlooks or Watches.

Cargo-focused ports have outperformed Fitch's expectations thus far, though performance will face pressure in 2021 due to a worsening economy and delays in fiscal stimulus. Conversely, the CDC's no-sail order in place for much of this year has severely hampered performance for cruise ports with pre-pandemic recovery not likely for several years.

Another resilient sector has been toll roads with traffic levels largely returning to pre-pandemic levels before leveling off somewhat last quarter. "Whether traffic recovers or backslides depends upon the path of the virus and related lock-downs, especially regarding commuter traffic from office workers," said Senior Director Scott Monroe.

The segment that may face the most formidable challenge over time is airports due to the unprecedented drop-off in passenger traffic. "Strong fee setting flexibility and liquidity will keep most airports numbers stable, though time will tell if that will be enough to sustain them with pre-pandemic recovery in passenger traffic to remain elusive for several years," said Senior Director Seth Lehman.

'Fitch Ratings 2021 Outlook: U.S. Transportation Infrastructure' is available at 'www.fitchratings.com'.

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Additional information is available on www.fitchratings.com

NFMA White Paper on Best Practices in Cybersecurity Risk Disclosure for State & Local Governments in Municipal Offerings.

On November 30, 2020, the NFMA released the final version of its paper on cybersecurity risk

disclosure.

- White paper, dated November, 2020
- Press release, dated November 30, 2020

SEC Needs to Take 'Bottom to Top' Review of Fixed Income Markets: Crenshaw

The next chairman or chairwoman will likely "take a hard look at the commission's approach to ESG," Crenshaw said.

Once Securities and Exchange Commission Chairman Jay Clayton departs at year-end, the four member agency — which will consist of two Republicans and two Democrats — can likely find bipartisan agreement on fixed income market structure issues, according to SEC Commissioner Caroline Crenshaw.

"Right now, our fixed income markets are regulated using a regime that … has been imported from the equity markets," Crenshaw, a Democrat, said Friday during the virtual Georgetown Financial Markets Quality Conference. "This can cause problems. Fixed income securities are traded in a very different way."

The commission should take "a bottom to top look at the corporate and muni markets. … We need to understand how these bonds are actually traded and how these things are happening on the ground as we build a regulatory system around it," Crenshaw said.

SEC Commissioner Elad Roisman, a Republican, added that "there is still a lot we can do when it comes to fixed income."
Retail investors, Crenshaw said, "have more exposure, perhaps more than anyone else, to municipal bonds, both directly and indirectly through various funds."

The SEC, she continued, needs "to do a better job of ensuring that all investors have the information they need to make the best investment decisions they can. It's especially an issue for retail investors because they often don't have access to the same type of information that nonretail investors have access to.

"That's true across all products, but it's especially true in the muni markets where a lot of bonds are thinly traded and there's very little pre-trade transparency."

Next SEC Chair's Priorities

The next chairman or chairwoman will likely "take a hard look at the commission's approach to ESG," especially those focused on climate risk, Crenshaw said.

Added Roisman: ESG is "a conversation that will be ongoing; it's one that I can't imagine we're not going to be having."

ThinkAdvisor

By Melanie Waddell | November 23, 2020 at 11:45 AM

NABL Submits Letter to Treasury and IRS.

On Wednesday, December 3, 2020, the National Association of Bond Lawyers (NABL) submitted a letter to the U.S. Department of the Treasury ("Treasury") and Internal Revenue Service (IRS) requesting an extension of IRS Notice 2020-53 through December 31, 2022. The notice, released on July 1, 2020, in response to the coronavirus pandemic provides relief relief to bond issuers, operators, owners and tenants of qualified residential rental projects and qualified low-income housing projects financed with exempt facility bonds, and state agencies that have jurisdiction over these projects, from otherwise-applicable federal tax law compliance requirements.

Read the full letter here.

The Fastest-Growing Fixed Income Sector: Taxable Muni Bonds

With a Joe Biden administration looming, municipal bonds have been in play for fixed income investors. One pertinent idea is a taxable municipal bond, the focus of the Invesco Taxable Municipal Bond ETF (BAB).

BAB seeks to track the investment results of the ICE BofAML US Taxable Municipal Securities Plus Index. The underlying index is designed to track the performance of U.S. dollar-denominated taxable municipal debt publicly issued by U.S. states and territories, and their political subdivisions, in the U.S. market.

According to Investopedia, taxable municipal bonds are "issued by a local government, such as a city, county, or related agency, to finance projects that the federal government will not subsidize, and it is not tax exempt."

As its namesake suggests, the BAB ETF hearkens to Build America Bonds (BAB), which, courtesy again of Investopedia, "were created under the American Recovery and Reinvestment Act (ARRA) of 2009 and, although taxable, have special tax credits and federal subsidies for either the bond issuer or holder. Taxable municipal bonds are popular among institutional investors and mutual funds that cannot take advantage of other tax breaks."

Continue reading.

ETF TRENDS

BEN HERNANDEZ

DECEMBER 2, 2020

Demand for Taxable Munis To Continue in 2021: Kazatsky (Radio)

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence: stimulus talks revived and 2021 outlook for munis. Hosted by Paul Sweeney and Vonnie Quinn.

Listen.

Bloomberg Radio

December 4, 2020 — 10:29 AM PST

Why Taxable Municipal Bonds Are Booming and How to Invest in Them.

Municipal bonds and tax-exempt debt are no longer synonymous. Taxable municipal bonds are the fastest-growing sector in U.S. fixed income. This year, issuance has totaled more than $170 billion, double the $85 billion sold in all of 2019. The total market has grown to $700 billion—sizable but still below the $3.7 trillion tax-exempt muni market.

Taxable munis offer an attractive alternative to corporate bonds, with higher yields and lower historical default rates. The market's obscurity is part of the reason for yields that can be 0.5 percentage point to 1.5 percentage points higher than those of similarly rated corporate debt.

"Issuance has exploded, and we expect that trend to continue. It's about 35% of total municipal issuance," says Peter Hayes, head of the municipal bond group at BlackRock. "Investor appetite is growing domestically and internationally."

Continue reading.

Barron's

By Andrew Bary

Nov. 27, 2020 11:36 am ET

Broker-Dealer Settles Charges of MSRB Trade Reporting Failures.

A broker-dealer settled FINRA charges of failing to accurately report trades to the MSRB.

In a Letter of Acceptance, Waiver and Consent, FINRA determined that the broker-dealer did not report its trades in increments of seconds, as required under MSRB Rule G-14 ("Reports of Sales or Purchases"). According to the Letter, for an approximately three-year period, the firm reported all trades as being done at "00" seconds, rather than the exact number of seconds. This resulted in 147,000 trade reporting violations. Further, FINRA found that the firm had 167 manual trade reporting failures also involving failure to report the correct time of trade. These reporting failures also resulted in violations of MSRB Rule G-8 ("Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors").

FINRA also determined that the broker-dealer violated MSRB Rule G-27 ("Supervision") by failing to follow the requirements under its written supervisory procedures to (i) execute a comparison between the firm's records and corresponding contra party trade reports to ensure the accuracy of

the times of trade it reported and (ii) specify the frequency of its review of its trade reports, and designate a supervisor for such review.

To settle the charges, the broker-dealer agreed to a (i) censure and (ii) $25,000 fine ($15,000 for the MSRB Rule G-14 and G-8 violations and the balance for the MSRB Rule G-27 violations).

Commentary

When technology is not working, that failure creates the capacity for a remarkable number of violations; e.g., in this instance, 147,000 violations due to the technology failure vs. 167 errors due to the manual process failure. Of course, the technology is indispensable, but the numeric difference in the number of failures really illustrates the importance of having compliance procedures that review the end results of technology processes.

Cadwalader Wickersham & Taft LLP – Steven D. Lofchie

November 20 2020

BAB: Taxable Munis Still Offering Value

Summary

- Taxable munis offer higher after-tax yields for everyone but those in the highest tax brackets, compared to tax-exempt munis.
- With markets hitting new highs, taking on less risk seems prudent. As a non-leveraged ETF, BAB offers a path to do so.
- Municipals should perform well in 2021, if states and cities get federal relief, which is more likely under a Biden administration.

Continue reading.

Seeking Alpha

Nov. 25, 2020

Hawkins Advisory re: Rev. Proc. 2020-49 - Extension of Ability to Hold Telephonic TEFRA Hearings.

In consideration of the ongoing Covid-19 pandemic, Treasury and the Internal Revenue Service have extended the temporary guidance originally provided in Rev. Proc. 2020-21, published in May of 2020. The temporary guidance allows issuers of private activity bonds to hold the public hearings required by the TEFRA rules by teleconference until December 31, 2020. The release on November 4, 2020 of Rev. Proc. 2020-49 extends the period during which issuers may hold telephonic hearings to September 30, 2021.

Read the Hawkins Advisory describing Rev. Proc. 2020-49.

California City That Sold Pension Debt Now at Fiscal Brink.

- **West Covina plumbed reserves to meet costs, state auditor says**
- **City has no recovery plan and risks bankruptcy, audit says**

West Covina, California, which sold $204 million of pension bonds in July, is at the fiscal brink because of its ineffective management and raiding of reserves, according to a report Tuesday by State Auditor Elaine Howle.

The southern Californian city of about 105,000 residents helped cover salary and benefit costs for its public safety workers by siphoning from reserves, halving its year-end balance in fiscal 2019 to about $10 million over four years, the report said.

The city, which has about $227 million in outstanding municipal debt, has made “questionable” financial decisions, has likely understated the impact of the coronavirus pandemic and doesn’t have a fiscal recovery plan, raising the risk of bankruptcy, according to Howle’s report.

“West Covina is at high risk of being unable to meet its future financial obligations and provide effective city services,” the audit said. “If West Covina is unable to resolve its structural deficit, it risks becoming embroiled in the lengthy and complex process of declaring municipal bankruptcy.”

In July, West Covina’s financing authority sold $204 million of taxable lease-revenue debt rated A+ by S&P Global Ratings, with the top yield of 3.89% for a bond maturing in August 2044. A bond due in August 2038 traded Monday at a 3.12% yield, according to data compiled by Bloomberg.

Proceeds of the sale went to paying down the city’s unfunded pension liability, which would initially reduce its annual pension obligation to the California Public Employees’ Retirement System. But that leaves the city on the hook for required debt payments that gradually increase every year by 2044 and still at the risk of higher pension bills should the retirement system underperform its target and require more from municipal governments to make up the difference, the audit said.

West Covina plans to sell land and use the proceeds to pay down its debt obligations, according to the report. But, such “large one-time revenue sources will be insufficient on their own to reverse the city’s negative financial trend and rebuild its reserves,” it said.

City Manager David Carmany said in an interview that he and the finance director were brought in recently to address the city’s fiscal issues. With public safety expenses accounting for about 80% of West Covina’s general fund, Carmany said that officials are negotiating with unions to help defray the burden, and police officers agreed to contribute more toward their pensions. The city may also disband the fire department and instead contract with Los Angeles County for its fire services, a decision that the council may make early next year, he said.

“We are aggressively exploring all options,” Carmany said. “This community is going to be facing some tough choices.”

Bloomberg Markets

By Romy Varghese

December 1, 2020, 11:25 AM PST Updated on December 1, 2020, 2:43 PM PS

Future Returns: Insured Munis Offer Stable Income and Peace of Mind

Investors have had plenty to worry about in 2020, and this is particularly true for anyone who counts on municipal bonds to generate stable and, in many cases, tax-free income for their portfolios.

Covid-19 has put pressure on a wide range of municipal bond issuers, from state and local governments, to universities, senior housing facilities, and convention centers. While there has been an uptick in defaults, it's a long way from the doomsday scenarios that made headlines early this year.

For one thing, the initial analysis of muni defaults was done at the height of Covid-19 shutdowns in March, say Bob DiMella and John Loffredo, co-heads and co-chief investment officers of MacKay Municipal Managers. Meanwhile, not every segment of the market has been squeezed. Public utilities have held up well, while public schools should benefit from continued strength in the housing market. Pension plans, meanwhile, have gotten a lift from the surging stock market.

Still, for many investors—especially those who buy and hold individual bonds—municipal bonds with an insurance wrapper may be worth a closer look.

"It's a bond with a belt and suspenders," DiMella says. "You've got the underlying credit, plus you've got this financial guarantor as a second backstop."

Bond Insurance Makes a Comeback

As the name suggests, bond insurance guarantees that principal and interest for a municipal bond will be paid in the event that the issuer defaults. Such insurance was widely used before the financial crisis, DiMella says, when a handful of companies insured roughly 60% of all new issues in the municipal bond market.

"It basically fell off a cliff after the crisis, with insurance wrappers representing a small percent of the market," he says.

Insured municipal bonds had seen a slow resurgence over the last couple of years, but the Covid-19 pandemic has spurred new demand, with insured munis now representing about 10% of new muni bonds. More large and high-quality issuers are offering an insurance component on new bonds in order to quell investor angst about rating downgrades and defaults. Two companies, Assured Guaranty and Build America Mutual, insure most bonds today.

"Investors get the benefit of stable ratings, increased liquidity, and less volatility," Loffredo says.

Small Price for Peace of Mind

Insurance, of course, is never free. On average, investors will give up between 10 and 20 basis points (1/10th and 1/20th of a percentage point) of yield for muni bonds wrapped with insurance. While some investors will balk at this tradeoff, especially in a low-yield environment, buy-and-hold investors may find that it's money well spent.

"You don't have to sacrifice a lot of yield to get the benefit of stable cash flow," says Loffredo, who notes that high-net-worth clients and family offices have shown an increased interest in insured munis as of late.

Still Opportunity for Upside

At the same time municipal bond insurance is an inexpensive option for investors who hold bonds to maturity, active investors may also have the potential for price appreciation.

“We would make the argument that there is a lot more value today than there was at the beginning of the year,” DiMella says. “In many cases they’re wider than they’ve been in many years.”

When the market first sold off this spring, virtually every segment of the muni market was impacted. Insured munis recovered faster than equivalent bonds, but spreads—the difference in muni yields versus comparable Treasuries—for triple-B-rated insured munis are still higher today than they were at the beginning of this year.

In fact, the spread for the insured index versus 10-year Treasuries began the year at 20 basis points and rapidly widened to 190 basis points during the market crisis this spring. They have since narrowed to 99 basis points, but the gap is still higher today than before the crisis, suggesting that yields should come down—and bond prices should move up.

Barron’s

By Sarah Max

Dec. 1, 2020 12:13 pm ET

Premium Bonds As a Cushion for Rising Rates.

In the mid-1990s, the United States was emerging from a recession and facing unbalanced budgets, a transition of political party in the White House, and a slower-than-normal economic recovery in the wake of the Gulf War. (Sound familiar?)

I recall discussing the situation and its financial implications with my then business partner as we commuted across the Golden Gate Bridge. More than two decades later, I have a strong sense of Deja-vu as we evaluate clients’ financial strategies in light of similar circumstances today.

As fixed income and muni market rates rise, the value of bonds go down. Municipal bond investors have a heightened awareness of the inverse relationship between interest rates and bond prices, but their knowledge of bonds, prices, yields and an extra dose of patience can be an advantage; they understand interest rates eventually will rise again.

For now, the Fed is planning to hold rates at near zero until labor markets reflect more maximized employment and inflation can reach 2% for some time. In this low interest rate environment, more bonds are being issued at premiums for sound reasons, and premium bonds can be used to help stabilize municipal bond values over time – if investors take time to understand them. When purchased correctly, premium bonds can work well in a portfolio and offer reasonable income solutions.

Continue reading.

municipalbonds.com

by Wayne Anderman CFP® MBA

Nov 26, 2020

Municipal VRDO Class Action Survives Banks' Request for Dismissal.

Financial institutions should work with outside counsel to ensure that their internal policies and external actions minimize conduct that may violate state and Federal laws and regulations, and incentivize employees to reward high ethical standards

On November 2, the United States District Court for the Southern District of New York (SDNY) largely denied a motion to dismiss a class action lawsuit brought by the cities of Philadelphia and Baltimore (collectively, the Plaintiffs) in May 2019. The Plaintiffs brought the action on behalf of themselves as well as other municipal issuers of variable rate demand obligations (VRDOs) against several large banks (the Banks). Plaintiffs allege that beginning in April 2009 and continuing through November 2015 (the Class Period), these banks collectively forced state and local governments to pay inflated interest rates on the bonds and notes issued as VRDOs in derogation of the Sherman and Clayton Antitrust Acts, as well as various state laws. The Banks deny the allegations and claim that they are baseless.

Judge Jesse M. Furman ruled that the Federal antitrust claims, as well as some of the state law claims, could continue.

Background

Publicly-Financed Projects

At issue in the lawsuit are the Banks' alleged improper remarketing practices in connection with bonds and notes issued by state and local governmental entities, as well as other public agencies and authorities. Issuers use these bonds/notes to finance projects including, but not limited to, economic development, education, hospitals, housing, transportation, and utilities.

Public Support

Certain VRDO bonds and notes are secured by tax revenues – generally, corporate and personal income taxes, sales taxes, and property taxes from individual and corporate taxpayers in the respective jurisdictions.[1] Other VRDOs are secured by revenues generated from a particular community project being financed. Some such examples include: (i) tenant rents for affordable housing, (ii) medical charges for hospitals, (iii) mortgage payments for single family housing, (iv) utility payments for electric, water, and sewer systems, (v) landing fees/passenger ticket charges for airports, (vi) tolls for bridges and highways, (vii) fares for mass transit, (viii) tuition for colleges and universities, (ix) property taxes for K-12 education, and (x) assorted local taxes and user fees for libraries, government buildings, police and fire stations, and parks.

To incentivize projects with a valuable community purpose, the Federal government provides a tax exemption on the bonds/notes to investors. For a project to qualify for the exemption, the Internal Revenue Code requires that for-profit companies have a limited role in these financed projects. Notably, unlike most other bond markets, there is an even split between corporate investors and individual investors of municipal bonds/notes as individual investors benefit from the Federal (as well as state and local) tax-exemptions, are often utilized for an individual's retirement savings and, importantly, provides monies to build and maintain beneficial projects to the community at large.

VRDO Structure

General

VRDO bonds are issued on a long-term basis but have short-term interest rates that reset on a periodic basis, typically weekly. Accordingly, VRDOs are very attractive for governmental entities as they can borrow long-term at generally lower short-term rates. VRDOs also offer flexibility to investors, who can exit the investment on a weekly basis through a remarketing agent. Here, remarketing agents are required to remarket the bonds to other investors. Alternatively, if there are no investors willing to purchase the VRDOs, the bonds are 'put' back to a rated bank. Both the remarketing agent and the bank providing liquidity (the Liquidity Bank), which are typically the same or affiliated entities, charge fees for their services. These fees must be added to the favorable interest rates to obtain the true cost of the borrowings to the governmental entities.

Interest Rate Swaps

Even though governmental entities (and their taxpayers) appreciate low interest rates, governmental entities generally are averse to variable rate risk, which can increase or decrease on a weekly basis. For this same reason, many homeowners do not like having adjustable rate mortgages, especially in a low fixed-rate environment. Accordingly, to assure that interest rates do not fluctuate, the Banks often provide parallel interest rate swaps so that the governmental entities take limited interest rate risk while the Banks take the variable rate risk.

However, there are numerous risks associated with swaps. These risks include, but are not limited to, basis risk, counterparty risk, and termination risk. Generally, governmental entities are not familiar with many of these risks. And these risks are often not fully explained by the Banks themselves. In general, in a falling interest rate environment (such as what has been occurring since the Great Recession, and exacerbated by the pandemic), interest rate swaps can be a significant drain on the resources of governmental entities. Additionally, conspiracies to manipulate interest rates (as allegedly occurred in this dispute) are the frequent subject of many of the cases cited by this court. Indeed, in resolving this motion, the court relied on several prior cases that involve Banks and other market participants manipulating interest rate swaps and other financial/commodity markets.[2]

Although the court discusses testimony from a Bank insider that VRDOs are a relatively low margin product for the Banks, interest rate swaps have historically been a very high margin product for banks offering swaps. Indeed, interest rate swaps have historically generated a significant percentage of large bank profits. For that very reason, such banks often encourage governmental entities to tie VRDOs to swaps. By this arrangement, the banks gain tremendous profits (and resultant banker bonuses), while the government reduces its perceived risks associated with VRDOs instead of undertaking a straight fixed rate bond deal or a VRDO with an interest rate cap.[3]

Remarketing Agent Role

In most remarketing agreements, the banks have two primary obligations. First, they must reset the VRDOs weekly interest rate at the *lowest possible rate* that would permit the bond to trade at par. Second, as mentioned above, the banks must remarket the VRDOs to other investors at the *lowest possible rate* when existing investors decide to exit the investment. Remarketing agreements can also generally be terminated by the governmental entities at will. If, for example, a governmental entity is not satisfied with a bank's remarketing efforts, then the governmental entity might want to replace the bank with another remarketing agent.

Liquidity Bank Role

If the banks, as remarketing agents, are unable to find another investor, the Liquidity Banks are required to purchase the tendered, but unremarketed, bonds. This contractual obligation between the banks, as Liquidity Banks, and the governmental entities is typically called a letter of credit and reimbursement agreement. The interest rate for a tendered, un-remarketed, bond that is held by the Liquidity Bank typically ranges from 10-15%, a significant increase from the low current 1-3% interest rate on VRDO bonds. Notwithstanding this high rate, Liquidity Banks prefer not to hold un-remarketed bonds, as doing so typically indicates that the transaction has some sort of underlying issue.

Importantly, a bond with a drawn letter of credit would require that additional capital be set aside by the Liquidity Bank. In essence, this un-remarketed bond would then, generally, be characterized as a defaulted bond by the Liquidity Bank. Banks try to avoid this situation at all costs.

Market Disruptions

Lehman Brothers' bankruptcy filing in September 2009 caused tremendous upheavals in the VRDO market. In 2008, $116.3 billion of VRDO bonds were issued by municipal issuers.[4] In contrast, in 2009, $32.3 billion of VRDO bonds were issued by these issuers, a decrease of 72%. [5] This general decreasing trend continued in each subsequent year of the Class Period. [6] One reason for these significant decreases was the failure of many banks to maintain satisfactory credit ratings. The decline in the banks' credit ratings forced governmental issuers to pay the un-remarketed bond rate of 10-15%, causing significant financial strains on government resources.

As these upheavals occurred in the midst of the housing crisis, Arent Fox was brought in to help develop the Temporary Credit and Liquidity Program (TCLP) with the US Department of Treasury, the Federal Housing Finance Agency, Fannie Mae and Freddie Mac, and state housing finance agencies throughout the country. This $8 billion program replaced the Liquidity Banks' liquidity facilities with facilities jointly provided by Freddie Mac and Fannie Mae.

State and local housing finance agencies are tasked with supporting affordable housing. This task became difficult (if not impossible) due to, among other things, the parallel banking crisis, which required these housing finance agencies to devote their limited resources to pay much higher interest rates on their VRDO bonds rather than developing new affordable housing and supporting existing housing projects. This prompted the creation of TCLP, along with a program to facilitate the issuance of new bonds during this crisis period – the $16 billion New Issue Bond Program (NIBP), which the Firm also helped develop and implement. Although the TCLP program was scheduled to terminate in 2012, it was extended through 2015, the end of the Class Period. The primary reason for an extension was that the Liquidity Banks were reluctant to provide liquidity during this tumultuous period for certain governmental issuers.

Alleged Antitrust Conspiracy

As alleged in the Class Action Complaint, the Banks, which served as remarketing agents for approximately seventy-five percent of all VRDOs issued in the United States, conspired not to compete against each other.

Philadelphia and Baltimore claimed that the Banks shared information regarding proprietary information, such as VRDO Bank inventory levels and planned changes to the VRDOs' base interest rates, in an effort to keep interest rates on VRDOs artificially high. According to the Complaint, collusion existed at all levels across each bank, ranging from senior personnel in Municipal Securities Groups, to the remarketing desks below these groups, down to sales desk personnel. [7]

As detailed in the Complaint, agents of the Banks communicated regularly, frequently, and in great detail. They often shared confidential and sensitive information relating to the VRDO issues. In some instances, the Banks are alleged to have shared the specific rates they were planning to set.

Ultimately, a related whistleblower complaint was filed, which led to the Securities Exchange Commission (SEC) opening a formal investigation in November 2015, and the Department of Justice (DOJ) starting its own investigation in 2016.

SDNY Rulings

Antitrust Claims

The bulk of the court's decision dealt with the Federal antitrust claims, which were ultimately upheld. The court stated that, during the Class Period, there was a plausible argument that the Banks "conspired *not* to compete against each other in the market for remarketing services." Needless to say, this type of alleged anticompetitive behavior is precisely the type of conduct contemplated and prohibited by the Clayton Act and the Sherman Act more than 100 years ago.

Rate Manipulation

In setting the initial rate, weekly rate resettings, and the rate upon tender of VRDOs, the Banks are supposed to consider the individual characteristics of the bonds (*e.g.,* issuer financial strength, security, Liquidity Bank credit rating), market conditions and investor demand, rather than Bank inventory levels or profits.

Here, the court determined that by resetting the VRDO base rates on a regular and arbitrary basis, the Banks had coordinated the rate reset of a large number of VRDOs in violation of the Federal antitrust laws. In fact, Judge Furman found the Banks' conduct to be both "deceptively simple" and " effective," as the interest rates during the Class Period for VRDOs were alleged to be nearly seventy-five percent higher than the rates would have been absent the Banks' conduct. The court also determined that the coordination of interest rates ceased shortly after the SEC and DOJ investigations began. In the court's view, this timing indicated that the Banks had stopped coordinating their illicit rate-setting practices in direct response to the investigations.

Collusive Activities

Although pending investigations may not, standing alone, satisfy an antitrust plaintiff's pleading burden, the court held that government investigations may be used to bolster the plausibility of these claims and allegations of rate manipulation. Thus, the court concluded that there were enough facts in the complaint to survive the motion to dismiss.

The court also found that allegations of Bank misconduct constituted "plus factors" – circumstantial evidence demonstrating, by inference, the existence of a price-fixing conspiracy.[8] For example, the court found that the regular communications and exchange of information between the Banks demonstrated that they were able to (and did) coordinate their rates to ensure that none of the Banks broke ranks from the conspiracy. The court also ruled that each of the Banks had a motive to engage in the alleged scheme.

In addition, the court also determined that that the Banks had used a third-party pricing service (J.J. Kenny Drake Inc.) until 2012 to telegraph to each of the Banks the collective view of where the base rate should settle for the Banks in remarketing bonds.[9]

Accordingly, the court held that Philadelphia and Baltimore had satisfied their burden, and ruled

that the antitrust claims could continue against all defendants.

State Law Claims

Breach of Contract

Philadelphia and Baltimore also brought several breach of contract claims against the Banks based on Pennsylvania and Maryland state law. The court determined that several of the Banks had not entered into contracts with either city, served as their remarketing agents, or otherwise had any role at all in facilitating a contractual relationship with the cities. Accordingly, the court granted the motion to dismiss the breach of contract claims as to each of these "Non-Counterparty Banks."

However, the court denied the motion to dismiss as to the remaining Banks that *had* entered valid remarketing agreements with the cities (the "Counterparty Banks"). The court held that Plaintiffs sufficiently pled that these "Counterparty Banks" *had* breached their contracts with Plaintiffs by failing to fulfill a contractual obligation under the remarketing agreements to use their *best efforts* – a high standard in the municipal bond market – to reset the interest rates of the VRDOs based on prevailing market conditions, and to remarket the bonds at the lowest rate possible that would allow the bonds to trade at par.

Breach of Fiduciary Duty

Philadelphia and Baltimore also brought several breach of fiduciary duty claims against the Banks. However, as it had done with the Non-Counterparty Bank breach of contract claims, the court dismissed the fiduciary duty claims against the Non-Counterparty Banks, ruling that they had no fiduciary or confidential relationship with either of the Plaintiffs. The disposition of the remaining fiduciary duty claims varied based on the applicable state law.

Unjust Enrichment

Finally, the Complaint also included claims for unjust enrichment against all of the Banks. The court reasoned that both Pennsylvania and Maryland law required the Plaintiffs alleging unjust enrichment to show that the validity of a contract itself is actually disputed. Here, the court noted that none of the Banks disputed the *validity* of the remarketing agreements. Rather, the dispute involved the *performance* stemming from the contracts. Accordingly, the court ruled that the unjust enrichment claims against the Counterparty Banks, which were duplicative of the breach of contract claims, must be dismissed.

The court also dismissed the unjust enrichment claims against the Non-Counterparty Banks, holding that both Plaintiffs failed to plausibly allege, as Pennsylvania and Maryland law requires, that these Banks had been enriched at their expense. Rather, as Judge Furman determined, neither Plaintiff had conferred a direct benefit to any Non-Counterparty Bank.

Statute of Limitations

The applicable statute of limitations for the claims brought in this case ranged from two to six years. The statute of limitations is tolled in each relevant jurisdiction where allegations plausibly allege that the Banks concealed their misconduct, and the Plaintiffs' ignorance of the concealed misconduct was not a product of their own lack of reasonable diligence. Accordingly, the court held that the alleged misconduct conduct was secret and covert by its very nature, and further ruled that a determination of the Plaintiffs' diligence in uncovering this conspiracy was premature at the pleadings stage.[10]

Takeaways

Even though Plaintiffs' lawsuit, as well as the DOJ and SEC investigations, are ongoing, banks and other market participants can already draw certain key lessons from the case. Crucially, the case demonstrates that banks and other financial institutions are vulnerable to Federal antitrust claims based on their conduct in financial markets, especially where (as here) courts consider circumstantial 'plus' factors to infer the existence of price-fixing conspiracies.

Financial Institutions

Accordingly, financial institutions should ensure that they have policies in place that prevent anticompetitive conduct similar to what is alleged to have occurred in this case.

In particular, financial institutions should be mindful of communications with other institutions that could imply horizontal conspiracies. Where necessary, financial institutions should retain outside counsel to develop policies and procedures to prevent or, at a minimum, immediately identify improper conduct *before* it develops into a bank-wide or industry-wide problem.

Additionally, all financial institutions, and particularly those that deal with bonds, swaps and other financial instruments, should be cognizant of the ability of municipalities and corporate borrowers to sue them for contractual breaches where there are plausible breaches of the underlying financing agreements. Here, too, financial institutions should work with outside counsel to ensure that their internal policies and external actions minimize conduct that may violate state and Federal laws and regulations, and incentivize employees to reward high ethical standards.

Governmental Entities and Conduit Borrowers

In addition, as always necessary, governmental entities, as well as conduit borrowers (including corporations and, in particular, not-for-profit corporations), should retain sophisticated, experienced and independent counsel and financial advisors to assure an independent review of VRDOs and the associated derivatives instruments so as to avoid repeating the turmoil impacting these instruments during the Great Recession. This is crucial for all financings, and not just VRDOs.

We can always hope…

[1] Due to the COVID-19 pandemic and resultant economic dislocations, general sales and selective sales taxes have likely been most affected, severely straining the financial wherewithal of municipal issuers. The impact will likely not be completely apparent until the end of such governmental entities' fiscal years (typically June 30th). The ten (10) most affected states, in order of highest percentage of tax revenues from these taxes (ranging from 61.7% to 85.1%), are:

1. Texas 6. Tennessee
2. South Dakota 7. Mississippi
3. Florida 8. Indiana
4. Nevada 9. Ohio
5. Washington State 10. Hawaii

In addition, due to disruptions in the oil and gas industry as a result of the pandemic, related severance taxes may also be adversely impacted. The states with significant severance taxes, in order of priority highest percentage of tax revenues from these taxes (ranging from 31.7% to 52.5%), are:

1. North Dakota 2. Alaska 3. Wyoming

Source: “Share of tax revenue in the United States by source FY 2019, by state,” Statista (June 2020).

[2] In deciding the Banks’ motion to dismiss, the court relied on several recent SDNY cases involving interest rates swaps. *See Gelboim v. Bank of Am. Corp., In re Interest Rate Swaps Antitrust Litig.*, 823 F.3d 759 (2d Cir. 2016) (finding that an inter-bank conspiracy was plausibly alleged); *Sonterra Capital Master Fund Ltd. v. Barclays Bank PLC*, 366 F. Supp. 3d 516 (S.D.N.Y. 2018) (denying a motion to dismiss where defendants allegedly colluded to share information, coordinate rate submissions, and engaged in manipulative trading practices); *Alaska Electr. Pension Fund v. Bank of Am. Corp.,* 175 F. Supp. 3d 44 (S.D.N.Y. 2016) (relating to manipulation of ISDAfix, a rate recently confirmed with the Federal Reserve Board of St. Louis (FRED), that as best as it can tell, is derived from LIBOR); and *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 27 F. Supp. 3d 447 (S.D.N.Y. 2014) (dismissing unjust enrichment claims against non-counterparty defendants).

In addition, the court also relied on a separate line of SDNY cases involving other types of market manipulations. *See In re Foreign Exch. Benchmark Rates Antitrust Litig.,* 74 F. Supp. 3d 581 (S.D.N.Y. 2015) (holding that consolidated complaint adequately established antitrust injury); *In re Commodity Exchange, Inc., Gold Futures & Options Trading Litigation*, 328 F. Supp. 3d 217 (S.D.N.Y. 2018) (holding that class failed to state antitrust conspiracy claim); *In re GSE Bonds Antitrust Litig.,* 396 F. Supp. 3d 354 (S.D.N.Y. 2019) (holding that alleged price-fixing conspiracy was inherently self-concealing so as to constitute fraudulent concealment); and *In re Platinum & Palladium Antitrust Litig.,* No. 1:14-CV-9391 (GHW), 2017 WL 1169626 (S.D.N.Y. Mar. 28, 2017) (finding a conspiracy plausibly alleged).

[3] In contrast to a swap which has no up-front cost (though potential substantial costs over time), an interest rate cap has an up-front cost (though with no costs over time) but is often limited to a period shorter than the tenor of the underlying bonds. In deciding between a swap and a cap, the governmental entity will often decide to go with the ‘free’ product (i.e., a swap). It should be emphasized that most banks do not even volunteer a cap option due to its limited profit potential for the bank (and the banker).

[4] The Bond Buyer.

[5] Id.

[6] Id.

[7] Parallel allegations against banks and other institutions were made in the SDNY cases referenced by the court in Footnote 2 above.

[8] *See Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 556 (2007).

[9] This is consistent with many of the SDNY cases referenced in Footnote 2 above.

[10] Here, the court also ruled that, at the pleading stage, discovery would be appropriate for the parties to develop their claims and defenses. *See In re Issuer Plaintiff Initial Pub. Offering Antitrust Litig.*, No. 00-CV-7804 (LMM), 2004 WL 487222, at *4 (S.D.N.Y. Mar. 12, 2004) (denying motion to dismiss where relevant statute of limitations had been tolled due to alleged covert rate-fixing conspiracy).

Arent Fox

December 3, 2020

Opportunity Zones: Past, Present, and Future, with Rachel Reilly.

With a new President taking office next month, what does the future hold for Opportunity Zones? And what policy reforms under a Biden-Harris administration would improve the policy such that it more closely adheres to legislative intent?

Rachel Reilly is former director of impact strategy at Economic Innovation Group, a bipartisan public policy organization that helped to create the Opportunity Zone legislation.

Continue reading.

Opportunity Db

By Jimmy Atkinson

December 2, 2020

Illinois Plans to Borrow Another $2 Billion From Federal Reserve.

- **It comes after state already borrowed $1.2 billion from Fed**
- **Fed's municipal lending program is set to end Dec. 31**

Illinois plans to borrow an additional $2 billion from the Federal Reserve in an effort to prop up its already-struggling finances as the state's bills rise amid the pandemic

It would be the second time the worst-rated state has borrowed through the central bank's Municipal Liquidity Facility, an emergency lending program for state and local government issuers. Illinois already borrowed $1.2 billion from the Fed during fiscal year 2020 to cover pandemic-induced losses, and has since repaid $200 million of that loan, according to the governor's office.

"Short-term borrowing is a short term band-aid to address the urgency of a short-term problem like one caused by a pandemic," Governor J.B. Pritzker said during a virtual press conference on Wednesday.

Illinois is the only state to tap the Fed's borrowing program so far and is at risk of seeing its debt cut to junk. The pandemic worsened Illinois's already strained finances: the state is struggling with $137 billion of pension debt and $7 billion of unpaid bills. Illinois is projecting a fiscal 2021 budget gap of about $3.9 billion and deficits are expected to continue through 2026, according to a Nov. 13 forecast from the Governor's Office of Management and Budget.

Yield Penalty

Investors have long punished Illinois for its fiscal woes, boosting the penalty the state pays to borrow from the bond market. Illinois 10-year general obligation bonds yield about 2.77 percentage points more than benchmark debt, the highest of the 20 states tracked by Bloomberg.

The state still has market access, but it's not a surprise that officials are turning to the Fed, said Daniel Solender, head of municipal securities at Lord Abbett & Co., which manages $30 billion of state and local debt, including Illinois bonds.

“It makes sense to use it while they can,” said Solender. “The reason they’re using the facility is because the cost for them in the market, it’s higher for them than other states.”

Spending Cuts

The decision comes after Illinois voters rejected a ballot measure that would have let the state raise taxes on its wealthiest residents, a key component of Pritzker’s plan to balance the budget. Since the failure of the graduated income tax proposal, Pritzker, a billionaire Democrat, has warned of potential spending cuts for public safety, education and health services.

Pritzker said the new borrowing is less than half of the $5 billion authorized, and that it would be “irresponsible” to saddle the state with the full amount. He said the state plans to repay the debt “as early as possible.”

“The $2 billion is necessary given that this targeted borrowing will allow us to stabilize Illinois’ health care system in the middle of a global pandemic and a COVID-19 spike here in Illinois,” Illinois Comptroller Susana Mendoza said in an emailed statement.

Mendoza plans to use the loan to pay medical bills for which the state receives federal matching dollars and also to avoid late-payment interest penalties, she said. The borrowing will be repaid over a three-year period and any new federal stimulus will be earmarked to repay the loan, according to Mendoza.

Dec. 1 is the last day for state and local governments to notify the Fed of their intent to tap the program before it expires on Dec. 31.

Bloomberg Markets

By Nic Querolo and Shruti Singh

November 25, 2020, 2:56 PM PST

Pittsburgh Sports Authority Bond Rating Slashed by S&P.

The municipal authority that owns Pittsburgh’s pro football, baseball and hockey stadiums had its ratings cut down two notches, from A-plus to A-minus, by S&P Ratings to reflect“a steep drop in pledged hotel tax revenue, a direct result of the severe toll of the pandemic,” the agency stated in its ratings note.

The Pittsburgh & Allegheny Sports & Exhibition Authority owns the Steelers’ Heinz Field, the Pirates’ PNC Park and the Penguins’ PPG Paints Arena, as well as the city’s convention center and some infrastructure, such as parking garages and roads near sports facilities. As part of building and maintaining those properties, the sports authority has $585 million in municipal bond debt outstanding. The A rating is the bottom of three “strong” credit ratings S&P Ratings maintains. The A rating , like most other S&P scores, can be further rated a “plus,” “minus” or standalone. “We anticipate either cash on hand or debt service reserve may need to be tapped to meet debt service due in February 2021, unless there is further revenue growth in the coming months,” the agency wrote.

Pledged revenues supporting the sports authority’s bonds were down 59% year to date through

September, to about $11.3 million, according to S&P. Based on earlier disclosures by the authority, revenue was on par with prior years in the first quarter of the year, then plunged starting in April. The bonds are initially backed by two hotel taxes of 5% and 2% on room transactions. With annual debt service of $54 million on the sports authority bonds, Pittsburgh will fall well short of what's needed.

Yet according to a September report from the Allegheny Institute for Public Policy, while the sports stadiums are technically revenue-backed bonds that would default if tax revenue continues to drop, a series of side agreements with Pennsylvania means the pro teams' home arenas will continue to have their debt paid on time. For PPG Paints Arena, the state signed a 2014 deal to pay the rink's debt service if other revenues fall short. Similarly, any unmet balance in the football and baseball stadium payments gets covered by the state annually through another side deal. The net effect is that while other tax revenue-supported facilities in Pittsburgh have had budget cuts due to lower revenue, the sports facilities haven't. "So, while parks, libraries, the zoo, the aviary and numerous other organizations took cuts, the [sports] debt allocation was unchanged," economist Eric Montarti wrote in the Allegheny Institute analysis.

The bond rating's downgrade doesn't have an immediate effect on the Pittsburgh sports authority itself. A drop in the credit rating means those people owning the existing bonds will experience a drop in value. The sports authority would likely be affected by higher borrowing costs in the future, however. A 2017 study found that every notch of ratings downgrade cost issuers an average of six basis points (100 basis points equals one percentage point). A 12-basis-point shift would mean Pittsburgh paying $120,000 more in interest on a $100 million A-minus bond than it would pay on one rated A-plus.

Yahoo Sports

by Brendan Coffey

November 24, 2020

MSRB EMMA 529 & ABLE Tutorial.

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More Information

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Bond Dealers of America

December 3, 2020

- **Ed. Note:** We'll be off next week. Double dose o' drivel 12/8.
- Regulator Joint Statement Highlights Need to Move on from LIBOR (But For Some, Not Necessarily to SOFR) – McGuireWoods
- The Transition Out of LIBOR: What State and Local Governments Should be Discussing with Their Financing Teams
- IRS PLR: City's Geographic Boundaries Constitute Qualified Service Area
- Treasury Releases Priority Guidance Plan.
- S&P: Approval Of Nontraditional Revenues Dominates Recent Ballot Measures For U.S. State And Local Governments.
- S&P: The Post-Election Landscape For U.S. Public Finance
- Without Fed's MLF, Stakeholders Warn of a Fragile Future for Munis.
- Ethical Considerations in a Digital World: Live NABL Webinar – (Whee! CLE!)
  And finally, Great Moments in Judicial Rhetoric is brought to us this week by *Faulkner v. Crumbley*. Imagine this: you've worked your way through college; LSATs; law school; clerkships; Big Law; dickhead partners (you know who you are); appointment to the Superior Court; and finally a gig on the Court of Appeals of Georgia; only to find yourself writing this piece of soaring legal rhetoric, "the Crumbleys presented testimony evidence that three cows, not just one, were on the road the night of the accident…" It was a dark and bovine night.

SCHOOL IMPACT FEES - CALIFORNIA

AMCAL Chico LLC v. Chico Unified School District

Court of Appeal, Third District, California - November 5, 2020 - Cal.Rptr.3d - 2020 WL 6498638 - 20 Cal. Daily Op. Serv. 11,591 - 2020 Daily Journal D.A.R. 12,009

Developer of private dormitory for students at state university within school district boundaries brought action for refund of school impact fees imposed by school district.

The Superior Court granted school district's motion for summary judgment, and developer appealed.

The Court of Appeal held that district was not required to determine whether dormitory would generate new students for school district in order to justify fee.

School district was not required to determine whether private residential dormitory for state university students would generate new students for school district in order to justify imposition of school impact fee based on study analyzing all new residential construction.

A school district need not make an individualized determination for each particular development project before imposing school impact fee; instead, the school district must make findings based on the general type of construction, such as residential construction.

School impact fee imposed on new private residential dormitory for state university students, which was based on general study of new residential development and impact on school facilities, was reasonable and complied with the Mitigation Fee Act, and thus was not an invalid special tax.

School impact fee imposed on new private residential dormitory for state university students was not a taking without payment of just compensation, as fee complied with the Mitigation Fee Act.

Developer fees generally do not constitute a taking if the fee is reasonably related to the impacts of the type of new residential development on the school district's school facilities and meet the requirements of the Mitigation Fee Act.

PREEMPTION - GEORGIA

Faulkner v. Crumbley

Court of Appeals of Georgia - November 2, 2020 - S.E.2d - 2020 WL 6389973

Driver and her passenger, who were injured when their vehicle struck a cow standing in the roadway, brought negligence action against cow's owners. The Superior Court denied cow owners' motion for summary judgment, and they appealed.

The Court of Appeals held that:

- Summary judgment evidence that there were three stray cows on roadway, rather than just one, without more, did not create genuine issue of fact that cow's owners breached their duty to keep their livestock off the road, and
- State statute, providing that no owner shall permit livestock to run at large on or to stray upon the public roads of the state or any property not belonging to owner of the livestock, except by permission of owner of such property, preempted county ordinance.

EMINENT DOMAIN - NEBRASKA

Douglas County School District No. 10 v. Tribedo, LLC

Supreme Court of Nebraska - November 6, 2020 - N.W.2d - 307 Neb. 716 - 2020 WL 6533474

Landowner sought review of board of appraisers' award of $2.6 million for school district's condemnation of approximately 43 acres of landowner's 74-acre tract, which landowner planned to develop into a mixed-use development, for a new high school site.

The District Court entered judgment upon jury verdict awarding landowner $4.6 million in just compensation. School district appealed.

The Supreme Court held that:

- Trial court acted within its discretion in admitting expert testimony regarding diminution of market value to remaining property;
- Any error in trial court's refusal to give proposed jury instruction relating to remaining property did not prejudice school district;
- Sufficient evidence supported jury's $4.6 million award; and
- Trial court acted within its discretion in awarding landowner $591,000 in attorney fees.

Trial court acted within its discretion in admitting expert testimony of developer's real estate appraisers regarding diminution of market value to developer's remaining property following the taking of portion of its 74-acre tract for new high school site, where experts detailed numerous elements that influenced their valuations, including dirt fill and leveling costs, and both appraisers testified that their references to damages related to a reduction in fair market value.

Any error in trial court's refusal to give condemnor's proposed jury instruction relating to remaining property following the taking, which stated that the "costs to cure" could be considered only if they had an impact on fair market of remaining property, did not prejudice condemnor, even though instruction was a correct statement of law, where substance of proposed instruction was consistent with instructions the court gave on measure of damages to remaining property.

Sufficient evidence supported jury's total award of $4,625,967 as compensation for both the taken property and diminution to fair market value of the remainder, for the condemnation of approximately 43 acres of a 74-acre tract that condemnee planned to develop into a mixed-use development instead of new high school site that was the reason for the taking, where condemnee's first real estate appraiser valued total compensation at $5,890,000, condemnee's second appraiser valued total damages at $7,022,000, and condemnor's real estate appraiser valued total damages at $2,601,600.

Trial court acted within its discretion in awarding condemnee $590,924.89 in attorney fees in condemnation proceeding resulting in judgment of $4,625,967 for condemnee, where condemnee offered affidavits of three members of State Bar who testified that they reviewed fees charged by condemnee's attorneys, that they received a detailed summary of work provided by counsel, and that they found requested fees to be reasonable, and court provided detailed explanation for fee award, including an acknowledgment that judgment exceeded condemnation award by more than 75%, that judgment was believed to be one of largest jury awards in a condemnation matter in a reported decision in state, that litigation was fairly complex, and that litigation persisted for over two and one-half years.

INCORPORATION - SOUTH DAKOTA

State through Attorney General v. Buffalo Chip

Supreme Court of South Dakota - November 10, 2020 - N.W.2d - 2020 WL 6601926 - 2020

S.D. 63

State filed a petition for, or in the nature of, a writ of quo warranto seeking a judgment declaring that campground did not lawfully incorporate as a municipality, after the Supreme Court concluded that county residents and neighboring city lacked standing to challenge the incorporation.

The Circuit Court granted State's motion for summary judgment. Campground appealed.

The Supreme Court held that:

- As a matter of first impression, statute that barred suits seeking to annul the existence of an actually incorporated municipality did not apply;
- State was not barred by doctrines of laches, estoppel, and waiver from bringing petition; and
- A municipality is prohibited from incorporating if it contains less than 100 residents or if it contains less than 30 voters.

Statute that barred suits seeking to annul the existence of a municipality that had actually incorporated did not apply to State's petition for writ of quo warranto that sought judgment declaring that campground did not lawfully incorporate as a municipality; State did not allege that campground abused its powers or surrendered its charter as legally existing corporation, but rather State sought to prevent campground from further acting as municipal corporation because it did not lawfully incorporate in the first instance.

State was not barred by doctrines of laches, estoppel, and waiver from bringing petition for writ of quo warranto that sought judgment declaring that campground did not lawfully incorporate as a municipality, despite contention that State would have known from census that campground did not have requisite 100 residents when it sought to incorporate and State should have challenged its existence then; no statute required State to institute action prior to a municipality's purported incorporation, and Secretary of State's filing of certified copy of canvas of votes in favor of incorporation was ministerial act that could not operate as waiver.

A municipality is prohibited from incorporating if it contains less than 100 residents or if it contains less than 30 voters; under either scenario, a municipality is not allowed to incorporate.

EMINENT DOMAIN - UTAH

Salt Lake City Corporation v. Kunz

Court of Appeals of Utah - October 16, 2020 - P.3d - 2020 WL 6106942 - 2020 UT App 139

City initiated action against owners of land south of airport acquired by city to obtain aviation easement by condemnation over airspace south of airport runway.

The Third District Court dismissed condemnation action. City appealed and owners cross-appealed.

The Court of Appeals held that:

- Owners' admissions at hearing on motion for partial summary judgment were limited in applicability to then-pending motions before trial court;
- Ruling on partial summary judgment motion did not rule on issue of whether city complied with notice and disclosure requirements;
- Notice to owners of eminent domain proceedings was inadequate to initiate condemnation for

aviation easement;
- Actual notice and previous opportunities to be heard did not amount to compliance with notice and disclosure requirements;
- Owners were not required to show prejudice with respect to violation of notice statute; and
- Trial court did not err by not allowing city to amend complaint.

Land owners' admissions in May 2009 hearing on motion for partial summary judgment, on issue of city's authority to condemn air rights over owners' land, that certain facts were "undisputed for the purposes of the current motions" were limited in their applicability to the then-pending motions before the district court, and thus trial court did not err in failing to consider ruling when dismissing city's condemnation complaint for failing to follow notice and disclosure requirements, where admissions came in response only to issue of extraterritorial eminent domain power, owners never withdrew immediate occupancy deposit including defense that city had not followed notice procedures, and city propounded discovery request for documents related to that defense.

Language in prior ruling for partial summary judgment on issue of city's extraterritorial eminent domain power in action to obtain avigation easement over airspace south of airport, that one of undisputed issues was that owners "were provided with timely and proper notice regarding condemnation efforts" did not amount to ruling on issue of whether city gave land owners proper notice and disclosure required by statute, and thus reconsideration of issue was unnecessary on appeal; partial summary judgment ruling merely identified that notice issue was not in dispute as it related to city's extraterritorial eminent domain power.

Notice to land owners of eminent domain proceedings regarding airspace over land they owned south of airport did not adhere to statute's directive regarding timing of that notice, and thus was inadequate to initiate condemnation for avigation easement, although notice for first meeting complied with statutory requirements, where owners were allowed to speak at second meeting but were not sent written notice of meeting at least ten business days in advance, and notice for third meeting arrived only three business days before meeting and owners were not allowed opportunity to be heard.

Statute governing notice requirements for condemnation proceedings required strict compliance, and thus actual notice to land owners of eminent domain proceedings regarding air rights over land they owned south of city's airport, and previous opportunities to be heard on issue did not fulfill purposes of statute to provide abundant procedural fairness to property owners.

Trial court did not err by not allowing city to amend complaint to obtain avigation easement over airspace south of airport through condemnation; city failed to adequately explain why amendment should be granted, failed to provide proposed amended complaint for consideration, and amendment would be futile since city could not retroactively follow statutory preconditions for condemning private property rights.

HIGHWAYS - VERMONT

In re Diverging Diamond Interchange Act 250

Supreme Court of Vermont - November 6, 2020 - A.3d - 2020 WL 6534557 - 2020 VT 98

Objector sought review of Environmental Commission's decision granting Agency of Transportation's application for an Act 250 land use or development permit for highway project involving reconfiguration of interstate exit, citing concerns of phosphorus and chloride discharges

into impaired lake.

The Superior Court, Environmental Division, granted permit and entered a postjudgment motion clarifying its decision. Objector appealed.

The Supreme Court held that:

- Environmental Division did not apply an improper de minimis standard in determining whether project would cause undue water pollution;
- Mere possibility of additional mitigation measures, without more, did not require a finding that phosphorus discharge was undue pollution;
- Environmental Division did not improperly afford Agency a presumption of compliance with criterion of no undue pollution;
- Environmental Division did not improperly shift burden of proof to objector with respect to issue of chloride pollution;
- Finding that project would not cause undue chloride pollution was not clearly erroneous; and
- Environmental Division acted within its discretion in not joining town as a necessary co-applicant.

Environmental Division did not apply an improper de minimis standard in determining whether proposed project would cause undue water pollution precluding grant of an Act 250 land use or development permit sought by Agency of Transportation for highway project involving reconfiguration of interstate exit, even if Division characterized amount of phosphorus discharged by project into impaired lake as exceedingly small, where Division considered testimony from both parties' experts regarding amount of phosphorus discharges, Division agreed with objector that there was no automatic allowance for de minimis water pollution, and Division also weighed project's compliance with applicable regulations, ability of floodplains to retain phosphorus, and available mitigation measures.

Mere possibility of additional mitigation measures, without more, did not require a finding that water pollution from phosphorus discharges into impaired lake was undue water pollution that would preclude grant of an Act 250 land use or development permit sought by Agency of Transportation for highway project involving reconfiguration of interstate exit, where Agency provided evidence of a carefully designed stormwater treatment system that used grass channels to remove phosphorus, and objector's expert testified that additional mitigation measures were available but could not quantify the expected reduction in phosphorus load or offer an opinion as to effect of reductions.

Environmental Division did not improperly afford Agency of Transportation a presumption of compliance with criterion of no undue water pollution for granting an Act 250 land use or development permit based on existence of stormwater permit for highway project involving reconfiguration of interstate exit; stormwater permit vested in regulations that did not include specific standards for phosphorus or chloride discharges, Division was concerned about strength of a presumption arising out of project's circumstance because phosphorus or chloride discharges were at issue, and Division expressly evaluated each pollutant on the merits rather than relying upon a presumption.

Environmental Division did not improperly shift burden of proof to objector with respect to issue of undue chloride pollution from proposed highway project involving reconfiguration of interstate exit, in determining whether grant Agency of Transportation's application for an Act 250 land use or development permit, where Division considered all evidence presented by Agency, including statewide snow and ice control plan, project's chloride management plan, and extensive expert testimony, Division concluded that Agency satisfied its burden based on that evidence, and Division

then considered objector's evidence and concluded that it was insufficient to disturb that conclusion.

Environmental Division did not clearly err in finding that proposed project would not cause undue chloride pollution that would preclude grant of an Act 250 land use or development permit sought by Agency of Transportation for highway project involving reconfiguration of interstate exit, even though Division did not have evidence before it about chloride use by town that was responsible for maintaining portion of project, where Agency witness testified that town's plan was reasonable and accorded with Agency's statewide snow and ice control plan, Agency had agreement with town detailing town's responsibility for winter road maintenance, and order granting permit provided that project was required to abide by conditions imposed by District Commission including chloride management plan.

Environmental Division acted within its discretion in not joining town as necessary co-applicant on appeal of Environmental Commission's grant of Agency of Transportation's application for an Act 250 land use or development permit for highway project involving reconfiguration of interstate exit, where Agency effectively controlled land such that appropriate permit conditions could be imposed on project, project's chloride management plan accorded with Agency's snow and ice control plan and also incorporated town's snow and ice plan by reference, Agency's expert testified that town's plan was reasonable, permit required Agency to perform winter road management in accordance with chloride management plan, and Agency's agreement with town required town to abide by chloride management plan.

PUBLIC PENSIONS - WASHINGTON

Wilson v. Washington State Department of Retirment Systems

Court of Appeals of Washington, Division 1 - November 2, 2020 - P.3d - 2020 WL 6389986

Retired city police officer sought judicial review of Department of Retirement Systems decision to deny him retirement benefits because, after leaving the police force, he took a new job as chief of staff for the city mayor.

The Superior Court reversed, and Department appealed.

The Court of Appeals held that:

- Retired officer could assert equitable estoppel as a defense;
- Department was equitably estopped from denying retired city police officer his pension benefits; and
- Officer was entitled to attorney's fees under the Equal Access to Justice Act (EAJA).

Retired city police officer could assert equitable estoppel as a defense to Department of Retirement System's defense of not paying him his pension because of his alleged breach in taking job as chief of staff for mayor; retired officer was due his pension and had, in essence, a contractual right to his pension benefits, and to contest the Department's denial of his pension, his only remedy was to appeal the decision.

Department of Retirement Systems was equitably estopped from denying retired city police officer his pension benefits on grounds he accepted job as city mayor's chief of staff; Department publications uniformly explained that an employee could return to work in the public sector and maintain their benefits by opting out of any other retirement program, city called and confirmed that information before hiring officer, officer relied on that information by resigning his law enforcement

commission, terminating his employment as chief of police, and filling out the Department's form for returning to work, and retroactive application of Department's new requirement that a retiree have no reasonable expectation of continuing employment with the employer at the time of separation would be manifestly unjust to retired officer.

Department of Retirement System's application of is new interpretation of "separated from service," which provided that, to obtain pension benefits, a retiree have no reasonable expectation of continuing employment with the employer at the time of separation, to retired city police officer who took job as city mayor's chief of staff was not substantially justified, and thus officer was entitled to attorney's fees under the Equal Access to Justice Act (EAJA); Department's website, publications, training, and oral representations confirmed the department's historical interpretation of "separation of service" before officer retired, and there was no notice of any change of interpretation before it was applied to officer.

TAX - NEW YORK

Wells Fargo Bank, N.A. as Trustee for Carrington Mortgage Loan Trust, Series 2006–NC2 Asset- Backed Pass-Through Certificates v. Budram

Supreme Court, Appellate Division, Third Department, New York - November 5, 2020 - N.Y.S.3d - 2020 WL 6493824 - 2020 N.Y. Slip Op. 06323

In action by mortgagee to enforce its mortgage after taxpayer-mortgagors reacquired property from city following tax foreclosure sale, the Supreme Court entered order dismissing complaint and, upon reargument, adhered to its prior decision dismissing complaint.

The Supreme Court, Appellate Division, held that any transfer of real property from city back to taxpayers, after the city had acquired a fee simple interest therein by a deed issued following tax foreclosure sale, could not be considered a redemption of the property or a rescission of the tax foreclosure, and did not restore mortgage lien.

Any transfer of real property from city back to taxpayers, after the city had acquired a fee simple interest therein by a deed issued following tax foreclosure sale, could not be considered a redemption of the property or a rescission of the tax foreclosure, and did not have effect of restoring mortgage lien which had been extinguished upon city's acquisition of fee simple interest in property by the issuance of deed following expiration of taxpayer-mortgagors' right of redemption; mortgagee, having made no attempt to protect its mortgage interest in tax foreclosure proceeding, could not attempt to enforce its mortgage once taxpayer-mortgagors reacquired the property from city.

S&P: Approval Of Nontraditional Revenues Dominates Recent Ballot Measures For U.S. State And Local Governments.

Key Takeaways

- Legalization of gaming and drugs continued to expand, with seven states approving new or additional taxing power from nontraditional revenue sources.
- Results from income tax increases were mixed, with the three major initiatives resulting in three different outcomes.
- Only two states had bond referendums on the ballot this year, but they all passed.

- Highlights from local government elections include some changes in property tax exemptions and police reforms in light of recent demonstrations across the country.

Voters weighed in on statewide ballot measures in 22 states on Nov. 3. Many of these were approved, with a clear preference for increasing “sin tax” revenues from gaming and legalized drugs. At S&P Global Ratings, our primary focus on ballot results is how credit quality could be affected; this generally stems from revenue increases and decreases, or a notable rise in expenditures. As more states turn to nontraditional revenue sources to support operations, we are also watching the long-term trend and stability of the new revenues.

Widespread Support Of Nontraditional Revenue Sources Including Gaming/Sports Betting, Marijuana

In recent years, various states have looked to legalization–and subsequently taxation–of retail marijuana. This seemed to continue with overwhelming support from voters, as all such measures on the ballots across the country passed. Arizona, Montana, New Jersey, and South Dakota approved the legalization of recreational marijuana, while voters in Mississippi and South Dakota approved medical marijuana programs. Colorado legalized marijuana some years ago, but this November asked voters for an increase in the nicotine tax, and Oregon increased taxes on tobacco products. We expect that more states will pass measures like this but expect their overall effect on state finances to be marginal. Additionally, as more states legislate these kinds of revenues, we expect that as legalization of marijuana becomes more widespread, the growth of revenues from these taxes will slow over time as marijuana becomes more readily accessible. (See our report, “Is Marijuana Legalization The Answer To States’ Budget Pressures?,” published Feb. 21. 2019, on RatingsDirect)

Measures to expand gaming and betting also received support, with Nebraska approving three measures including enacting taxes on racetrack activities. Maryland and South Dakota also expanded gaming activities within the states. While not a statewide measure, Louisiana’s voters approved sports betting in a majority of its parishes. All states that permit commercial casino gaming levy some form of wagering tax on adjusted gross receipts or gross gaming receipts less any payout for prizes.

Although none of these nontraditional sources make up significant components of a state’s revenue, we do view the diversity of revenue sources as a net positive.

Mixed Results For Income Tax Changes

Three states had income tax changes on the ballot (Arizona, Colorado, and Illinois). While a voter initiative to reduce income tax rates passed in Colorado (to 4.55% from 4.63%), in Arizona voters approved an initiative to increase income tax on residents with incomes above $250,000. The measure sets up a separate tax bracket for residents that would increase the top rate to 8% from 4.5% on incomes above $250,000 (or $500,000 for joint filers). The additional revenue derived from the increased tax rate will be used solely to fund education.

Additional revenues at the state level can bode well for state revenue sharing for schools and local governments, and results for state-level tax increases varied. When revenue increases at the state level either enhance—or stave off cuts—to locals, the credit impact can be net positive.

Illinois voters did not approve a legislative measure to replace the state’s flat income tax rate with a graduated income tax, which would have been significant in addressing the state’s current budget challenges. (For additional information, see our summary report for Illinois published Oct. 7, 2020.)

Limited support for increased income taxes is not surprising, particularly during an economic contraction. However, if this trend continues, states will have to look to other options to balance budgets as the effects of the COVID-19 pandemic on state revenues contribute to varying degrees of budget and liquidity stress across states.

There is no immediate credit impact for local governments in Arizona, Illinois, or Colorado as a result of the electorates' vote on income tax, but we are watching how it could affect local operations over the long term.

Few Requests For State Bond Issuances During A Tepid Economic Recovery

Two states, California and New Mexico, included new bond authorization questions this year, unlike in 2018 when six states had bond authorizations on the ballot. New Mexico was successful, as was California. Such authorizations can provide funding for various programs, taking advantage of favorable market conditions. In our view the decline of bond authorization measures could reflect the uncertainty of the recovery from the recent COVID-19 induced recession. S&P Global Ratings has noted that in the decade following the Great Recession state governments generally reduced their overall debt burden. (See "Infrastructure After COVID-19: Risk Of Another Lost Decade Of U.S. State Government Capital Investment," Oct. 2, 2020.)

Local Government: Some Shifts In Who Bears The Property Tax Burden

Across the U.S., voters approved multiple statewide measures that resonate down to the local government level. This includes some indication of an incremental shift in property taxpayers from residents to business, such as more homestead exemptions for segments of society such as veterans and senior citizens. Measures supporting these changes passed in Florida, Virginia, Louisiana, and New Jersey. These changes also represent a shift to more support for the social 'S' in ESG. Exceptions to this include votes in California and Colorado where voters decided not to shift the property tax burden more heavily to businesses:

California's property tax regime under Proposition 13 remains intact: A proposed seismic shift that would have changed the manner in which assessed valuations are determined for business properties (Proposition 15) was narrowly defeated, while amendments to Proposition 13 at the margins, such as those that benefit seniors, continue to be approved (Proposition 19).
Repeal of the Gallagher Amendment in Colorado (Amendment B) resulted in stopping residents' property tax rollbacks which had ultimately shifted more burden to businesses.

Local Law Enforcement Reforms

Following a summer marked by police protests in the wake of the May killing of George Floyd in Minneapolis, 14 cities and counties had elections addressing policing policies and procedures. Questions were on the ballot in seven states, from California to Ohio. Initiatives designed to change police duties, limit general funds spent on police operations, establish oversight boards and improve transparency found broad support in jurisdictions across the U.S., with 15 of 20 passing. For the most part, the changes are not expected to affect credit quality. However, should they result in notable revenue or expenditure changes that affect a jurisdiction's financial position, there could be an impact.

This report does not constitute a rating action.

Fitch Ratings Releases U.S. Public Finance Transition and Default Study.

Related Fitch Ratings Content: U.S. Public Finance 2019 Transition and Default Study

Fitch Ratings-New York-17 November 2020: U.S. Public Finance rating activity was largely positive in 2019, resulting in downgrades trailing upgrades by a ratio of 0.6 to 1, according to a recently published study by Fitch Ratings. However, USPF rating activity through October 2020 reversed the positive trend, with downgrades exceeding upgrades by 1.7 to 1.

U.S. Public Finance accounted for one speculative grade default in 2019, the charter school Cambridge Academy East, AZ, with debt issued by the Industrial Development Authority of Pima County, AZ. The resulting 2019 U.S. Public Finance default rate was 0.03%.

The average annual default rate remained low at 0.04%, across the historical 1999-2019 period.

This new study provides transition and default analysis on Fitch's U.S. Public Finance ratings in 2019 and over the long-term period from 1999-2019. The report provides summary statistics on 2019's key U.S. Public Finance rating trends.

The full 'U.S. Public Finance 2019 Transition and Default Study' is available at www.fitchratings.com.

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Fitch Ratings Updates Criteria for US NFP Hospitals & Health Systems and State Revolving Funds.

Related Fitch Ratings Content:

- U.S. Public Finance State Revolving Fund and Municipal Finance Pool Program Rating Criteria
- U.S. Not-For-Profit Hospitals and Health Systems Rating Criteria

Fitch Ratings-Austin-18 November 2020: Fitch Ratings has made minor updates to its 'U.S. Not-For-Profit Hospitals and Health Systems Rating Criteria' as part of the routine criteria review process. This update replaces the criteria report of the same name published in November 2019.

The changes are not substantive in nature and include updates to language regarding leases and official acceptance of the Portfolio Analysis Model (PAM) to conduct portfolio sensitivity analysis.

Fitch has also made minor updates to its 'U.S. Public Finance State Revolving Fund and Municipal Finance Pool Program Rating Criteria.' The update replaces the Fitch Analytical Stress Test (FAST) model with PAM as the model used to conduct portfolio analysis, where appropriate.

Fitch does not expect any impact on existing ratings from the updates to either criteria.

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S&P: COVID-19 Activity In U.S. Public Finance

Read the S&P Report as of 11/17/20.

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Read the S&P Report.

U.S. 2020 Election Investment Pulse: Neutral To Positive For Municipals.

Summary

- Many of the policies that a president will ultimately decide can be impactful. For example, tax policy, which could impact a state or local government's ability to raise their own taxes and impact demographics. But another impact is that it can also increase the attractiveness of munis as an asset class for investors.
- Regardless of how the two Georgia Senate runoffs are decided, we really don't expect Democrats to have the majority in the Senate that they really need to help Biden carry his policies through at the level he wanted. So we do expect there to be some gridlock, and that could hamper some of his policies.
- We're expecting additional stimulus, which should help stabilize some of the issues at the state and local levels. And then, we did see a lot of bond measures pass in the November ballot. And so, we expect there to be more bonds.

Continue reading.

Seeking Alpha

Nov. 19, 2020

Fitch: US Election Largely Credit-Neutral to Healthcare Sectors

Fitch Ratings-New York-17 November 2020: US election results are neutral to the credit profiles of corporate, not-for-profit and insurance issuers in the healthcare sector but legislative uncertainty remains, says Fitch Ratings. A divided Congress, due to a presumptive Republican-controlled Senate will translate into legislative gridlock but there is potential for some compromise, given President-Elect Joseph Biden's long career in the Senate. The fate of the Affordable Care Act (ACA) and support for Biden's healthcare proposals in the Senate are key credit-related items to watch.

Prior to the election, Fitch's U.S. corporates, not-for-profit and health insurance analysts studied the credit implications of three electoral outcomes. The scenarios were the status quo, reflecting a Donald Trump victory and a Republican-controlled Senate; a Democratic-party sweep, where Biden

wins and Democrats control Congress; and a divided government, where the Presidency and Congress are controlled by different political parties. The Republicans currently hold a 52-48 majority in the Senate. If Democrats, which already control the House of Representatives, win the two Senate seats in the January runoff, they would also control the Senate due to Democratic Vice-President-Elect Kamala Harris' ability to cast tiebreaking votes.

Healthcare policy proposals outlined by Biden aim to build upon the ACA, which is being challenged before the Supreme Court of the United States (SCOTUS), but some proposals may still be viable even if the ACA does not survive. A decision on whether to strike down or uphold the law is anticipated by mid-2021.

Biden's proposals include expanding coverage, lowering healthcare and prescription drug costs and ending surprise billing. Bipartisan support on some less controversial proposals, including curbs on surprise billing and lowering drug prices, may be possible. The addition of a public insurance option and lowering Medicare's age eligibility seem less likely, given the pandemic's negative impact on the federal budget.

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S&P: The Post-Election Landscape For U.S. Public Finance

With the presidential election over, S&P Global Ratings offers a focus on the post-election landscape and what will be the key drivers related to credit across the broad and diverse U.S. municipal market. While U.S. fiscal federalism allows significant autonomy for the state and local government and enterprise obligors that comprise the municipal market, there are clearly fiscal interdependencies as well as regulatory and policy linkages with the federal government that influence their credit quality. Although there were substantive differences in the campaign platforms (see "U.S. Election: Promises, Policy, And The Potential Effects On The Economy And Corporate Credit," published Oct. 19, 2020, on RatingsDirect), actual policy shifts during President-elect Joe Biden's tenure will depend in part on the composition of Congress, which will be finalized in January. Administrative actions will also be something to watch. In the graphic above we highlight key issues we think will require credit focus across U.S. public finance. Below, we offer more detailed sector-specific views.

States: Uneven Economic Rebound And Policy Uncertainty Continue

The ongoing COVID-19 pandemic and subsequent recession have affected the credit quality of states; over a quarter of our ratings in the sector have a negative outlook or have been downgraded, to date. A path to economic recovery remains unclear and shows meaningful regional variations. States have been aided by existing federal stimulus packages in funding pandemic response costs, but there has been little in the way of replacement of lost revenues. The November ballot measures were successful in legalizing recreational drugs and various types of gaming. Both will continue to provide new and additional revenues to states where taxed, although the amount of the revenue is not significant in replacing revenue streams lost to the pandemic. Other tax-raising measures on a statewide level generally failed. Some states continue to face budgetary imbalances for the remainder of fiscal 2021 as well as into fiscal 2022. For credit maintenance we would expect to see a number of options being utilized to balance current and out-year budgets, including expenditure cuts, reserve draws, other revenue raising options, and even limited deficit borrowings. There remains a possibility of additional federal stimulus, although it will likely have with more restrictions on use.

Fiscal policy with focus on health care

Federal grants to state and local governments are concentrated in three major functions: health; income security; and education, training, employment, and social services. The most significant single program area is grants to states for Medicaid–estimated at $458 billion of federal outlays to states in fiscal 2020, up from $370 million in fiscal 2016, an increase of 24%. The federal budget deficit in fiscal 2020 is estimated to be $3.1 trillion, up from $585 billion in fiscal 2016. Considering that entitlement programs–including Medicaid–are major drivers of the long-term fiscal deficits at the federal level, we expect that these programs will continue to be a short- and long-term focus. The U.S. Supreme Court is currently considering the case California v. Texas that brings into question the constitutionality of the Affordable Care Act (ACA), and with it, potential enforceability and funding to states for Medicaid expansion, which is a centerpiece of the law. Should Medicaid and Medicaid expansion funding be altered, states would need to consider the structure of their health care programs and this would likely lead to changes in the overall budget structure as well.

Infrastructure

From a credit perspective, we continue to look at the various economic policy decisions at the state and federal level. A once bipartisan policy issue that affects credit and economic direction is federal involvement, incentives, and funding of large-scale infrastructure projects. In a recent report we noted that in the decade following the Great Recession there was a $1.5 trillion decline in state capital spending and infrastructure investment, compared to the capital spending growth trends

prior to 2009 (see “Infrastructure After COVID-19: Risk Of Another Lost Decade Of U.S. State Government Capital Investment,” published Oct. 29, 2020, on RatingsDirect). This new paradigm was due to a number of factors, but mostly reflects a challenging operating environment and growing fixed-cost obligations, like pensions and other benefit costs through the lower-for-longer recovery period. A cohesive federal infrastructure program could help avoid another decade of underinvestment in the nation’s infrastructure and concurrently act as an economic stimulus (see “Infrastructure: What Once Was Lost Can Now Be Found–The Productivity Boost,” May 6, 2020).

Energy policy
Another economic policy widely discussed on the campaign trail was around energy. Energy policy, most frequently packaged in a simplistic debate over fracking, could have a credit impact on energy-dependent states, but as we recently wrote (“How Diverging Energy Policies In The U.S. Presidential Election May Affect Credit Quality,” Oct. 23, 2020), we do not expect the Biden energy platform to have a meaningful credit impact on the nation’s oil-producing states, but it could accelerate developing trends toward less mineral extraction. However, an outright ban on new onshore permitting on federal lands could add pressure to certain states like New Mexico and Wyoming which are the largest recipients of federal royalty payments.

Local Government: Post-Election, Credit Pressure Does Not Subside

Stimulus
Local governments remain on the front lines in fighting the pandemic, and with no post-election movement toward a meaningful state and local government stimulus package, we expect some governments will implement sizable expenditure cuts. Many issuers kept aside stimulus received earlier this year in anticipation of a third spike in COVID-19 cases; that will help manage costs but will not cure the budget gaps caused by revenue shortfalls. Severity and duration of this fall’s COVID-19 spike will play an important role in how prepared local governments are for 2021, particularly if any enhanced social distancing measures result in a notable slowdown in economic activity, especially during the holiday season.

Economic/fiscal policy
How much time elapses before a meaningful economic recovery will be a critical part of how local government credit quality is affected by a new president, and we do not anticipate the pace of recovery will be the same for everyone. Our expectation for an uneven health recovery includes both physical and fiscal health, and some regions and states will be hit harder than others. In the meantime, we expect there will be more one-time measures used to close budget gaps, including an increased use of reserves and some deficit bond issuance. Our focus when evaluating the budget balancing strategies of local governments remains on the long-term effect of choices made now, particularly if assumptions for 2021 recovery are optimistic or if one-time strategies include deferring maintenance or reducing pension contributions.

Infrastructure
Looking further out in a Biden Administration, any major infrastructure package that includes local governments and schools would be a win-win in terms of both job creation and facility improvements.

Tax Policy
Reinstatement of tax-exempt advance refundings would be a benefit to governments. Their elimination as part of the Tax Cuts and Jobs Act resulted in more limited refunding options thereby reducing budgetary flexibility.

Pandemic Policy
Although more good news like Pfizer’s announcement last week on a workable vaccine could come

sooner than anticipated, we do not think it is likely to result in a quick return to business-as-usual for local economies; the imbalance is likely to be prolonged. In the meantime, we expect there will be deterioration in credit quality that could result in negative outlook revisions as the economic recovery takes (or doesn't take) shape. This could extend to downgrades in the most acute situations where short-term strategies have clear negative implications for long-term credit strength.

Health Care: ACA Support Is Key, But Watch Pandemic Response And The Supreme Court
We believe that a Democratic administration, and a potentially mixed Congress (or lack of a super majority of Democrats in the Senate depending on the Georgia runoff elections) coupled with the pandemic and economic challenges, is unlikely to yield large health policy changes over the next couple of years. That said, we believe that the incoming administration's support of the ACA and coordination of a national COVID-19 strategy could be a net incremental benefit for not-for-profit acute care providers, as they represent a departure from the policies of the current administration. Other policy initiatives put forth by the new administration may take longer to play out, if implemented, and require additional details to allow for assessment of the impact on the not-fo--profit acute care sector. Finally, the results of the California v. Texas case at the Supreme Court, along with the final determination of the Senate makeup, could have implications for the new administration's efforts to expand coverage and protections established by the ACA, and ultimately for not-for-profit hospitals. There are several key areas that we are watching.

ACA support and expansion
With likely less ability to make major health policy changes such as introducing a public health insurance option or reducing the Medicare age, we believe that the new administration will continue to support the ACA through administrative actions to encourage insurance coverage within the current ACA framework, which we view as incrementally beneficial for not-for-profit acute care hospitals. Examples of actions could include restoring funds for ACA consumer outreach and sign-ups, elimination of short-term health plans, and elimination of certain Medicaid waiver programs with eligibility restrictions.

Other proposals and views of the new administration
If the new administration is able to move forward on larger initiatives such as the public health insurance option or lowering the Medicare eligibility age, we believe it would likely take some time and the impact would initially be incremental and depend on the details. For example, providers could be negatively affected by a public insurance option if reimbursement tilts towards governmental rates and depending on how individuals and employers respond, but this could be partially offset by expanded insurance coverage. Other initiatives that we will monitor include potentially increased scrutiny of M&A activity which could negatively affect a hospital or health system's ability to fulfill strategic growth goals and address specific challenges. We view positively bi-partisan efforts to support rural health providers and telehealth, while the ongoing shift to value-based reimbursement would be viewed as neutral as most hospitals and health care systems have continued to invest in this area.

National strategy to address COVID-19
If effective–and likely over the medium to long term–a national strategy to address COVID-19 could keep infections at more manageable levels and minimize disruption at hospitals as well as help manage supply expenses. However, it may not be possible for a national strategy to make a meaningful impact to hospitals in the near term given the currently high infection rates and different state approaches to managing the pandemic thus far.

ACA legal challenge
We are monitoring the Supreme Court case California v. Texas which challenges whether the ACA can remain in place given there is no penalty associated with the individual mandate. There are

different potential outcomes but a full strike-down of the law, which many believe is unlikely, would have the largest negative impact to individuals covered by various ACA programs as well as to acute-care providers. Among other changes, a full strike-down of the ACA would reduce eligibility for Medicaid and private insurance, or would rescind coverage for individuals currently covered under ACA programs. The new administration's ability to enact a remedy quickly, should there be an adverse ruling against the ACA, would be important to minimize disruption both to individuals and providers but may be a challenge if there is a split Congress. While we've seen hospitals adjust and accommodate to other adverse decisions, it may be more challenging to absorb the disruption now given the current operating challenges related to the pandemic. If the Supreme Court rules that the main provisions of the ACA can remain in place, we expect the new administration will continue its efforts to expand and strengthen coverage discussed above.

Higher Education: Potential Benefits From Increased Funding And Revised Immigration Policies

For higher education, a Biden administration would likely lead to a significant change in priorities, and a reversal of position on certain issues, that could be credit-positive for colleges and universities. We expect the key policy focus areas for a new administration will be on the federal student loan program, the funding environment for federal grants and contracts, and possible revisions to immigration student policies affecting international students, and oversight of Title IX. Of most immediate significance will be the outcome of any additional funding for pandemic relief. Also, the pause on student loan payments currently in place for millions of Americans is set to expire soon and monthly payments will resume in January. If no actions are taken, this could cause material stress and uncertainty for borrowers at a time when coronavirus cases are rising and unemployment levels remain high, and could result in an increase in defaults.

Because of the breadth of colleges and universities serving the higher education market, the above federal policy issues would affect post-secondary institutions differently depending on the size and scope of the organization. Discussions around expanding free college, and further supporting workforce training and historically black colleges and other minority-serving institutions, are expected to continue. For smaller colleges and regional universities, any changes to the federal student loan program, or political pressure or legislation regarding student access, tuition levels, or post-graduation employment, could significantly affect operations and enrollment. Students at these institutions tend to be the most price-sensitive and in need of the most financial and academic assistance, and the institutions themselves highly reliant on tuition and fees as their main source of revenue. Larger, comprehensive research and national/international colleges and universities will be more affected by the outlook for federal grants and contracts, and international students.

Housing: Financial Benefits May Be On the Horizon

Housing credits may see future financial benefits. Biden's "Build Back Better" plan provides support for additional unemployment benefits as well as other support for the economy and efforts to contain the pandemic. To the extent it is achieved, it will be a credit positive for the housing sector by improving currently unemployed owners' and renters' capacity to meet their housing payments.

Biden's $640 billion housing plan, "The Biden Plan for Investing In Our Communities Through Housing," released in February, also includes several notable features that would be a credit positive for the housing sector. These include a downpayment tax credit for first-time homebuyers that could drive increased demand for HFA single family mortgages, resulting in higher fee or annuity income. Biden's plan goes so far as to indicate its willingness to partner with state housing finance agencies in at least one instance: to help national service workers, including teachers and first responders access homeownership in certain neighborhoods. It also provides for expanded funding for community development financial institutions. The plan includes an expansion of the Low

Income Housing Tax Credit program and the implementation of a new renter tax credit program. The plan also includes significant increased funding for the Section 8 voucher program–a positive for those PHAs that administer these programs.

Transportation: Show Me The Money

Infrastructure
We do not anticipate significant changes in the transportation infrastructure picture under a Biden Administration barring bipartisan agreement on funding sources, an obstacle that has stymied every grandiose plan in the past 20 years. The 2020 presidential election of course featured party platforms promising significant transportation infrastructure spending for repairing roads, bridges, and highways–with very different policy choices in terms of delivery and execution–but equally silent with respect to how to pay for it. An attempt to advance private transportation investment was made during the Trump Administration (see "President Trump's Infrastructure Plan: A Substantive Shift To Private-Sector Funding," Feb. 14, 2018), but it ultimately failed to get traction. We anticipate a similar outcome for the alternate reform agenda from the Biden Administration focusing on public investment while simultaneously addressing climate change, social equity and other policy objectives. Without some grand bargain, this 180-degree change in priorities will run into the same status quo roadblocks imposed by the current political gridlock and federal budget math (i.e. finding new revenues or budgetary offsets). And while states have been back-filling spending with gas tax increases and other measures, they risk another period of under-investment as the COVID-1- -triggered recession is expected to pressure transportation budgets.

Transportation legislation
Before too long, the Biden Administration will encounter the can kicked down the road this past fall called the FAST (Fixing America's Surface Transportation) Act highway law, which was set to expire on Sept. 30 but will now expire in the fall of 2021. Unable to reconcile different proposals, Congress passed and President Trump signed into law an extension that provided certainty of funding to states and regional infrastructure providers including transit agencies. But looming in the next reauthorization will be difficult decisions regarding a long-term solution to make the Highway Trust Fund (HTF) solvent. The HTF gets its revenues from a 24.4 cents-per-gallon diesel tax and 18.4 cents-per-gallon gas tax last increased in 1993 but pays out more every year than it takes in. We anticipate a Biden Administration to be more supportive of big ticket, urban rail, and transit system projects–another reversal of the Trump era focus on rural investment–and may signal future budgetary emphasis in any COVID-19-related stimulus bill, which many large transit systems are requesting.

Public Power: Tightening Environmental Regulations Likely
S&P Global Ratings expects the Biden Administration to pursue tightening environmental regulations governing the electric industry and its fuels. Such measures could directly and indirectly affect public power and electric cooperative utilities' operations, their costs of doing business, retail rates, their financial flexibility, and possibly their ratings.

Energy policy
During the run-up to the election, Joe Biden and Kamala Harris voiced unfavorable views of fossil fuels. The Biden energy platform–including recommitting to the Paris climate accords and variants on the Green New Deal–might be costly and technologically challenging. Whether the new administration can achieve its objectives could depend on the composition of the Senate, which will not be known until January. However, it is possible that the administration will bypass legislative gridlock through executive orders and regulatory pronouncements. We see precedent for such actions in the 2015 Clean Power Plan, one of the most far-reaching carbon emissions regulations to come out of the Obama Administration's Environmental Protection Agency.

If a Biden administration restrains fracking, natural gas prices could rise sharply. Natural gas is the primary input for producing electricity in the U.S. Consequently, consumers might see higher electricity costs. Higher retail rates could limit utilities' financial flexibility and potentially erode financial margins. We believe rate affordability plays an important role in influencing public power and electric cooperative utilities' credit ratings. In addition, because affordability and consumer acceptance place limits on the rates utilities charge for essential electric service, it is possible that spending for environmental compliance costs could come at the expense of investments in the reliability and safety of the electric grid. In recent years, many state initiatives for reducing carbon emissions, other greenhouse gas emissions, and the solid byproducts of electricity production, emphasized utilities transitioning to wind and solar resources. Some of the more ambitious of these initiatives appear to discount the intermittency of renewable generation and the insufficiency of existing storage technologies to counter intermittency. Neither solar nor wind produce electricity around the clock and current technologies do not provide capacity to store enough of the surplus solar and wind electricity produced during peak production hours to cover the nonproduction hours and could lead to less reliable electric service (see "California's Rolling Blackouts Could Foreshadow Rating Pressures For Public Power And Electric Cooperative Utilities," Sept. 10, 2020). Federal initiatives that build on state initiatives and that do not appropriately account for intermittency and storage issues could face similar pitfalls.

We expect the trend of significant coal plant closures seen in recent years to continue during Biden's presidency. If public power and electric cooperative utilities are compelled to close undepreciated power plants, their financial performance could face pressures. Although public power and electric cooperative utilities can look to their essentially captive customer bases to recoup uncompensated investments, this could be financially burdensome to customers, particularly if these utilities need to secure alternative sources of electricity production that add costs.

Ultimately, whether the new administration's environmental policies will affect the credit ratings S&P Global Ratings assigns to public power and electric cooperative utilities will depend on how much of the campaign platform translates into new regulations and legislation, and its costs.

Water Utilities: Regulatory/Environmental Policy Issues Are Key Focus

Fiscal policy
We would expect that a President Biden's first budget would double down on environmental protection, on top of his platform of giving environmental justice a higher priority, so it is likely those programs will be preserved if not increased.

Regulatory focus
S&P Global Ratings anticipates that the Biden Administration will end the "two for one" whereby the Trump Administration had a stated goal not to implement new rulemaking unless two existing rules could be eliminated. In fact, we expect increased regulation–and, potentially legislation–related to the federal Safe Drinking Water Act. There is bipartisan support even in a divided Congress to consider formal rulemaking on per- and poly-fluoroalkyl substances compounds, though less certain would be any federal participation in remediating certain contaminated sites. We also expect finality on the long-awaited update to the 1991 Lead and Copper Rule; final public comments were received earlier in 2020. It is unclear if Biden would modify or even rescind the October 2020 executive order related to water. That executive order established a federal "sub-cabinet" aimed at reducing bureaucracy and duplication of efforts among agencies and departments tasked with federal water supply and watershed management, among other stated goals.

Environmental, social, and governance policies
Because President-elect Biden also made climate change a centerpiece of his campaign, we would

him to swiftly re-commit the United States to the 21st Conference of the Parties, commonly known as the Paris climate accords. In our view this is more impactful to electric and gas rather than water and sewer utilities. However, if recent proposed legislation–none has yet moved beyond committee–is any indication, Congress has acknowledged the rising cost of utility services to households and the related social credit factor of affordability. Specifically, one bill proposed a drinking water version of the federal Low Income Home Energy Assistance Program, which provides grant money to qualifying communities for certain expenses like customer bill pay assistance programs. This would be especially welcomed in communities that saw outsized COVID-19 economic destruction.

Infrastructure
We do anticipate that Biden will propose some type of infrastructure stimulus package, although it is not yet known which asset classes might be targeted. It would not be unreasonable to assume policy goals aimed at improving mitigation from and adaptation to impacts from climate change. Lastly, once the report to Congress from the recent federal stormwater task force is received, likely in early 2021, there could also be additional federal support, at least for technical assistance for infrastructure projects that naturally lend themselves to pre-disaster resilience.

This report does not constitute a rating action.

Don’t Discount States for U.S. Climate Progress.

The Biden administration should look to states as a laboratory for innovative climate action.

All climate policy eyes are on Washington, D.C., these days and for good reason. The fact that President-elect Joe Biden puts climate change among his top four priorities promises significant progress at the federal level, with or without the Senate. But don’t forget states as a crucial driver of climate progress.

During the four years of the Trump administration, states have served as a backstop, while federal climate action has been backsliding. Yet states’ roles go well beyond that. They often serve as a laboratory for new ideas as well as a conduit by which federal agencies make progress.

California is typically held up as the state with the most progressive climate agenda. It is, but it is hardly alone. Per the Center for Climate and Energy Solutions, 23 states plus the District of Columbia have their own greenhouse-gas reduction targets. States as diverse as New York, Montana, and Louisiana have net-zero greenhouse-gas emissions targets by midcentury. Ten Northeastern states have a power-sector emissions trading system that caps their emissions and establishes a price per metric ton of CO_2, albeit a low one. Virginia is poised to join in 2021 as the eleventh, while California has its economy-wide system plus additional ambitious sector-specific policies.

Meanwhile, 29 states and the District of Columbia have renewable portfolio standards, which require a certain portion of the state’s electricity mix to be low- or zero-carbon. These standards drive emissions reductions by as much as 10% to 25% below where they would otherwise be. Economists are quick to remind us that these reductions come at a cost. A recent analysis by University of Chicago economists Michael Greenstone and Ishan Nath concludes that costs range from between almost $60 to $300 per metric ton of CO_2 , well above California’s and even the European Union’s economy-wide carbon prices of around $17 and $32, respectively.

This only shows that the power-sector standards are significantly more ambitious than existing cap-and-trade systems and also achieve more emissions reductions. The higher prices paid may well be worth it. They are, after all, within the range of the latest cost-of-carbon estimates of $100 and often much higher.

State-level electricity sector policies are also an important part of federal climate policy. The Federal Electricity Regulatory Commission (FERC) is an independent body charged with regulating interstate electricity transmission, and with reviewing energy infrastructure projects. Its legal charge is economic regulation, which makes it an all-the-more powerful voice in the climate fight.

FERC's power – and, thus, threat to fossil interests – was brought to the fore with the recent demotion of Neil Chatterjee, a former energy advisor to Senate Majority Leader Mitch McConnell and Trump appointee. He was replaced as chair in retaliation for supporting "state-determined carbon pricing" in wholesale electricity markets. While the Biden administration is poised to seek a more expansive role for FERC in advancing climate action, a significant part of that impact will still rest on state-level policies.

States are also an important laboratory for new ideas. California, while often out front, is far from alone. In 2018, Washington State saw a state-level carbon pricing initiative fail at the ballot box, to a large part because of stiff fossil fuel industry opposition. The oil industry spent $31 million to defeat the measure, led by $13 million from BP alone.

The campaign in Washington State is continuing, this time with a potentially important post-pandemic twist: the carbon tax is tied to green bonds focused on investing in a green economic recovery. The state has had prior experience with similar bonds, raising over $50 million in 2015 to invest in a number of energy efficiency and conservation efforts.

The additional benefit: The idea of green bonds tied to a new revenue source helps solve binding state-level fiscal constraints. It also ties nicely into Biden's "building back better" mantra. While Washington State's idea may not serve as a template for Washington, D.C., directly, versions of the idea may well be duplicated in other states, facing similar fiscal situations.

Most of these state-level efforts are indeed bottom-up, developed organically in municipalities and states. Yet there, too, might be a role for the Biden administration. The principle of testing large government policies in multiple local and regional pilots before a nation-wide implementation is not as ingrained in the U.S. as, for example, in China. There, the concept of shidian (试点), a focus on local entry points and testing for national policies, is indeed at least partially formalized. U.S. federalism – and the European Union's subsidiarity principle – allow for a version of this. Learning from local experiences ought to be an important component of more centralized efforts.

Bloomberg Greeen

By Gernot Wagner

November 20, 2020, 3:00 AM PST

What Cities Need From the Biden Administration in the First 100 Days.

Covid-19 financial relief, housing help and gun violence research are among the top priorities for local governments.

Municipal leaders have a privileged position in America: We see first-hand how policies affect the 200 million people we represent in our cities, towns and villages. We are also the first to respond to the challenges our communities face, and the first to provide the resources our residents need.

While most of the last 10 months have been devoted to our immediate duty to protect our residents from the spread of Covid-19, it has also given us an important opportunity to examine the future of our hometowns, including how to address the systemic challenges that predated — and are now exacerbated by — the pandemic. Whether it's ensuring our cities are built to meet the needs of all our residents, providing help for working families struggling to support their households, or eradicating persistent inequities in our civic institutions, the challenges before us have been thrown into sharp relief.

Building more equitable cities at a time when we are fighting an uphill battle to rebuild our economy is no easy task. To tackle the monumental challenges before us, we need more from officials at the federal level. Below are the five most urgent priorities for local governments that the National League of Cities asks the administration of President-elect Joe Biden to address in its first 100 days.

Provide Covid-19 Relief for Local Governments

Local governments are facing more than $360 billion in revenue shortfalls over the next three years due to the pandemic, forcing municipal leaders to grapple with devastating cuts to essential services and personnel — including those that have been integral to local pandemic response and economic recovery efforts.

In Ruston, Louisiana, Mayor Ronny Walker said his city "wouldn't have had to cut a single person from our payroll if Congress had done for cities what they did for businesses" through the Paycheck Protection Program. Pittsburgh Mayor Bill Peduto said laying off 10% of city employees would only make up a quarter of his city's budget shortfall for the next year, and that in the coming years, "what you're going to see in cities is more cuts to essential services."

While negotiations over a comprehensive Covid-19 relief package remain stalled in the current lame duck session of Congress, local leaders are making difficult decisions to protect families, municipal workers and America's economic future. It's past time for the federal government to fulfill its responsibility to our local heroes serving on the front lines of the pandemic, and we strongly urge the Biden administration to work collaboratively with both parties in Congress to secure a Covid-19 relief package that provides direct federal aid to local governments and municipalities of all sizes.

Build Sustainable Infrastructure

Even before the pandemic, much of our nation's infrastructure was in dire need of repair, improvement and modernization to meet the demands of the 21st century. Local governments have been forced to delay or cancel projects to repair roads, water systems and other critical infrastructure due to budgetary constraints caused by the pandemic, underscoring why it is more important than ever for the federal government to support infrastructure projects that will help put Americans back to work. Just this week, New York City's Metropolitan Transit Authority was forced to consider a plan to cut 40% of weekday subway services and lay off more than 9,000 transit workers absent support from the federal government — an "end to the New York way of life," as one official said.

Current transportation funding sources like the Highway Trust Fund are on track to be depleted as soon as 2021, according to recent CBO projections. By providing grants, tools and resources to support local infrastructure efforts, the federal government can do more than just ensure the safety

and mobility of our communities; it can help make our communities more resilient in the face of extreme weather events and natural disasters, many of which we faced this year in the midst of the global pandemic.

It is also essential that the administration make investments in broadband service. With more people working and schooling from home, the need is clearer than ever before to ensure reliable, affordable broadband access for all Americans — particularly those in small and rural communities.

Provide Support for Building a Skilled Workforce

With the nature of work rapidly evolving due to the Covid-19 pandemic and technological advancements, we need enhanced workforce training programs to ensure our residents and communities can continue to play a central role in our nation's economic recovery. As more Americans prepare to re-enter the workforce after historic levels of unemployment, it is necessary for the Biden administration to promote apprenticeship programs, expand financial aid programs for workforce skills training and create new pathways to successful careers for unemployed and underemployed Americans.

By investing in skills training and services to support participants, such as child care and transportation, the federal government can help city leaders build upon successful workforce development programs — particularly those that help remove barriers to accessing education and improve the likelihood that students will be able to finish college. This is particularly important for postsecondary students attending college during the current Covid-19 crisis who are being forced to remain or return to homes that may lack access to the internet or who, in some cases, may have no home at all.

Cities are counting on Biden to empower local workforce solutions, streamline federal funding and drive new resources into proven solutions to ensure that all people have opportunities to thrive.

End Housing Instability and Homelessness

The Covid-19 pandemic has been a catalyst for housing instability in the U.S. The nationwide moratorium on evictions has not prevented some landlords from evicting their residents, and 8 million tenants face the prospect of evictions when it ends in January 2021.

With more Americans out of work and unable to afford their basic needs, including housing, it is critical for the new administration to address housing instability and homelessness.

Cities need new policy solutions to stabilize and stem the loss of public and affordable housing. They also need the resources to expand promising ideas like "housing first programs," which focus on providing immediate permanent housing — regardless of circumstance — to people experiencing homelessness. Before the Covid-19 pandemic, several housing-first pilots were yielding notable progress. President-elect Biden can take meaningful steps toward ending homelessness by expanding these types of programs, as well as those that provide mental health and emergency services that residents need to stay stable and sheltered.

Reduce Gun Violence

Gun violence continues to plague our society, claiming the lives of thousands of Americans each year and tearing apart the very fabric of our communities. Our nation has seen a rise in gun violence since the onset of the pandemic, creating twin public health crises that threaten to undermine the safety that local leaders are entrusted to deliver to their residents.

The National League of Cities calls on Biden to convene a national commission on gun violence, including elected officials from all levels of government, victims' family members, survivors, gun advocates and law enforcement to offer recommendations on ways to reduce gun violence. In recognizing gun violence as a public health issue, the Biden administration should provide funding to the Centers for Disease Control to conduct comprehensive research to identify the underlying causes that lead to gun violence and mass shootings in communities.

If we are going to truly "Build Back Better"— a central theme of Biden's campaign — we must ensure the administration maintains a strong and close working relationship with local leaders from across the country. We know our communities best and are best positioned to help the new administration address the systemic issues that have long impacted them, only to now be exacerbated by the Covid-19 pandemic.

Bloomberg CityLab

Joe Buscaino

November 20, 2020, 7:33 AM PST

Joe Buscaino is the President of the National League of Cities and the President Pro Tempore of the Los Angeles City Council.

Congress is Forcing Cities to Defund the Police, Firefighters, and Schools.

Cities that had barely recovered from the Great Recession face huge budget shortfalls yet again.

America's mayors are begging for help.

Unless Congress passes a coronavirus relief package, cities and towns across the country are going to struggle "to keep the lights on" and perform basic services like responding to 911 calls, Joe Buscaino, president of the National League of Cities and president pro tempore of the Los Angeles City Council, told Axios.

In May, the National League of Cities (NLC) found that US cities are facing a $360 billion revenue shortfall over the next three years. And since then, there's been little movement from the federal government to provide the support needed to avoid furloughs and cuts to basic, necessary services to keep cities afloat as they govern through the Covid-19 pandemic.

Continue reading.

Vox.com

By Jerusalem Demsas

Nov 19, 2020

Cities Still Need Their Lifeline From the Fed.

Extend the Municipal Liquidity Facility beyond Dec. 31.

America's state and local governments face a difficult winter. Already under severe financial pressure, their resources will be stretched still further by a resurgent pandemic. Congress needs to give them new fiscal aid right now, but whether that will happen is in doubt.

Given these uncertainties, this is no time to remove the one reliable lifeline they have: the Federal Reserve's highly successful effort to ensure they can borrow what they need.

The Fed and the Treasury introduced the program, known as the Municipal Liquidity Facility, amid the Covid-induced mayhem of March and April — when markets froze and borrowing costs more than doubled for even the most highly rated cities. To restore calm, the central bank pledged to buy debt securities directly, at a closer-to-normal yield, from any creditworthy issuer that couldn't raise money from private investors.

It worked. Simply by being in place, the backstop revived the market. It brought yields below pre-pandemic levels, and only two issuers (Illinois and New York's Metropolitan Transportation Authority) actually had to tap it, using less than $1.7 billion of the $500 billion available. It's hard to imagine a more effective use of taxpayer resources.

Just one problem: The program expires Dec. 31, and — as Bloomberg News has reported — Republican legislators and the Treasury have opposed an extension. This wouldn't be so serious if the coronavirus crisis were ebbing and the economy were on a glide path to recovery. They're not. Cases and hospitalizations are on the rise in most states, threatening renewed social-distancing measures and a slower expansion (or worse). This will reduce municipal tax revenues again – and they're already projected to come up hundreds of billions of dollars short. Layoffs and service cuts are looming. And with Republicans likely to retain control of the Senate, it's unclear when, if ever, legislators will support a new relief package.

To be sure, borrowing is no substitute for fiscal support. But the backstop is crucial to help municipalities weather these stresses. It should remain in place until officials are certain it's no longer needed, as happened with emergency lending facilities after the 2008 financial crisis. The central bank should also consider expanding access — for example, by lowering the population threshold from the current 250,000, so struggling smaller cities can benefit.

Judging from the lack of jitters in municipal bond markets, investors are assuming that common sense will prevail. It's to be hoped they're right. The Trump administration should extend the facility immediately and, if it fails to do so, President-elect Joe Biden should pledge to set things straight after he takes office on Jan. 20. The finances of cities and states across the country depend on it.

Bloomberg Opinion

By Editorial Board

November 17, 2020, 6:30 AM PST

Congress Splits Along Party Lines Over Fed-Facilities Move.

- **Democrats criticize secretary for seeking to end the programs**
- **GOP Senator Pat Toomey says facilities have done their job**

Lawmakers split along party lines on U.S. Treasury Secretary Steven Mnuchin's move to shutter a number of Federal Reserve emergency-lending facilities that relied on his agency's backing.

"Ending emergency programs specifically intended to support the economy through this crisis is irresponsible and misguided," Democratic Representative Richard Neal of Massachusetts, chairman of the powerful House Ways and Means Committee, said in a statement. "The Covid recession is not over. Millions of workers remain without jobs, and the futures of businesses across the country continue to hang in the balance."

By contrast, Republican Senator Pat Toomey of Pennsylvania, a member of the congressional panel monitoring pandemic relief funds at the Treasury and Fed, said in a Bloomberg TV interview that the facilities have served their purpose to stabilize markets and are no longer needed.

"These were always meant to be very temporary facilities," he said Friday. "I'm not surprised that a central bank would like to keep more power and more tools, but that doesn't make it right."

Mnuchin, in a letter to Fed Chairman Jerome Powell released by the Treasury on Thursday, ordered the sunsetting of five of the central bank's facilities designed to buffer the impact of the coronavirus pandemic, while asking for four others to be extended for 90 days. The Fed then released a statement underlining its preference for the "full suite" of measures to be maintained into 2021.

Senate Majority Leader Mitch McConnell said the "obvious use" for the hundreds of billions of unspent dollars is to re-purpose the funds for small business relief and vaccine efforts. Congressional leaders have been deadlocked for months over how much to spend on additional stimulus and where to allocate the money.

"American workers should not lose their jobs needlessly when a second round of the job-saving Paycheck Protection Program for the hardest-hit small businesses would make a huge difference," McConnell said in a statement.

Democratic Representative James Clyburn of South Carolina, chairman of the House Select Subcommittee on the Coronavirus Crisis, said the facilities that will no longer be able to purchase new assets beyond December were "part of a comprehensive set of tools Congress gave the Federal Reserve to combat the pandemic-related economic crisis."

Clyburn asked Mnuchin to rescind his request, and suggested congressional Democrats may encourage President-elect Joe Biden's Treasury chief to reestablish the programs next year.

Toomey said that he doesn't believe a Biden administration would have the legal power to extend the facilities on its own, but that Congress could re-authorize the lending programs if economic conditions worsened.

House Speaker Nancy Pelosi accused Mnuchin of trying to hobble the next administration's ability to deal with the economic fallout of the continuing pandemic.

"Why? — Because they want to impede the ability of the administration to have everything available to them?" Pelosi said Friday at her weekly news conference.

The congressional watchdog monitoring the Fed and Treasury's relief efforts divided last month over whether one of the programs Mnuchin has ordered to be ended — which supports the municipal-

debt market — should continue.

The panel's two Democrats wanted the Municipal Liquidity Facility not only extended, but its terms adjusted to make it more favorable for bond issuers. State and local governments also lobbied to expand the program.

But Republicans on the oversight commission said the program, which had made only two loans at that point, had served its purpose to restore liquidity to the municipal bond market.

Bloomberg Politics

By Laura Davison

November 20, 2020, 9:05 AM PST Updated on November 20, 2020, 11:47 AM PST

Treasury-Fed Clash Exposes Broader Policy Stress.

Pressure is growing on the ability and willingness of officials to maintain the scale and scope of their initial responses to Covid-19.

Global markets woke up Friday morning to indications that exceptional and lasting policy support may be less certain than widely assumed. While short-term political considerations may well be playing a role — a view that most investors will be quick to grasp, dismissing the news as "noise" and reversible — a bigger phenomenon may well be in play: What was first designed as a huge "one-round" policy intervention has turned out to be much more than that, and the longer this "multiround" process persists, the greater the pressure on the ability and willingness of policy makers to deliver, especially in parts of the developing world.

Having eagerly supported the Federal Reserve's massive intervention in financial markets in March and April, outgoing Treasury Secretary Steven Mnuchin seems to have surprised even the central bank late Thursday by refusing to extend backing for some emergency lending programs into next year and asking for the return of money for them. This immediately triggered an unusually public response from the Fed lamenting the decision and stressing that the "full suite of emergency facilities" plays a key role as "a backstop for our still strained and vulnerable economy."

Some economists and market participants initially interpreted this as yet another indication of a problematic transition from the Trump administration to the incoming Biden team — one that is already complicating the country's response to the surge in Covid infections and hospitalizations and may well play out in foreign policy and military affairs. Having said that, the implications are overwhelmingly viewed as both temporary and reversible under the new administration that will take office on Jan. 20.

The Treasury's action came in the context of a general under-utilization of the Fed's programs. Some see this as a signal of low need, bolstered by Mnuchin's comment that "banks have the lending capacity to meet the borrowing needs of their corporate, municipal and nonprofit clients." Others feel that this under-utilization is due to the markets doing the work for the Fed, thereby increasing moral hazard and excessive risk-taking. Yet others are arguing the move is motivated by the desire to reallocate money to other programs such as the Paycheck Protection Program, effectively enhancing public sector support for the economy.

The U.S. is not alone in its policy support difficulties. In the U.K., the Treasury is facing a large increase in its fiscal imbalance, with the latest data from the Office for National Statistics showing that the deficit for the first six months of this fiscal year (April-October) amounted to a record 261 billion pounds. This is leading some to expect a public sector pay freeze to be announced as early as next week when the latest round of Covid-related lockdowns could well send Britain into a double-dip recession. Politics is also seen as playing a role as Prime Minister Boris Johnson is trying to gather Conservative Party support for his pivot toward greater military expenditure as part of the redefinition of the country's role on the world stage after Brexit.

Although short-term political considerations may well be playing a role, and these two countries can reverse course should policy makers so desire, a greater phenomenon exists that could well become more important the longer it takes to develop and distribute vaccines to counter the threat of Covid-19.

The initial global reaction to the economic "sudden stop" caused by Covid-19 was highly influenced by what worked for the global financial crisis: that is, a large-scale multifaceted intervention underpinned by the three notions of "whatever it takes," "all in" and "whole of government." At its essence, this is what in game theory terms would be labeled a "one round" policy response. Yet Covid is requiring several rounds of responses as illustrated by the new infection wave in many countries and the realization that vaccines will not be widely available until sometime next year.

As time has passed, a small but growing number of countries are finding it hard to maintain the scale and scope of their initial policy interventions. Well before these latest twists, the U.S. faced political resistance to renew one element after another of its initial fiscal relief, and the U.K. reduced support for those facing job challenges before having to reverse course.

Markets will be quick to dismiss the latest developments, especially in the U.S., where a new administration is likely to restore funding and the Fed can in the interim augment the quantitative easing program already at its discretion. But they should not ignore the warning signs. Particularly in the developing world, policy makers' willingness to continue to carry out a multiround policy response will increasingly face a harsh reality: that of declining ability.

Bloomberg Opinion

By Mohamed A. El-Erian

November 20, 2020, 7:15 AM PST

Without Fed's MLF, Stakeholders Warn of a Fragile Future for Munis.

Issuers will lose a financial, if not psychological, backstop from the Federal Reserve at the end of the year and some participants fear the municipal market will become more fragile, less resilient and more prone to shocks amid another wave of coronavirus cases.

Following Treasury Secretary Steve Mnuchin's move on Thursday telling the Fed to sunset emergency lending facilities created in response to the coronavirus Thursday, including the Federal Reserve's Municipal Liquidity Facility, the news struck some municipal stakeholders as poorly timed and made them wary of the muni market's future.

"As a country and a financial market, we're not out of this yet," said Matt Fabian, partner at

Municipal Market Analytics. “So theoretically we should be layering on more tools, not removing them.”

Fabian called the MLF an insurance policy for both borrowers and investors.

“Now, without the MLF, the market becomes more fragile and more susceptible to setbacks, illiquidity and maybe selling if things turn negative,” Fabian said. “If credit trends turn even more negative, if fears of a major issuer defaulting or having trouble paying begin to grow,” those trends could weigh on the industry.

As COVID-19 deaths continue to climb, the Treasury’s timing “is poor,” Fabian said.

More than 2,000 American deaths were recorded by John Hopkins University in one day on Thursday, the highest since May. There are now over 11 million recorded COVID-19 cases in the U.S.

Mnuchin asked in a letter sent to the Fed to return unused funds to the Treasury from the MLF and four other lending programs created under the CARES Act.

And while some sources said the move was not unexpected given how well the municipal market has performed since the sell-off in the spring, the withdrawal of the MLF means that next year, investors will become more concerned about issuers’ ability to pay debt because of renewed economic shutdowns, Fabian said.

“It just makes us more fragile,” Fabian said. “If there is a shock to the system, like we have multiple states shutting down their local economy or say tax collections are postponed again to make it easier on taxpayers, that is a challenge that the MLF would help us get through, but lacking it, it means that states and cities are more on their own so investors will have to be more careful.”

On CNBC Friday morning, U.S. Treasury Secretary Steven Mnuchin explained his reasoning for ending the CARES Act programs.

“It was very clear that Congressional intent is it expires on December of this year,” Mnuchin said. “It is very clear in the law.”

Lawmakers could legislate extending the MLF and sources expects appeals from lawmakers before the end of the year on the interpretation of Congressional intent.

The Fed had the authority under the CARES Act to lend up to $500 billion for state and city issuers through the MLF. The U.S. Treasury provided $35 billion from the Exchange Stabilization Fund, using funds appropriated under the CARES Act, for the program. The rest of the funding comes from the Fed.

So far, Illinois and the New York Metropolitan Transportation Authority have been the only issuers to use the MLF. Both issuers this week said they intended to tap the facility before it expires and Mnuchin’s announcement will not change those plans as both were allocated a portion of the money in the law.

Mnuchin also dug into the MTA on CNBC Thursday, saying the authority has a revenue problem and the MTA can currently borrow from the traditional market without the Fed.

“Let me just say, there is a big difference between grants and loans, and the areas of the economy right now that are really hard hit like the MTA, they need to work with the state and federal governments on how they’re going to get grants to go forward,” Mnuchin said.

MTA Chairman and CEO Pat Foye responded to Mnuchin's comments.

"We're glad Secretary Mnuchin has acknowledged the MTA has a serious and substantial revenue problem, that we have been devastated by the pandemic and that we are the economic lifeblood of New York and the nation," Foye said.

"We have been clear since the beginning of the crisis: Borrowing or cutting our way out of this is not an option. We need federal relief and we simply can't afford to wait any longer," Foye added.

But that is not stopping the MTA from using the MLF before it expires. The MTA's Board on Wednesday approved to borrow up to $2.9 billion, its maximum available.

Many state and local governments have said they need direct aid from the federal government to get them through the pandemic. House Democrats passed a relief bill in May that would give $915 billion in state and local aid, but Senate Republicans are not in agreement.

On Thursday, the Fed responded to Mnuchin?s letter saying it, "would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy."

The Fed is in the best position to say if facilities should be extended, Fabian said, adding that "if the Fed believes [the programs] should be continued, it's very likely that they should be continued."

Lawmakers have also weighed in, saying the facilities should be extended.

"The COVID recession is not over," said Rep. Richard Neal, D-Mass., chair of the House Ways and Means Committee. "Millions of workers remain without jobs, and the futures of businesses across the country continue to hang in the balance. Ending emergency programs specifically intended to support the economy through this crisis is irresponsible and misguided."

Sen. Bob Menendez, D- N.J., a member of both the Senate Banking, Housing and Urban Affairs and Senate Finance Committees called Mnuchin?s decision "short-sighted."

Other market participants expect the worst is yet to come for municipal credit, so the MLF should be extended.

"The MLF exists in case the market does freeze like it did in March and April," said Tom Kozlik, head of municipal strategy and credit at Hilltop Securities. "It would be prudent for the Treasury and Fed to continue with that program for at least the next year, if not longer."

Others said the short-term effects of the Treasury's announcement won't have an immediate effect on the market, given high inflows and investors are not questioning what municipal credit will look like in the near future.

Patrick Luby, municipal strategist at CreditSights, said the end of the MLF will not have a material, adverse effect on the municipal market.

"Its function of being the backup source of liquidity of the market has been demonstrated by the abundant liquidity available in the marketplace that it's not needed right now," Luby said.

The Fed and Treasury did a good job of moving quickly and providing comfort to the markets, Luby said.

Mnuchin also announced Thursday that the Money Market Mutual Fund Liquidity Facility would be extended by 90 days. The money market facility includes short-term municipal debt, including municipal securities, with maturities of 12 months or less. Market participants have said that facility has been more beneficial to more issuers than the MLF.

“Because the Fed opened up the MMMLF and accepted municipal VRDOs as collateral, that unlocked a lot of the dealer balance sheets to be able to take risks and provide liquidity to the rest of the muni market,” Luby said.

Meanwhile, Fabian doesn’t think volatility like the market saw in March is likely, but said the future is unpredictable.

“We are losing resilience, removing the MLF deprives the muni market of some resilience,” Fabian said.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 11/20/20 03:37 PM EST

Credit, Muni Markets Shrug Off Treasury Threat to End Fed Programs.

NEW YORK (Reuters) – The credit and municipal bond markets held fast on Friday morning after U.S. Treasury Secretary Steven Mnuchin defended his decision, first announced Thursday evening, to let several of the Federal Reserve’s key pandemic lending programs end on Dec. 31.

Mnuchin said on Thursday that some of the Fed’s stimulus programs, which have established the central bank as a lender of last resort to U.S. corporations and municipalities, should be allowed to expire and that the unused funds should be given to Congress to reallocate. The announcement was not expected by Fed officials, who had said this week that the programs should be extended, and told Mnuchin so immediately after his decision was made public.

The Fed programs were essential to restoring liquidity in financial markets in March, when nervous lenders seized up and both the credit and municipal bond markets reached levels not seen since the last financial crisis. But both markets were steady on Friday morning, as investors bet that the liquidity established by the Fed’s programs would not soon dissipate.

“Markets seem to be acting as if this may be an overblown event,” said Kevin Giddis, head of fixed income at Raymond James.

“While the market “righted” itself in March at the idea that these facilities were available so quickly, funding away from the Fed became cheaper and easier for most companies in the capital markets versus Fed-assisted financing.”

The iShares exchange-traded funds tracking the high-yield HYG.P and investment-grade LQD.P markets both inched lower on Friday, with a slightly bigger move seen in LQD, last down 0.22%. The Fed’s Primary and Secondary Market Corporate Credit Facilities chiefly targeted investment-grade debt.

The $3.9 trillion U.S. municipal bond market opened steady on Friday with Municipal Market Data’s initial read of its benchmark triple-A yield scale largely unchanged. The iShares National Muni Bond ETF MUB.N was up slightly.

The Fed's $500 billion Municipal Liquidity Facility (MLF) has so far only attracted two users – Illinois, the lowest-rated state, and New York's Metropolitan Transportation Authority (MTA), which was hit exceptionally hard by a sharp drop in mass transit ridership due to the pandemic.

Greg Saulnier, managing analyst at Municipal Market Data, said Illinois and MTA bonds are trading inside the rates offered through the MLF and that muni market fundamentals are strong.

"Perhaps there is some marginal effect in terms of mentality without the safety blanket there, but I'm not sure how much of that will play out in terms of trading and spreads, if at all," he said.

But Emily Swenson Brock, director of the Government Finance Officers Association's Federal Liaison Center, said the loan program's end comes as the resurgence of the virus threatens already weakened state and local government revenue.

"This is a pivotal time for states and local governments and to receive this news is extremely frustrating," she said.

By Kate Duguid, Karen Pierog

Reporting by Kate Duguid; Editing by Alden Bentley, Chizu Nomiyama, Kirsten Donovan

NOVEMBER 20, 2020

Investors Say Fed 'Backstops' Removed by Treasury Were Little Used but Lifted Confidence.

(Reuters) – A surprise move on Thursday by the U.S. Treasury Department to withdraw hundreds of billions of dollars used to support corporate, municipal and other bonds ravaged by the COVID-19 pandemic has injected some new uncertainty in global markets, investors said.

While the support wasn't widely used, even its presence served to bolster investor confidence, said Andy Richman, director of fixed income strategies for Sterling Capital Management.

"They were there as a backstop and even the thought of them was seen as a safety net. If something did go wrong the Fed was there," he said.

Richman said he expected slightly lower equity prices and higher bids for U.S. Treasuries as a safety play on Friday, though the impact could be dulled by other developments in Washington such as a possible deal on relief spending.

Treasury Secretary Steven Mnuchin on Thursday told the Federal Reserve to return money earmarked for pandemic lending to businesses, nonprofits and local governments, ending on Dec. 31 some crisis programs that allowed the Fed to buy corporate bonds and make loans to small businesses and local governments.

The surprise announcement sent benchmark U.S. Treasury yields and equity index futures lower. The 10-year Treasury note yield US10YT=RR slid 2 basis points and was the lowest in 10 days at 0.83%.

Several investors said they were still trying to grasp the full implications of losing access to

programs like the Municipal Liquidity Facility, which bought short-term notes directly from U.S. cities, counties and states.

“Without the MLF, the market won’t collapse, but it will lack some resilience if its tested by a selloff or more pronounced credit fears,” said Matt Fabian, partner at Municipal Market Analytics.

Isaac Boltansky, director of policy research for Compass Point Research and Trading, called the diminished role of the Fed “nonsensical” at a time when the U.S. economic recovery still seems shaky.

“This is a distressing development that injects uncertainty and instability into markets completely unnecessarily,” he said. He added that “How many times will Washington trip on its shoelaces in response to this crisis?”

By Ross Kerber

Reporting by Ross Kerber in Boston. Additional reporting by Karen Pierog in Chicago; Editing by Lincoln Feast.

NOVEMBER 19, 2020

Muni Market Faces Test With Cut to Fed Lifeline That Ended Crash.

- **Treasury Secretary doesn’t intend to extend credit programs**
- **Backstop improved investor confidence, though few loans made**

In March and April, the Federal Reserve’s interventions in the municipal-bond market helped reverse a record-setting crash that erupted when panicked investors fled over concern about the financial impact of the coronavirus pandemic.

The central bank’s commitment to lend to states and local governments if needed helped the price of their bonds to rally and has left yields hovering around the lowest levels in decades, even though only two borrowers tapped the $500 billion program.

Now, even with the coronavirus raging anew and states and cities still struggling to gauge the scale of the financial hits they’re facing, that support is poised to end. Treasury Secretary Steven Mnuchin late Thursday announced a decision to allow some of the Fed’s novel lending programs to lapse at the end of the year as scheduled, raising the risk that if the market seizes up again there won’t be anywhere for governments to turn as a lender of last resort.

“It doesn’t make sense to pull away this kind of support at this stage,” Thomas Graff, head of fixed income and portfolio manager at Brown Advisory. “This is like taking off your seatbelt as you pull into your neighborhood. It is probably fine. But it is all risk, no reward.”

The nation’s $3.9 trillion municipal-bond market currently seems at little risk and prices edged up slightly Friday. Even as governments unleashed a record flood of debt sales last month, yields held not far from the record lows hit in August. New Jersey and Suffolk County, New York, which considered borrowing from the Fed, were able to borrow easily in the public markets at a lower interest rate this week. New Jersey paid yields of about 1% for three-year debt. Those securities have rallied and traded at a 0.5% yield Friday.

“That was a resounding affirmation that the market feels healthy enough,” said Christopher Brigati, head of municipal trading for Advisors Asset Management Inc.

The market has also benefited from optimism about the initial results of two coronavirus vaccines. That’s eased worries about the financial outlooks for a broad swath of borrowers, including airports and colleges, that have been heavily affected as the pandemic upended daily life.

Yet a turnaround is far from completely assured for states and cities whose tax collections tend to remain depressed long after the end of recessions, and the individual investors who dominate the market have frequently fled en masse in the face of bad news — a phenomenon that analysts call headline risk.

Agencies such as New York’s Metropolitan Transportation Authority, the operator of the city’s subway and bus system, are also pleading for help from Washington, where talks about a stimulus bill have made little headway since President Donald Trump’s electoral defeat this month. It’s not clear how much opposition Joe Biden may face once he takes office in January, since the political control of the Senate hinges on runoff elections in Georgia.

The MTA and Illinois were the only two to borrow from the Fed because they faced such large penalties in the public market, though other governments eyed it as a potential backstop that they didn’t want to see withdrawn.

Before the Fed program lapses, the MTA has said it could sell $2.9 billion in debt to the Fed. Illinois has also raised the possibility of borrowing from the Fed again.

Barclays Plc strategist Mikhail Foux said cash-strapped borrowers who are the target audience for the Fed’s loans could be negatively affected by the end of the program, though he noted there may be little impact for the broader market. Bank of America Corp. analysts said in a report the end of the Fed program could be a “small negative.”

“This is very disappointing, especially for weaker credits which are still facing the financial impact from the pandemic,” said Gary Pollack, head of fixed income for private wealth management at Deutsche Bank. “On the other hand, the muni lending facility was not utilized that much because its interest rate was too onerous. But still it is a back-stop for those who need it.”

Bloomberg Markets

By Amanda Albright

November 20, 2020, 10:39 AM PST

— With assistance by Joseph Mysak Jr, and Elise Young

Fed to Return Lending-Backstop Funds to Treasury as Requested.

- **Powell letter follows public rift that arose a day earlier**
- **Mnuchin argues money should be put to better use elsewhere**

The Federal Reserve said Friday it would comply with a Treasury Department request to return unused funds meant to backstop five emergency lending programs, moving to tamp down a public rift that arose a day earlier.

“We will work out arrangements with you for returning the unused portions of the funds allocated to the Cares Act facilities in connection with their year-end termination,” Fed Chairman Jerome Powell said in a letter to Treasury Secretary Steven Mnuchin posted on the central bank’s website.

Mnuchin on Thursday sparked a conflict between his agency and the central bank when he said he wouldn’t agree to extend the facilities enabled by the Cares Act, passed by Congress in March. The law appropriated funds to act as loss-absorbing buffers that enabled the Fed to stabilize financial markets and make loans to companies and municipal debt issuers.

Mnuchin says the programs are no longer needed, and the money should be returned to Congress and put to better use elsewhere.

The Fed had responded on Thursday with its own statement, saying it “would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy.”

‘Deeply Irresponsible’

The move drew swift criticism from Democrats. President-elect Joe Biden’s transition team spokeswoman, Kate Bedingfield, on Friday blasted Mnuchin’s move as “deeply irresponsible.”

The S&P 500 Index extended a weekly decline as traders weighed the dispute over the emergency lending programs. The credit markets seemed to hold up amid the uncertainty. Corporate bond investors continued to flood Carnival Corp.’s bankers with orders for debt.

On Friday, Powell conceded the Treasury’s authority in the matter, saying in the letter that the Cares Act “assigns the Treasury secretary sole authority to make certain investments in Federal Reserve emergency lending facilities, subject to limits specified in the statute.”

Some officials, including a Democrat sitting on the commission supervising spending under the Cares Act, have said the Fed wasn’t legally required to return funds already transferred to it by the Treasury. But the Fed made clear it would not escalate the spat and would return the funds.

Other Funds

Powell, in his letter, also appeared to urge the Treasury to consider using other funds held by Treasury to reauthorize at least some of the programs that will now be unable to make new loans after Dec. 31.

“As you noted in your letter, non-Cares Act funds remain in the Exchange Stabilization Fund and are, as always, available, to the extent permitted by law, to capitalize any Federal Reserve lending facilities that are needed to maintain financial stability and support the economy,” Powell wrote.

The ESF contains about $75 billion that pre-dates the Cares Act. Mnuchin has also left open the possibility of using that money to re-activate the programs, but appeared to characterize that as an emergency option.

“In the unlikely event that it becomes necessary in the future to re-establish any of these facilities, the Federal Reserve can request approval from the secretary of the Treasury,” Mnuchin said in his letter on Thursday.

The Fed, in contrast, believes the programs remain crucial. In an online event Nov. 17, Powell said the Fed would eventually shut down its emergency programs, but added, “I don’t think that time is

yet or very soon, we will put those tools away."

The programs affected include two that can purchase corporate bonds, one for municipal debt and one, the Main Street Lending Program, that makes loans to mid-sized companies through banks.

The programs will continue to hold existing assets and service loan agreements with banks. The Fed will retain about $26 billion received by the Treasury to continue to backstop the loans already made. But the programs won't be able to extend new credits unless they receive fresh funds from Treasury.

Bloomberg Economics

By Christopher Condon

November 20, 2020, 1:50 PM PST Updated on November 20, 2020, 3:04 PM PST

This Fed-Treasury Public Fight Has No Winners.

The coronavirus crisis dream team of Jerome Powell and Steven Mnuchin cracks after the election.

So much for the synergy between Federal Reserve Chair Jerome Powell and Treasury Secretary Steven Mnuchin in combating the fallout from the coronavirus pandemic.

In what might be an unprecedented public spat between two of the nation's most prominent economic leaders, Mnuchin sent a letter to Powell on Thursday that said he would let certain emergency lending facilities created by the Coronavirus Aid, Relief, and Economic Security Act expire on Dec. 31, citing what he saw as "congressional intent." Moreover, he requested that the Fed return almost $200 billion of unused funds to the Treasury, which would "allow Congress to re-appropriate $455 billion, consisting of $429 billion in excess Treasury funds for the Federal Reserve facilities and $26 billion in unused Treasury direct loan funds."

The Fed responded almost immediately with a short statement: "The Federal Reserve would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy." Shots fired.

At stake is the future of the Municipal Liquidity Facility, the Main Street Lending Program, the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility and the Term Asset-Backed Securities Loan Facility. By contrast, Mnuchin requested a 90-day extension of the Commercial Paper Funding Facility, the Primary Dealer Credit Facility, the Money Market Liquidity Facility and the Paycheck Protection Program Liquidity Facility.

I argued last week that it would be a mistake in particular to let the facilities for municipal bonds and small businesses expire, not just because their finances are the most imperiled by the pandemic but also because these programs are hardly used in the first place — a backstop in every sense. Those for corporate debt, on the other hand, don't seem quite as necessary given that junk-bond yields are near a record low and the investment-grade markets are wide open.

Mnuchin argues in his letter is that the facilities "have clearly achieved their objective," rattling off municipal-debt issuance figures, corporate-bond spreads and rates on asset-backed securities. Still, the announcement flies in the face of Powell's long-held position — which was thought to be shared

by Mnuchin — that “when this crisis is behind us, we will put these emergency tools away.” The Covid-19 pandemic is only worsening across America, from rural counties to New York City.

What happens now is something of an open question. Bharat Ramamurti, a member of the Congressional Oversight Commission, says the Fed can retain the $195 billion that’s already been committed to the lending programs established by the Cares Act. “That’s why (I imagine) the Mnuchin letter is a ‘request’ to return the funds, not just asserting his authority to take the money back,” he said on Twitter.

It would be a remarkable move by Powell, who has repeatedly talked about the importance of elected leaders directing public funds, to deny Mnuchin’s request outright. But at the same time, he said just this week that “I don’t think the time is yet, or very soon,” to wind down the emergency facilities. Handing back the money would severely constrain the Fed and President-elect Joe Biden’s pick for Treasury Secretary from easily firing them back up should the need arise. If the Fed no longer had the Cares Act money, it could only back the facilities with “Core ESF funds, to the extent permitted by law, or additional funds appropriated by Congress,” according to the letter.

Mnuchin, for his part, argued in an interview with Bloomberg News late Thursday that companies hurting from the pandemic need grants, not debt, and that he hopes the leftover funds are used to help the economy. Presumably, it would be significantly easier to sell Congress on appropriating these funds rather than working toward a bipartisan fiscal aid package, which has remained elusive for months and which President Donald Trump might not support anyway.

Tony Fratto, former assistant secretary for public affairs at the Treasury during the George W. Bush administration, said on Twitter that he’s “never seen Treasury and the Fed in a public break. This is disturbing.”

Whether the markets interpret it as similarly unnerving remains to be seen. Early indications suggest S&P 500 futures didn’t take kindly to a public spat between Mnuchin and Powell, a duo that investors have relied upon to remain above politics and keep the economy on the right track. That dream team is now infighting.

Bloomberg Opinion

By Brian Chappatta

November 19, 2020, 4:06 PM PST

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

Treasury Seeks Unused Funds From Fed in Clash With Central Bank.

- **Fed prefers programs ‘continue to serve their important role’**
- **Treasury wants Congress to re-appropriate $455 billion**

The Trump administration moved Thursday to end several emergency pandemic lending programs at the Federal Reserve, triggering a rare public rift when the central bank objected to the Treasury Department’s instruction.

Treasury Secretary Steven Mnuchin, in a letter to Fed Chair Jerome Powell, sought a 90-day extension for four of the central bank's emergency lending programs, while requesting five other programs expire on schedule on Dec. 31 and the Fed return unused funds, allowing Congress to re-appropriate $455 billion and spend the money elsewhere.

The Fed responded in a short statement that it "would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy."

The conflict — a rare public rift between the Fed and the Treasury — comes as the U.S. recovery faces increasing pressure from a resurgent coronavirus pandemic and follows months of deadlock between Republicans and Democrats over the size and type of additional fiscal stimulus. Removing some of the emergency programs has the potential to leave the economy more vulnerable as President-elect Joe Biden prepares to take office in January.

"I am befuddled. It adds insult to injury to an economy that is about to be flooded by the surge in Covid cases, hospitalizations and deaths," said Diane Swonk, chief economist at Grant Thornton in Chicago. "If anything, Treasury should be shoring up the storm wall of these facilities."

Yields on 10-year Treasuries dropped about two basis points amid the news to end Thursday at 0.8 3%. U.S. stock futures pared gains into the close, and S&P 500 emini contracts were down about 0.9% early in the Asia session Friday. The Bloomberg Dollar Spot Index rose 0.2% Friday after five straight days of declines.

The emergency programs created by the Cares Act, the stimulus President Donald Trump signed earlier this year, were set to expire at year-end. Mnuchin is seeking to end the primary and secondary market corporate credit facilities, the Municipal Liquidity Facility, the Main Street Lending Program and the Term Asset-Backed Securities Loan Facility.

"The economy has responded very strongly, but there are still areas of the economy that need more support," Mnuchin said in an interview. "That's why I'm encouraging Congress to reallocate this money."

The secretary sought a 90-day extension for the Commercial Paper Funding Facility, the Primary Dealer Credit Facility, the Money Market Mutual Fund Liquidity Facility and the Paycheck Protection Program Liquidity Facility.

Demand for Main Street loans has picked up in the last few weeks
The Fed programs were launched this spring to stabilize markets and extend credit to U.S. companies as the Covid-19 pandemic took hold. They helped quell the panic but take-up has been relatively low — which the Fed says is a sign that they've worked.

Republicans in Congress have used that to argue that they are no longer needed and the billions of dollars sent to the central bank to set them up can be deployed better elsewhere. Democrats, as well as the central bank, say that removing the safety net of these programs as the virus surges again through the country is not a good idea.

"I do think it's critical that the 13(3) programs, the public market backstop programs and programs that support Main Street and the PPP, that they continue beyond year-end. I think that's very important," Dallas Fed President Robert Kaplan said earlier Thursday in an interview on Bloomberg Television, referring to the section of the Federal Reserve Act providing the authority for emergency lending.

Republican Senator Pat Toomey, of Pennsylvania, praised Mnuchin's move. "With liquidity restored," the programs should expire, "as Congress intended and the law requires," Toomey said in a statement Thursday.

The Fed's intervention into corporate bond markets was particularly effective, staving off a massive wave of bankruptcies. But the government support also stoked record amount of issuance and ultra-low rates, resulting in worries that credit markets were overheating and taking too much risk.

While investors had expected the buying program to continue well into next year, market watchers were relatively sanguine about the demise — for now.

Bloomberg Economics

By Saleha Mohsin and Catarina Saraiva

November 19, 2020, 1:29 PM PST Updated on November 19, 2020, 4:00 PM PST

— With assistance by Steve Matthews, Christopher Condon, Lisa Lee, and Joanna Ossinger

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The Treasury Is Asking the Fed for Its Money Back. Here's What It Means for Markets.

The Federal Reserve will likely be forced to close five pandemic facilities on Dec. 31 and return unused funds unless Congress acts. And while Wall Street watchers say the move could undermine confidence, markets had a muted response Friday.

Treasury Secretary Steven Mnuchin declined to extend the facilities in a late Thursday letter to Fed Chairman Jerome Powell, saying that they had done their job and highlighting that much of their capacity remains unused. What's more, he said, the only facilities slated to close are those financed with Treasury funding appropriated by Congress in the Cares Act. Mnuchin asked the Fed to return unused funds and extend the four programs that don't have that funding.

The Fed, for its part, came out with a statement saying that it "would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy."

Markets' responses were muted on Friday. The S&P 500 was down 0.3%, while the iShares iBoxx $ Investment Grade Corporate Bond exchange-traded fund was down 0.3% and the iShares iBoxx $ High Yield Corporate Bond ETF (HYG) was down 0.2%. And the iShares National Muni Bond ETF (MUB) gained 0.1%.

Still, many Wall Street strategists appear to agree with the Fed.

"While the amount of debt purchased so far isn't necessarily significant relative to the size of the market, we view the signaling of the purchases as important as the purchases themselves," strategists at CreditSights wrote in a Nov. 20 note.

They were writing on investment-grade debt, but strategists in other markets have echoed the sentiment.

“US credit markets will have to get through the winter months in which the surging new wave of the virus and exhaustion of savings from prior fiscal stimulus threaten a loss of economic momentum without a Fed backstop, though with support from vaccine prospects,” Evercore ISA economists Krishna Guha and Ernie Tedeschi wrote in a Nov. 19 note. “Mnuchin’s move will tighten financial conditions and removes a safety net for markets at the wrong moment.”

Vikram Rai, a municipal-market strategist with Citigroup, wrote in a late October note that the “Municipal Liquidity Facility (MLF) MUST be extended beyond year-end 2020.”

To get a more detailed idea of the implications of the facilities’ closings, it may help to run down what specific facilities are expiring, the markets they were created to support, and their uptake:

The Primary- and Secondary-Market Corporate Credit Facilities:

These two vehicles were created to buy up to $750 billion in corporations’ bonds, either directly or indirectly through exchange-traded funds. In the primary market facility, the Fed could buy four-year bonds directly from companies. In the secondary market facility it bought up to five-year maturity bonds that companies have already issued, with their selections based on a broad-based investment-grade market index. The secondary-market facility also bought corporate bond ETFs.

While the Fed hadn’t bought any bonds in the primary-market facility, it owned $4.8 billion of bonds and $8.6 billion of ETFs in its secondary-market facility, totaling more than $13 billion.

That is a relatively small sum compared to the maximum $750 billion purchase amount, not to mention the overall size of the $9.6 trillion corporate bond market. Yet corporate bond markets across the quality scale have recovered to their pre-pandemic levels. According to ICE Indexes data, investment-grade bonds are yielding 1.9%, down from 4.7% at the height of March’s selloff, and high-yield bonds are yielding slightly less than 5%, down from their 11% pandemic peak.

The Term Asset-Backed Securities Loan Facility, or TALF:

This facility was created to support the market for securities backed by loans, specifically: credit-card loans, automobile loans, student loans, certain types of business and insurance loans, and leveraged loans.

As of Oct. 31, the Fed had lent out $3.7 billion of cash with the TALF, in the form of three-year loans with AAA-rated asset-backed securities as collateral. The asset-backed securities market is about $1.7 trillion, according to the Securities Industry and Financial Markets Association, or Sifma, though a significant amount of those loans are backed by commercial mortgage-backed securities, which are included in the $10.3 trillion mortgage market.

In his letter to the Fed, Mnuchin highlighted steep declines in consumer-loan-backed security yields since the pandemic, indicating a rebound in prices—for both AAA- and A-rated securities. Credit-card asset-backed security yields are only slightly higher than pre-pandemic levels, as are auto loans.

The Main Street Lending Program:

This bundle of facilities was meant to help small-to-midsize businesses and nonprofits access cash. The program—five facilities all managed under a common umbrella—was created to purchase a large proportion of new or expanded loans of at least $100,000 from these entities’ lenders. The facilities were created to purchase five-year loans with deferred principal and interest payments.

As of Oct. 31, the MSLP had purchased $4.2 billion of loans, from 419 businesses across the U.S.

and one nonprofit. In his letter to the Fed, Mnuchin said that the financial system can now provide credit to businesses, citing a National Federation of Independent Business survey that found only 2% of small and medium-sized firms reported that they had unsatisfied borrowing needs.

The Municipal Liquidity Facility:

This facility was created to lend directly to state and local governments, but was one of the most controversial programs in the Fed's stable, as market participants said its costs were prohibitively high—even after a reduction—and strategists said the Fed didn't want to get too involved with a market that it saw as more Congress's area of focus.

The Metropolitan Transportation Authority and the state of Illinois have used the facility, as the MTA grapples with cratering revenues and Illinois' recent budget trouble threatens the state's credit rating. The MTA has borrowed $450.7 million from the MLF and plans to borrow an additional $2.9 billion by the end of this year, while Illinois has borrowed $1.2 billion.

Even so, the broader municipal market hasn't taken the coming expiration too hard yet, as mentioned above. The worst of the pandemic-related trouble has so far been experienced by regions with high population densities and/or tourism revenues, such as New York and Hawaii, or among issuers that were struggling already with structural deficits. And many of the most embattled issuers say they would rather have grants than than loans.

Still, with a divided government likely after January's runoff elections the question of federal aid is still up in the air. And UBS strategist Tom McLoughlin told Barron's in an interview last week that he believes there could be an uptick in the number of municipalities using the MLF in coming weeks if they believe it will soon expire.

In his letter, Mnuchin cited recent months' declines in municipal bond yields as evidence of the facility's success, even though that market hasn't recovered as strongly as corporate debt markets have.

And broadly, the programs' success appear to be a major reason that Mnuchin feels comfortable shutting them down.

But it is not yet clear how markets will fare this winter, with surging coronavirus case counts and a divided government that looks likely to persist into the new administration in January.

Even so, there is another reason that investors don't seem pessimistic about the facilities' closing at the moment: The possibility that the closing of the facilities will prompt more fiscal support from Congress. In an interview with CNBC on Friday morning, Mnuchin said that fiscal support is a more important factor in coming months, and said he would be working with Congress on Friday to attempt to push forward a deal.

"With lockdowns increasing, though hopefully mitigated by COVID vaccines in the coming months, now is a perfect time to get at least a [small] deal done," wrote Academy Securities strategist Peter Tchir in a Friday note. "So maybe Mnuchin has figured out a way to get the money out directly or is betting that this forces the hand of Congress. I think this might be what the economists who are harshly criticizing this move are missing."

Barron's

By Alexandra Scaggs

Nov. 20, 2020 12:31 pm ET

Biden Needs to Fix Mnuchin's Big Mistake.

The president-elect must safeguard the Fed's lifeline for companies and municipalities.

U.S. Treasury Secretary Steven Mnuchin has just put the country's financial stability at unnecessary risk, by refusing to extend programs that've kept credit flowing to companies and municipalities amid a severe economic crisis. It's now up to President-elect Joe Biden and the Federal Reserve to correct what could prove to be a costly mistake.

At issue are several emergency lending facilities, set up to address a severe credit freeze that accompanied the onset of the coronavirus pandemic in March and April. With $195 billion in backing from the Treasury, the Federal Reserve made about $2 trillion available to small businesses, corporations, and state and local governments, ensuring that they'd have access to the funds they needed to meet their obligations. The mere presence of such a formidable backstop emboldened lenders, making private credit widely available on excellent terms. As a result, the Fed's facilities have gone largely unused. For the most part, this is a sign that they're doing their job, providing the confidence needed for markets to operate on their own.

Now, however, Mnuchin wants to shut them down. In a letter to Fed Chairman Jerome Powell, he said he intends to withhold the approval needed to extend the programs beyond Dec. 31, and asked the Fed to return the capital that the Treasury has committed. His rationale is that he's acting according to the requirements of the Cares Act, that markets' thorough recovery makes removing the backstop completely safe, and that the money could better be used for direct grants.

He's wrong on all counts. When the programs were created, the clear intent was to extend them as long as necessary, just as the Fed did with its emergency lending facilities during the 2008 financial crisis. They remain necessary: With Covid-19 resurgent across the country, the economic outlook darkening, and Congress making no progress on added fiscal relief, it would be profoundly irresponsible to remove the one remaining lifeline that companies and municipalities have. And while direct grants are undoubtedly needed, that's a separate subject: The Treasury's capital is a commitment that it will eventually recoup, and it in no way prevents Congress from allocating funds for grants. It's hard not to see Mnuchin's decision as politically motivated, designed to undermine the incoming administration.

Together, Biden and the Fed can set things straight. The president-elect should affirm that after taking office in January, he'll direct his Treasury secretary to grant the approval that Mnuchin has refused. As long as the central bank doesn't return the Treasury's capital, the Fed should be able to revive the facilities. It's less than ideal, but the knowledge that help is on the way should be enough to get markets through what's turning out to be a difficult presidential transition.

Bloomberg Opinion

By Editorial Board

November 20, 2020, 7:30 AM PST

Steven Mnuchin's Finest Hour.

The Treasury chief decides to end Fed emergency programs as Congress intended.

The late, great Milton Friedman used to say that nothing is so permanent as a temporary government program. That's one of many reasons taxpayers should thank Treasury Secretary Steven Mnuchin for moving to end most of the Federal Reserve's special pandemic lending facilities on Dec. 31 as Congress intended.

This isn't popular at the Fed, which likes its growing ability to allocate credit and please politicians with loans to their allies. It also won't go down well on most of Wall Street, which loves the Fed backstops. And Democrats are unhappy because they want a long-term call on the Fed for their own political ends.

But Mr. Mnuchin has acted in the best interests of the economy and the federal fisc, and the facts of the financial markets and politics explain why. Specifically, Mr. Mnuchin asked Mr. Powell in a letter Thursday to end the facilities that the Fed stood up with money under the March Cares Act. This includes the state and municipal lending program, primary and secondary corporate credit facilities, the Main Street facility for businesses, and the program for asset-backed securities.

All of these programs were created in an emergency at the onset of the pandemic when the financial markets were in danger of melting down. The Fed also stood up facilities, without Cares Act money, for commercial paper, money-market funds, and primary dealer credit.

The programs worked. Even as the pandemic and government shutdowns have waxed and waned, financial markets have healed. Lending spreads have fallen, and liquidity is ample in nearly all markets.

The facilities worked even without the Fed doing much lending. Their existence alone helped restore confidence. Treasury provided some $195 billion in Cares Act cash to backstop the facilities. But the Fed has made only $25 billion in loans or funding for other assets. Small and large businesses have ample access to credit, and so do cities and states.

Democrats are squawking about the Municipal Liquidity Facility going away, but so far it has made only two loans: one to the sorry state of Illinois for $1.2 billion and one to New York's Metropolitan Transportation Authority for $450 million. New Jersey considered the Fed facility, but this week it floated $3.7 billion in bonds paying 1.95% in the private markets and the offer was oversubscribed. If even a deadbeat like Trenton can tap the private markets, there's no need for the Fed to do the lending.

Mr. Mnuchin has also asked the Fed to return $455 billion in unused Cares Act funding to the Treasury. That money will sit in the general fund and Congress can reappropriate it for other uses. It could pay for a new Covid relief bill if Speaker Nancy Pelosi ever agrees to compromise. Or it could be used to reduce the deficit (we can dream).

None of this means the Fed is out of ammo. Mr. Mnuchin has extended for 90 days four Fed facilities that were set up with pre-Cares Act money in Treasury's Exchange Stabilization Fund (ESF). That includes the commercial paper and money-market programs. The ESF also retains some $80 billion, and $50 billion of that could quickly be used to leverage as much as $500 billion in lending if need be. The Fed will also retain $25 billion in its facilities that it could use to leverage another $250 billion.

The Fed issued a statement on Thursday griping about Mr. Mnuchin's decision, which proves the secretary's point. Chairman Powell is behaving like a politician these days, opining on fiscal policy that is not part of his mandate. But it would be an abuse of his authority and a rejection of Congressional intent if he refuses to return the $455 billion to Treasury.

He'd essentially be saying that any money handed to the Fed in an emergency is the Fed's to use for whatever purpose and for as long as the central bank wants. This would be an unprecedented intrusion into fiscal policy. And it would make Congress understandably reluctant to hand more money to the Fed in the future. Senators Mike Crapo and Pat Toomey, who negotiated the Cares Act language in detail, issued statements Thursday supporting Congress's intent to terminate the emergency programs on Dec. 31. Late Friday Mr. Powell replied in a letter to Mr. Mnuchin that the Fed will work with the Treasury to return the money.

The termination is also important to limit the demands by politicians to use the Fed for policies they can't get through Congress. Four Senators, including Minority Leader Chuck Schumer, wrote Messrs. Powell and Mnuchin this month urging that the Fed programs be expanded. Democrats want the Fed to bail out states, invest in public works, add climate mandates and promote racial justice. The U.S. economy doesn't need more politicized credit.

Political actors rarely cede power or money they've received in emergencies, and thus do temporary programs become permanent. Mr. Mnuchin has done a public service in breaking that pattern, and Mr. Powell will as well if he follows that good example.

The Wall Street Journal

By The Editorial Board

Updated Nov. 20, 2020 6:08 pm ET

Letter from Chair Powell to Secretary Mnuchin Regarding Emergency Lending Facilities.

Dear Mr. Secretary,

Like you, I am pleased with all that we have accomplished together this year. We rapidly put in place emergency lending facilities to support state and local governments, small and medium-sized businesses, and large employers. These were novel and complex programs that required us to work productively together. Our efforts helped to prevent severe disruptions in the financial system and unlocked trillions of dollars of private lending to households, businesses, and municipalities at a moment when the economy needed it most.

The CARES Act assigns the Treasury Secretary sole authority to make certain investments in Federal Reserve emergency lending facilities, subject to limits specified in the statute. You have indicated that the limits on your authority do not permit the CARES Act facilities to make new loans or purchase new assets after December 31, 2020, and you have requested that we return Treasury's excess capital in the CARES Act facilities. We will work out arrangements with you for returning the unused portions of the funds allocated to the CARES Act facilities in connection with their year-end termination.

As you noted in your letter, non-CARES Act funds remain in the Exchange Stabilization Fund and are,

as always, available, to the extent permitted by law, to capitalize any Federal Reserve lending facilities that are needed to maintain financial stability and support the economy.

November 20, 2020

Mnuchin-Powell Split Shows Rare Discord as Economy Struggles.

- **Treasury secretary, Fed chair typically work in lockstep**
- **Investors will look to whether Mnuchin successor renews**

The top two U.S. economic policymakers clashed over whether to preserve emergency lending programs designed to shore up the economy — a rare moment of discord as the nation confronts the risk of a renewed downturn spurred by the resurgent coronavirus.

The disagreement erupted late Thursday when outgoing Treasury Secretary Steven Mnuchin released a letter to Federal Reserve Chair Jerome Powell demanding the return of money the government provides the central bank so it can lend to certain markets in times of stress. Minutes later, the Fed issued a statement urging that "the full suite" of measures be maintained into 2021.

"This is a significant and disturbing breach at a critical time for the economy," said Tony Fratto, who worked at the Treasury and the White House during the George W. Bush administration. "We need all the arms of government working together and instead we're seeing a complete breakdown," he said, noting that Washington remains at an impasse on fiscal stimulus as well.

Investor reaction to the split was swift amid fears the decision will unsettle markets and impede the economic recovery: futures on the S&P 500 Index were down 0.5% in early Friday trading in Europe, with haven demand sending Treasuries higher and pulling down yields.

Treasury chiefs and Fed chairs typically coordinate closely at times of crisis, appearing jointly before Congress and working in lockstep to ensure funding markets run smoothly. The two agencies were tightly linked in the bailouts of the financial and auto industry more than a decade ago. And they united again in the March 2020 Cares Act economic rescue package, which appropriated cash for the government to finance Fed backstops for everything from municipal to corporate finance after markets buckled when the pandemic hit.

Now, Mnuchin wants some of the money back, arguing many markets are no longer at risk of seizing up and so don't need further aid beyond next month. In his sights are facilities which sought to ease corporate credit and municipal-borrowing and also offered loans to small and medium-sized businesses. He asked that four other programs be kept in place for an additional 90 days.

"Financial conditions are quite strong," Mnuchin said in an interview. "The good news is, the markets have recovered significantly," he said. Companies don't need more loans, and instead require more grant money, which requires action from Congress, he said.

The Fed has argued that the lack of take-up for some of the programs is a sign they've worked.

Mnuchin said that the purpose of his announcement was not to put the Treasury against the Fed, and that he was merely carrying out the law prescribed by the Cares Act. The facilities could be re-activated if needed with either congressional support or with other funds available to the Treasury, he said.

“It appears the Fed may be reading the legislation differently,” said Michael Feroli, chief U.S. economist at JPMorgan Chase & Co.

The risk is that divisions between the key economic players undermines confidence at a time when growth is flagging. Fed Bank of Dallas President Robert Kaplan said on Bloomberg TV Thursday that there’s the potential for gross domestic product to shrink this quarter and even next.

The economy is also set to go without fiscal stimulus: Republicans and Democrats remain deadlocked on a new package, and measures including extended unemployment benefits are set to expire next month.

“I was a bit surprised” at the Treasury’s statement, Raphael Bostic, president of the Fed Bank of Atlanta, told Bloomberg TV. “Given where the economy is — and there’s so much uncertainty still out there — it’s prudent to keep those things open so that when people, if they do have stress, they can draw upon it.”

Among the initiatives that will now no longer be able to extend new credit are two Fed facilities that allowed it to buy corporate bonds for the first time. They helped to unfreeze that market, even before the effort was up and running, and businesses have since logged record amounts of debt issuance.

Another, the Main Street Lending Program, has had a slow start, and the Fed recently loosened its terms to help encourage banks and smaller businesses to participate.

Powell himself said at a virtual conference on Tuesday that the time to discontinue the lending facilities was “not soon,” highlighting that typically the central bank keeps its backstops in place for some time after a crisis hits. He has repeatedly praised the Cares Act for what he’s described as “essential” support amid the historic collapse in GDP in the spring.

The U.S. Chamber of Commerce called for a reconsideration of Mnuchin’s decision.

“We strongly urge these programs be extended for the foreseeable future and call on Congress to pass additional pandemic relief targeted at the American businesses, workers and industries that continue to suffer,” the chamber said in a statement.

The sunsetting of some of the facilities may now build expectations for the Fed to take some other policy action when it wraps its next meeting on Dec. 16. Feroli was among those already anticipating that the central bank could tweak its main asset-purchase program by skewing it toward longer-dated securities.

President-elect Joe Biden’s administration could seek to renew the facilities, or press Congress to authorize fresh funding for them, when it takes office in January. Biden said Thursday that he’s made a decision on who he will nominate as Treasury secretary. Republicans in Congress have said the billions of dollars sent to the central bank can be deployed better elsewhere.

Biden’s Treasury could agree to restart the facilities, as Mnuchin pointed to, using the Exchange Stabilization Fund.

That could be one reason why credit markets may not immediately respond to the Treasury’s move, said Ellen Zentner, chief U.S. economist at Morgan Stanley. Plans by cruise operator Carnival Corp. to sell debt without collateral will test the strength of the market in the meantime.

“If the only implication is you’re going to have a three-to-four week disruption until a new Treasury

secretary is confirmed, then credit investors won't look to sell" for now, Zentner said on Bloomberg TV. The key will be to see whether that renewal will be forthcoming, she said.

Bloomberg Politics

By Chris Anstey and Saleha Mohsin

November 19, 2020, 8:04 PM PST Updated on November 20, 2020, 5:14 AM PST

— *With assistance by Kathleen Hays*

Municipal CUSIP Request Volume Continues to Surge.

NEW YORK, Nov. 16, 2020 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for October 2020. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a significant surge in municipal request volume for the second straight month, while corporate volumes declined throughout the U.S. and Canada.

CUSIP identifier requests for U.S. corporate debt declined 9.2% in October, while requests for new U.S. equity identifiers fell 4.9% and Canadian requests were down 8.7% versus last month's totals. On a year-over-year basis, corporate CUSIP requests are up 12.2%.

Municipal requests climbed in October. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – surged 31.8% versus September totals. On an annualized basis, municipal CUSIP identifier request volumes were up 15.4% through October. On a state-by-state basis, issuers in Texas requested 300 new municipal identifiers in October, followed by California with 175 and New York with 148.

"The real story in this month's data comes from the municipal market, where issuers have really ramped up access to debt markets," said Gerard Faulkner, Director of Operations for CGS. "In Texas alone we saw 300 identifier requests for new municipal debt issues this month. It's clear that the combination of low rates and increasing funding needs is creating a recipe for increased municipal market activity."

Requests for international equity and debt CUSIPs were mixed in October. International equity CUSIP requests were down 13.8% versus September. International debt CUSIPs increased 5.9% on a monthly basis. Syndicated loan requests were up 38.0% on a monthly basis and down 28.2% year over year.

To view the full CUSIP Issuance Trends report for October, click here.

Agencies Provide Temporary Relief to Community Banking Organizations.

The federal bank regulatory agencies on Friday announced an interim final rule that provides temporary relief for certain community banking organizations related to certain regulations and reporting requirements as a result, in large part, of their growth in size from the coronavirus response.

Community banking organizations are subject to different rules and requirements based on their risk profile and asset size. Due to participating in federal coronavirus response programs—such as the Paycheck Protection Program—and other lending that supports the U.S. economy, many community banking organizations have experienced rapid and unexpected increases in their sizes, which are generally expected to be temporary. The temporary increase in size could subject community banking organizations to new regulations or reporting requirements.

With regard to the requirements covered by the interim final rule, community banking organizations that have crossed a relevant threshold generally will have until 2022 to either reduce their size, or to prepare for new regulatory and reporting standards. The rule applies to community banking organizations financial institutions with less than $10 billion in total assets as of December 31, 2019. Community banking organizations with under $10 billion in assets may have fewer resources available to prepare and comply with previously unanticipated regulatory requirements, especially during a time of economic disruption.

The rule will be effective immediately upon publication in the Federal Register, and comments will be accepted for 60 days after publication in the Federal Register.

Federal Register notice: Temporary Asset Thresholds (PDF)

November 20, 2020

IRS Releases UBTI Calculation Regs for Exempt Orgs.

Treasury and the IRS have released final regulations on calculating the unrelated business taxable income of tax-exempt organizations.

The final regs (T.D. 9933) issued November 19 address section 512(a)(6), a Tax Cuts and Jobs Act provision that requires exempt organizations with more than one unrelated trade or business to calculate UBTI separately for each one. The regs provide guidelines for identifying separate UBTI and explain when EOs can treat investment activities as one unrelated trade or business when computing UBTI.

The final guidance adopted some clarifications provided in the proposed regs (REG-106864-18) without change. Those clarifications involve the section 513(b) definition of unrelated trade or business applying to individual retirement accounts and the inclusions of subpart F and global intangible low-taxed income being treated in the same manner as dividends when determining UBTI.

UBTI Calculation Regs Reflect Public Input.

Guidance from the IRS and Treasury to help tax-exempt organizations calculate unrelated business taxable income if they have more than one unrelated trade or business adopts many suggestions offered in public comments.

The final regulations (T.D. 9933), released November 19 ahead of official publication in the Federal Register, address section 512(a)(6), a Tax Cuts and Jobs Act provision that requires exempt organizations with multiple unrelated trades or businesses — silos — to calculate UBTI separately

for each one.

The final regs explain how an EO can determine if it has more than one unrelated trade or business and, if it does, how to calculate its UBTI.

“The IRS should be commended for its speedy efforts in issuing final guidance on 512(a)(6), along with their level of consideration given to the 17 comments submitted in response to the proposed regulations,” Meghan R. Biss of Caplin & Drysdale Chtd. told Tax Notes.

The preamble to the final regs discusses reducing the administrative burden on organizations and the IRS by adopting bright-line rules, Biss noted.

“In doing so, I believe that the IRS is taking into account how it will enforce these rules,” Biss said. “ To me, the rejection of facts and circumstances is an indication that they want agents to avoid the enforcement difficulties posed in other EO areas that rely solely on a facts and circumstances test.”

NAICS Codes

The final regs retain the proposed regs’ (REG-106864-18) provision requiring an EO to identify each of its separate unrelated trades or businesses by using the first two digits of the North American Industry Classification System (NAICS) code that most accurately describes the unrelated trade or business.

The determination is based on the more specific NAICS code that describes the organization’s activity, and the descriptions in the current NAICS manual of trades or businesses using more than two digits of the NAICS codes are relevant in making that determination, according to the preamble.

In response to comments, the final rulemaking incorporates a NAICS rule for identifying particular industries and provides that when there are sales of goods both online and in shops, the separate unrelated trade or business is identified by the goods sold in shops if the same goods generally are sold online and in stores.

If an EO concludes that its trade or business activities would be most accurately described by different NAICS two-digit codes, the activities should be identified that way and treated as separate unrelated trades or businesses, according to the final regs.

Like the proposed rulemaking, the final regs say the NAICS two-digit code has to identify the separate unrelated trade or business in which the EO directly or indirectly engages. It may not describe activities substantially related to accomplishing the organization’s exempt purpose.

The final regs, in response to comments, eliminate the restriction on changing NAICS two-digit codes. An organization that changes the identification of a separate unrelated trade or business must report the modification in the tax year of the change in accordance with forms and instructions.

IRAs, Subpart F Income

The final regs adopt the proposed rulemaking’s clarification that the definition of unrelated trade or business applies to IRAs.

Likewise, the proposed regs’ clarification that inclusions of subpart F income and global intangible low-taxed income are treated the same way as dividends for purposes of determining UBTI is retained in the final rulemaking.

Net Operating Losses

An EO with more than one unrelated trade or business will determine the net operating loss

deduction separately for each of its unrelated trades or businesses, according to the final regs. They also provide that reg. section 1.512(b)-1(e), which addresses the application of section 172 in the context of UBIT, applies separately for each such unrelated trade or business.

The final regs say an organization with losses in a tax year beginning before January 1, 2018, and in a tax year starting after December 31, 2017, will deduct its pre-2018 NOLs from total UBTI before deducting any post-2017 NOLs regarding a separate unrelated trade or business against the UBTI from such trade or business. The IRS and Treasury rejected a commentator's request to permit an EO to choose the order in which it uses pre-2018 and post-2017 NOLs based on its own facts and circumstances.

The final regs clarify that pre-2018 NOLs are taken against the total UBTI in a way that allows for maximum use of post-2017 NOLs, rather than pre-2018 NOLs, in a tax year.

"For example, the final regulations further clarify that an exempt organization may allocate all of its pre-2018 NOLs to one of its separate unrelated trades or businesses or it may allocate its pre-2018 NOLs ratably among its separate unrelated trades or businesses, whichever results in the greater utilization of the post-2017 NOLs in that taxable year," the preamble explains.

The final rulemaking also provides that after offsetting any gain from terminating, selling, exchanging, or otherwise disposing of a separate unrelated trade or business, any remaining NOL is suspended.

But the suspended NOLs may be used if the previous separate unrelated trade or business later resumes or if a new unrelated trade or business that is accurately identified using the same NAICS two-digit code as the previous separate unrelated trade or business begins or is acquired in a future tax year, according to the preamble.

In response to six commentators, the final regs provide that for purposes of section 512(a)(6), a separate unrelated trade or business that changes identification is treated as if the originally identified separate unrelated trade or business is terminated and a new separate unrelated trade or business begins.

Therefore, none of the NOLs from the previously identified separate unrelated trade or business will be carried over to the newly identified separate unrelated trade or business, the preamble explains.

The change in identification may apply to all or a part of the originally identified separate unrelated trade or business. If the change applies to the originally identified separate trade or business entirely, any NOLs attributable to that separate unrelated trade or business are suspended, the final regs say.

If the change in identification applies to the originally identified separate unrelated trade or business in part, the originally identified separate unrelated trade or business that remains unchanged keeps the entire NOLs attributable to it, including the part for which the identification is changing.

Investment Activities

Despite pleas from some commentators, the final regs, like the proposed version, treat an EO's investment activities that are subject to UBIT as a separate unrelated trade or business for purposes of section 512(a)(6).

Regarding specified payments from controlled entities, the IRS and Treasury adopted the language in the proposed regs without change, rejecting the suggestion that all specified payments be treated

as one unrelated trade or business for purposes of section 512(a)(6).

Qualified Partnership Interest
The final regs rejected commentators' recommendations of alternative or additional methods for identifying a qualified partnership interest (QPI).

The rulemaking adopts the proposed regs' position that once an organization designates a partnership interest as a QPI, it can't subsequently identify the trades or businesses conducted by the partnership that are unrelated trades or businesses regarding the EO using NAICS two-digit codes unless and until the partnership interest stops being a QPI.

In response to a commentator, the final regulations clarify that if an organization whose interest must be considered when determining the EO's percentage interest for purposes of the first prong of the control test is a general partner in a partnership in which an EO holds an interest, that interest is not a QPI.

Regarding the first prong of the control test, the final regs keep the 20 percent capital interest threshold of the proposed regs. However, they make clear that the EO must satisfy the percentage interest requirement for its tax year with which or in which the partnership's tax year concludes.

TAX ANALYSTS

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